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Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Electoral Reform Green Paper: Donations, Funding and Expenditure

Political campaign donations are a valuable part of the democratic process. As an Independent, my election campaigns have relied on donations from residents and members of the local community who have supported me for my achievements, policies and approach to representation.

Giving donations provides an opportunity for people to participate in the political process and express their support. In such cases, donations may be selfless, even altruistic; or they may be made with the intention of supporting a candidate who broadly supports the donor's concerns.

However, there are varying motives for funding political parties and candidates. Donations that are intended to influence policies or decision making for private benefit create community concern and undermine public confidence in the political process.

The public does not believe that corporations make large donations because they are community-minded or that people pay thousands of dollars to dine with Ministers, without expecting something in return. Such donations create an imbalance because the wealthy have access and influence that is not available to the general public.

The recent Wollongong Council scandal has no place in a genuine democracy, and was the end result of lax and ineffective attitudes to conflicts of interest, particularly involving political donations. It occurred in a climate where governments and Parliaments have ignored blatant conflicts of interest, and large donations from vested interests have coincided with a lack of government will to introduce reform for broader public benefit.

To restore and preserve confidence in the political process, ***donations from the highest priority risk areas must be prohibited across all jurisdictions in Australia***, with increased ***accountability and transparency mechanisms*** to limit opportunities for political donations to subvert the public interest in other areas.

I have repeatedly called for electoral funding reform and believe the Federal Government Green Paper process provides an exceptional opportunity to achieve real change to benefit the wider public. It is particularly important in NSW where the State Government has indicated that it will only support new reform through a coordinated national approach. Australia's system is lax in comparison to many other countries and the wider community wants major reform.

I make this submission as an Independent who has contested many State and Local elections.

PRIORITY RISK AREAS

There is growing public concern about the influence of large political donations from some industries/sectors due to the high risk of undue influence and the serious consequences of inappropriate decisions. These priority risk areas generally involve:

- Policy areas with a significant level of **discretionary decision making**, where there is a risk that political donations influence specific decisions contrary to the public interest;
- Industries or sectors with a **high degree of regulation**, particularly to maintain health and safety, where political donations can influence policy outcomes contrary to public interest;
- **Opportunities for significant private financial profit (or loss)** due to government decisions; and
- Potential negative public outcomes that are **significant or permanent**.

There are a number of industries where there is a direct vested interest in using political donations to achieve particular policy outcomes that are in conflict with the broader public interest, including the development, gaming, racing and tobacco industries, and government contractors. Some countries have already implemented bans on specific industries. Where there is potential for undue influence on the political process, there should be restrictions on donations.

I will discuss particular industries where recent incidents in NSW have exposed significant conflicts of interest however I believe that the only way to safely avoid donations with a high risk of undue influence for commercial interests is to ban all donations from corporations and only allow donations from individuals. Individuals are not likely to profit directly or significantly from policy decisions in the way that it is possible for corporations to derive benefit.

I recommend a comprehensive investigation of all sources of political donations in order to identify and exclude donors that could unduly influence the political process or create a perception of undue influence. This investigation should consider banning all donations from corporations and limiting donations to individuals only.

Developer Donations

Developer donations are a significant concern at the State and Local level where there is a combination of discretionary decision making, essential regulation to restrict some activities, potentially high profits and significant and permanent negative consequences from poor decisions.

Developers have the capacity to directly and significantly benefit from planning decisions through approval of multimillion dollar developments, while the broader community is directly impacted by these decisions as a result of factors such as overshadowing, increased traffic or inadequate sustainability.

The NSW Independent Commission Against Corruption (ICAC) has acknowledged that developer donations can be used to influence decisions of public officials and recommended action in its 2007 report *Corruption Risks in NSW Development Approval Process*.

At a minimum, developer donations undermine public confidence in the planning system because they create doubt that decisions are made fairly or impartially. Donations can also create conflicts for elected representatives who may be forced to choose between the public interest and the interest of their party. At worst, developer donations result in decisions that are not in the public interest.

I agree with former Prime Minister Paul Keating who stated that “we would be better off if developers were forbidden from donating election funds to municipal candidates and to political parties”.

I recommend a total ban on developer donations to political parties and electoral candidates, based on a clear and broad definition of development-related interests to minimise loopholes.

Gaming, Racing and Liquor Industries

Like the development industry, ICAC has identified the gaming, racing and liquor industries as having high level of reliance on various forms of permits and approvals, from which political donations create conflicts of interest. This has been a growing concern and in recent elections I have refused any donations that appear to be associated with liquor licenses, in order to avoid any perceived conflicts.

Due to the significant level of public harm that is associated with the gambling and liquor industries, it is essential that government establish and enforce effective policies to minimise harm while permitting the industries' benefits.

Community concern about political donations from the liquor industry was highlighted during the 2007 campaign to reform NSW liquor laws. Many of the comments I received from NSW residents expressed disgust over a perceived link between the NSW Government's failure to adequately reform laws and the large political donations from pubs and hotels. While liquor reform was achieved, it took a strong, widespread community campaign.

The NSW president of the Australian Hotels Association stated in 2004 on ABC's Stateline that:

"Democracy is not cheap. And your firm and your company – everybody's involved with assisting political parties because at this stage we need to keep these people in place to have the democracy we have today."

I recommend a total ban on political donations from the gambling and liquor industries.

Foreign Donations

Foreign donations are also a concern as it is difficult to envisage a rationale for foreign donations that does not involve a direct vested interest in a particular outcome. Forty countries have banned foreign donations and I understand that this provision is proposed in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill, 2008*.

I recommend a total ban on political donations from foreign donors who are not Australian citizens.

TRANSPARENCY AND ACCOUNTABILITY

To restore and strengthen confidence in the political process, there is also a need to increase transparency and accountability of political donations. Key areas include ***accurate disclosure of donations*** through the removal of existing loopholes, and the ***introduction of appropriate caps/thresholds*** to limit the potential and perceived influence of donations.

Loopholes for Some Significant Donations

Parties are only required to declare the source of their donation if it is \$10,000 or more federally, or if it is between \$1,000 or more to \$1,800 or more, in the states and territories. A corporation can escape being identified for donations to a party of around up to \$90,000 in a year and up to almost \$300,000 over three years by keeping donations in each state, territory and federally below disclosure thresholds.

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This loophole needs to be closed to ensure the community can be informed about the sources of donations to parties seeking to represent them. I understand the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill, 2008* proposes to reduce the Federal disclosure threshold to \$1,000.

I recommend that threshold limits for the disclosure of donations across Australia ensure accurate disclosure of all large donations.

Sponsored campaign fundraising events allow lobbyists to pay to sit at tables with Ministers and Shadow Ministers with reduced disclosure requirements, including participants treating functions as business expenses.

This involvement between lobbyists and politicians should be placed on the public record in a timely and accurate manner.

I recommend complete information about sponsored campaign fundraising events, including ticket prices and attendance, be made publicly available.

Reporting Returned Donations

In line with my position that campaign donations from some sources of funding may involve a perception or risk of undue influence, I have at times returned donations where I have subsequently suspected a possible conflict of interest.

It is not always possible to readily identify sources of funding, although a complete ban on donations from high risk priority areas will address the most significant problems.

On one occasion, my records indicated that a donation came from a law firm, but subsequent inquiries revealed that the firm had significant development-related investments, so I returned the donation. On another occasion, I returned a donation where an individual was subsequently revealed to be involved in a hotel development.

At times when this has occurred, my formal electoral return had already been lodged with no opportunity to adequately correct the public record.

I recommend a formal mechanism be provided to enable recording and subsequent reporting of returned campaign donations.

Frequency of Disclosures

I support changes to the NSW system that now require disclosure reports twice a year. Regular disclosure of donations available to the public will significantly improve transparency. Disclosure frequency requirements must also ensure that Independents are not excluded from the political process due to onerous reporting requirements that are not achievable for candidates without the support of a party structure and offices.

Donation and Expenditure Caps

NSW, and Australia generally, appear to be experiencing a progressive increase in campaign costs based on increasing competition to grab the electorate's attention. This escalation of costs increases pressure for more fundraising and ever larger donations in order to compete.

The escalation of election costs also potentially reduces political debate by providing an opportunity for some donors to seek influence across the political spectrum. Failing to respond to requests of large donors can reduce a party's campaign budget, while potentially increasing that of

the opponent. Industry, lobby groups and developers often fund more than one party to secure the support of both sides of politics.

It would be too difficult to establish a fair expenditure cap for both party candidates, who have the benefit of state-wide and national campaigns, and independent candidates, who run their own campaign in their own electorate, without disadvantaging independents.

I believe a cap on actual donation amounts is a fairer measure to level the playing field among candidates, while reducing reliance on particular donors. A cap of around \$5,000, indexed for inflation, would assist candidates to raise appropriate funds without risks of establishing a relationship of dependence with a particular donor. I understand thirty countries have set maximum campaign contributions from donors.

I recommend that mandatory limits be placed on donor contributions.

PUBLIC ELECTORAL FUNDING

A ***transparent and equitable system of public electoral funding*** for candidates is also a vital mechanism for reducing the reliance, and therefore the influence, of large donations.

Public Funding Amounts

Appropriately managed and targeted public funding of individual parliamentary candidates can provide democratic benefits. Public funding helps individuals who have community support, but limited financial resources, to contest elections. Without public funding, voters may be denied a reasonable choice of candidates.

One of the arguments for the introduction of public funding of campaigns was to reduce the risk of corruption by making political parties less dependent on political donations. However, candidates still accept donations – and spending on the major parties' campaigns has increased significantly. The intended aim will only be achieved if public funding is linked to a ban on high risk sources of donations, maximum limits on donations, and greater transparency of donation sources.

Public funding should only be provided to reimburse campaign expenses that have actually been incurred. I do not support the system used federally, and in some states where funding is simply linked to first preference votes, regardless of expenses. I understand the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* proposes to withdraw this system. There should be a limited amount of funding available for each electorate from which candidates who achieve a set level of primary votes must share funds. This system operates successfully at the NSW state level.

I recommend that public funding of election campaigns should be based on a specified amount for each electorate, shared by candidates who achieve a certain level of votes, and limited for each candidate by the amount they spent on their campaign.

Disparity Within Levels of Government

Public funding and tax concessions for Local Government elections should match State and Federal provisions. The need for grass roots representatives who understand local issues is fundamental at the local level and additional barriers should not discourage candidates at this level.

Unlike political donations to parties or State and Federal Independent candidates, donations to candidates contesting Local Government elections are not tax deductible. Tax deduction limits of \$1,000 are also imposed on local candidates who spend more on their campaign than they raise but these limits do not apply to State and Federal candidates. Furthermore, there is no provision

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for Local Government candidates to apply for retrospective public funding when their expenditure exceeds the funds raised.

This disparity is not justified. All candidates, regardless of jurisdiction, put themselves forward for public service.

I recommend that tax concessions and public funding provisions for Local Government candidates match State and Federal entitlements.

Full versus Part Public Funding

The NSW Premier has said that “political donations and similar contributions should be a thing of the past” and declared support for a solely publicly funded system.

I do not support a fully publicly funded system.

A fully publicly funded system would need to provide equal opportunity for new and existing, and party and independent candidates. It is essential to a democracy that new genuine independent candidates are able to contest an election to represent their local communities. I do not believe this would be possible without draining the public purse.

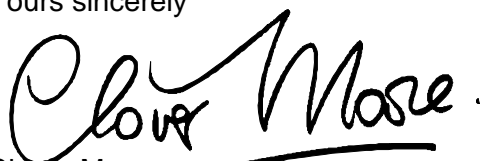
Past NSW elections have attracted a large number of independent candidates from the NSW Legislative Assembly, including 70 in 2007 and 104 in 2003. Statistics published by the NSW Department of Local Government show that the number of candidates has increased at every Local Government election since 1991, with 5,078 in 2004 and 4,950 in 1999, with the overwhelming majority of candidates either independents, or independents grouped together.

A healthy democracy depends on having a truly competitive field of candidates that enables all individuals regardless of wealth or party membership to put themselves forward as community representatives.

Providing fair and equitable funding that did not disadvantage the large number of independent candidates against party candidates, who have the support of a party funded campaign, would divert funds from necessary services.

I recommend that a mixed system of public and private election funding is appropriate with the focus on transparency, accountability, reduced risks of conflict of interests and fairness for all candidates.

Yours sincerely

A handwritten signature in black ink that reads "Clover Moore". The signature is written in a cursive, flowing style.

Clover Moore
Member for Sydney