

Submission: Electoral Reform Green Paper - Donations, Funding and Expenditure

The problem

It has been estimated that around \$5 million was donated by the energy industry to the Liberal party in the years when these companies were seeking to head off our signature of Kyoto, secure rejection of carbon trading, and block higher mandatory renewable energy targets. Buying and selling influence through political parties is of course not new and remains part of Australia's political process. In the 2007 Federal elections a record \$100 million plus will have been spent by parties and candidates. Based on past elections around **70%** of that will be privately sourced and around 80% of that will come from corporates or trade unions.

These facts are but the tip of a sordid iceberg of woefully lax and nonsensical electoral laws governing the intersection of money and politics in Australia.

The supreme irony is that the laws governing political party financing are so lax that breaking them has been pretty well impossible.

As has been the case with climate change, Australia has fallen into a policy time warp. Our close western democratic colleagues have spend the past decade tightening and in some cases totally reforming regulation of political party financing. For its part Australia has been heading in the opposite direction. To take a sample of supposedly like minded western democracies - the US, UK, Canada and New Zealand - all are already in the second or third round of refurbishing laws governing either fund raising, election expenditure and in some cases both.

The need to implement detailed and comprehensive laws limiting campaign expenditure is evident from the experience of other countries. Monetisation of politics in all western democratic countries is rising rapidly. Were this can lead is exemplified by the United States where the rate and absolute level of monetisation has reached the point where it is a serious impediment the democratic process. Last year's presidential elections were the first US\$1 billion plus campaign. The previous congressional elections in 2004 cost over \$4 billion. As one commentator noted, when a congressman gets elected the clock starts ticking: he has to raise around \$1000 a day until the next elections to fund his re-election. That's because the average cost of a congressional house seat campaign is \$1.3 million and a whopping \$9.6 million for a senate seat – in real terms both up four times from the mid 1970s.

Al Gore in his treatise on the decay of democracy in the US argues a key element of this process is monetisation of American elections. In his heavily researched book "Assault on Reason" he worries that, given the extraordinary

costs of campaigns, incumbents are forced to sell influence to fund ruinously expensive election campaigns. Their incumbent advantage in being able to do so has seriously reduced the turnover of incumbent candidates in elections - 95% of senators and house members are being regularly re-elected a markedly higher proportion than in earlier post war decades. The ubiquitous use of the 30 second television commercial he argues is both dumbing down debate and, if used scientifically and in sufficient volume, can be used to produce a pre-determined voting outcome. As a vision of the future where the US has arrived is clearly not one Australia would want to inherit.

Fund raising

Proposal 1: There needs to be comprehensive limits on the amounts of funds raised by political parties and the methods of fundraising throughout the election cycle and not simply during elections.

Currently there no overall limits on how much parties can raise in Australia. If that's not of concern, the woefully lax disclosure laws certainly are. Use of dummy trusts, foundations, and fundraising dinners to obscure the true origin of donations is widespread. It is a truly red light world where an undisclosed \$1500 can buy time with ministers. But the regulation of contributions in Australia is truly bizarre in that what disclosure there is, is only required after elections not before.

Proposal 2: There needs to be strict controls on the amounts political parties can spend on elections

On an international comparison basis, Australia is exceptionally lax in regulation of expenditure on elections. There are no limits here either for both the Federal and State parliaments (with the exception of Tasmania). Even so, substantial public funding is provided with absolutely no strings attached. In the Federal arena that meant \$42 million was handed out in the 2004 elections (around \$18 million to Labour and \$21 million to the Coalition).

Since this windfall was greatly increased by the Labour Government in 1996, parties have simply doubled their election expenditures. The result is that, overall, private sources of party funding in election years is still around 80%.

Extraordinarily enough political parties are not required to account for the public funding they receive. That led to the claim that Pauline Hanson in the **2004** elections received around \$200,000 in her tilt on the senate while spending a claimed mere \$36,000. If true, the laws effectively says we should have no interest in how the differential was spent.

Of course in federal politics the major parties do spend everything they get. In 2004 we spent as much as on the elections as the legally capped expenditure on the UK general elections in 2005.

Our ultra-laissez faire approach contrasts starkly with the western democracies we most closely identify with. All have either restrictions on donations or expenditure or both albeit with varying degrees of effectiveness.

Proposal 3: a far smaller limit on individual contribution to political parties is essential. These limits need to be imposed for the whole of the election cycle. Given the deluge of expenditure washing over US elections there are surprisingly strict laws governing campaign contributions in presidential and congressional elections. In the Presidential race individuals are limited to \$US2000 per election, \$US25,000 per annum and \$95,000 per election cycle. For Congress the amounts are similarly modest - \$4000 per election.

Proposal 4: companies and other organisations including unions should be banned from making donations to political parties during elections and throughout the electoral cycle.

Companies and organisations do not have the right to vote. They do however have a wide range of means to influence governments through direct representation, lobbying; use of think tanks; public campaigns and advertising. There is no logical justification therefore why money should take the place of reason and advocacy open to all bodies and individuals in seeking to influence members of elected governments and their political parties. Corporate and trade union donations become directly or indirectly the buying of influence and favours. Perception is as important as reality in this context. This position is well accepted in a number of major democracies. In the US, companies and trade unions are banned from direct contributions to candidates or parties. Canada similarly prohibits companies and trade unions from making campaign contributions to parties during an election campaign and allows them a paltry \$1000 contribution to individual candidates.

Proposal 5: there need to be set, responsible caps on the expenditure of political parties during the whole of the election cycle. Political parties should be required to account for such expenditure and apply such expenditure (if on a reimbursement basis exclusively on elections and other related purposes.

There is ample evidence that even with limits on amounts political parties can raise expenditures also need to be capped. Without dual caps the ability of individuals and organisations to avoid the limits is expanded and inevitably ineffective. The US is a case in point where the lack of expenditure caps in presidential elections (where candidates do not accept public funding) has led to billion dollar elections.

Proposal 6: We should adopt The Canadian model which

- **places strict limits on both expenditure and fundraising**
- **Only allows for public funding of election campaigns**

The gold standard in electoral probity is without doubt Canada which closely regulates both spending and contributions of political parties, candidates and third parties although spending is capped only during the election campaign itself. Canada is also unique in providing a quarterly ongoing subvention to political parties based on their performance in the preceding general election.

Canada has comprehensive public capped funding of elections with parties getting between 50 and 60% of their capped expenditure refunded. In the last election the conservative party received around \$C18 million based on its contesting all constituencies and a stipend set at \$C.80 cents per elector. Individual candidates similarly get 50-60% of their campaign expenditures refunded based on whether they reach a 2% or 5% vote threshold.

By comparison New Zealand provides public funding to parties -a modest total of \$NZ 3.2 million for the 2005 election- which funds the capped total advertising expenditure (non-advertising expenditure is uncapped).

The US in general does not provide public funding of congressional or presidential elections. However, optional public funding is available the acceptance of which, requires a cap on total campaign expenditure to that level. In practice this offer is now rarely taken up. In the 2005 presidential elections Bush could have received \$50 million in public funding but preferred to rely on private donations which totalled around \$300 million. None of the candidates in the 2008 presidential race took public funding.

The UK strictly caps expenditure by parties and candidates for the period 1 year prior to an election which effectively limits party expenditure to a modest 30,000 pounds per electorate. Public funding is limited to free broadcasting with privately funded electronic broadcasting banned and some policy development grants.

All, other than Australia, require accountability for expenditure of public funding. The UK, Canada and the US strictly prohibit foreign contributions to political parties and candidates. The reason why Australia and New Zealand do not is hard to fathom. Since foreigners do not have a vote it has to be asked why they should be allowed to buy influence.

Proposal 6: limits on fund raising and expenditure need to be applied to the whole of the electoral cycle: not just election campaigns

In an era of continual campaigning, restrictions need to be applied to the whole of the election cycle not just during the election campaign.

Proposal 8: strict limits on quasi political advertising is needed in conjunction with proposal 1-6 above.

There is ample and clear evidence in Australia and overseas that quasi political advertising – e.g. government ‘informational’ advertising or, as in the US, interest group issue advertising during election campaigns is growing in importance.

Government advertising is used as a defacto funding device and worse is free in the hand of the Government. Far stricter regulations on its use need to be put in place. Equally issue advertising has carved a gaping hole in limits to campaign contributions in the US. What is clear is that if caps on fund raising and/or expenditure are imposed it is essential to also regulate “quasi” forms of expenditure.

Some estimates put the massive splurge on government advertising prior to the last Australian election at around \$250 m.

In the same way charging companies and individuals large sums for dinners and similar devices put on by political parties (in Australian they not currently counted as a campaign contribution) are simply circumventing caps on contributions and can be used to sell influence pedalling audiences with ministers. This practice needs to be banned outright.

Proposal 9: Limits need to be place simultaneously on fund raising and expenditure

Experience shows – as is the case in New Zealand - that if only expenditure is capped the pressure of unrestricted funding will find its way into the campaign. Conversely where expenditure is uncapped and contributions restricted - as is the case in the US - a way of raising funds will be found to meet unrestricted demand. As noted above, using third parties to get around funding restrictions has become an art form in the US and the subject of some, so far ineffectual laws.

The need for simultaneous and tightly implemented caps is born our by other countries experience. In New Zealand both parties in the last election seriously exceed their expenditure caps with apparently few penalties.

In the UK, the Labour government has been rocked by scandals surrounding contribution bribery by businessmen seeking peerages and regulatory favours. Indirect campaign expenditure means the true amount spent on the last elections was closer to 90 million pounds.

In Canada complex funding arrangement using loans have caused a further round of tightening of election laws. That has produced an independent inquiry into the financing of political parties and some recommendations of further sweeping reform.