

26 February, 2009

Electoral Reform Secretariat
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To the Secretariat

Fairfax Media Limited is pleased to provide comment on the Electoral Reform Green Paper issued by Senator John Faulkner, Cabinet Secretary and Special Minister of State.

1. As a matter of principle, Fairfax Media supports the fundamental thrust of the Green Paper and the discussion of the issues, i.e., that there is a greater need for more “transparency and the active provision of information about political party funding and conduct.” (Green Paper at 2.) This is at the heart of Fairfax Media’s coverage of politics and the political process, and we support greater disclosure and transparency of these matters.
2. In several instances, the Green Paper raises the issue of political expenditures by third parties, and particularly whether “political expenditure” includes “the public expression of views on an issue in an election by any means”, and “the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors”, and whether “some media organisations may also be caught under the current provisions if they provide electoral opinion material or conduct opinion polling”. (Green Paper at 23; see also Green Paper at 33-34, 50, 54, 81.)
3. We have carefully studied the Commonwealth Electoral Act and in particular Section 314 AEB with regard to whether Fairfax Media, as a media organisation and publisher, is required report on expenditure related to engaging editorial staff, columnists or contractors who report on political issues, or on opinion polling conducted by our newspapers or websites.

The AEC has posted a Funding and Disclosure Guidance Note “to assist people or organisations who may have incurred political expenditure to prepare their annual return for the financial disclosure scheme established by Part XX of the *Commonwealth Electoral Act 1918*.”

http://www.aec.gov.au/pdf/political_disclosures/forms/ppar_expend/info_sheet.pdf

The Note applies a “primary or dominant purpose” test to political expenditure:

“Subject to the threshold, items (i) and (ii) of the definition require disclosure where you made (or were liable for) a payment the primary or dominant purpose of which was to fund:

the public expression of views on a political party, candidate or member of the Commonwealth parliament by any means; or the public expression of views on an issue in an election by any means.

“*Primary or dominant purpose* - A person or organisation may have a number of purposes in incurring expenditure on the public expression of views on a political party, candidate or member of the Commonwealth parliament and an issue in an election by any means. To

work out whether you have a disclosure obligation, you will need to reach a view as to whether your primary or dominant purpose for incurring the expenditure was to contribute to or achieve the public expression of views on a party, candidate or a member of the parliament, or the public expression of views on an issue in an election. The primary or dominant purpose does not need to be the sole purpose, but it must be dominant of the various purposes for which the expenditure was incurred. The activity must be primarily rather than incidentally concerned with the expression of views on the party, candidate, member of parliament or election issue. The primary or dominant purpose should be assessed in relation to each item of expenditure that may require disclosure.

As an example, expenditure on the publication of a political or policy opinion piece in a newspaper may be an adjunct to your normal activity of reporting and commenting on news and issues and so is not political expenditure. The publication of that same opinion piece in a journal or web-site whose objective is to see the election of a particular government, or to further a particular policy line, may well give rise to reportable expenditure. Similarly, the publication of a political or policy opinion piece in a peak body or trade union journal may well be an adjunct to your normal activity of reporting and commenting on issues of relevance to members' interests. The publication of that same material in a special journal or bulletin may well give rise to reportable expenditure." (Guidance Note at 2-3)

4. The Australian Electoral Commission's view is that if the "primary or dominant" purpose of the expenditure was to fund the public expression of views on a political party, candidate or member of Commonwealth parliament, or the public expression of views on an issue in an election, then the expenditure needs to be reported in the AEC annual return, i.e, the AEC narrows section 314AEB so that only if the expenditure is made primarily for pushing a particular political viewpoint is there a disclosure obligation.
5. Our firm view is that Fairfax Media's primary and dominant purpose is to run a publishing and media business and to report on news and current affairs rather than express certain political viewpoints. Fairfax Media is in the news business, not the electoral business.

This view of Fairfax Media's primary and dominant purpose is backed up by our track record. Our publications have covered numerous elections over the years. In these publications, we have presented (and funded) a consistently broad range of divergent viewpoints and opinions on all sorts of electoral issues, together with detailed factual coverage of the issues of the day. Our business purpose is to ensure we remain a profitable and robust publisher of informative and stimulating publications which will continue to be bought by our readers and to generate advertising revenue.

Although individual columnists and contributors may have their own political views, Fairfax Media, as the organisation that incurs the expenditure, can not be said to have a primary or dominant purpose to fund the public expression of views on a political party, candidate, MP or issue in an election. Even in articles such as our editorials where we may take a particular political position, the primary or dominant purpose of the organisation in arranging for their publication is for the contribution and enhancement of the day-to-day publishing business, and not for any political agenda.

6. Requiring a news organisation to report on its news expenditures in the context of election disclosure laws is, in our view, entirely inappropriate and not the purpose of the disclosure provisions. Requiring disclosure of the internal cost allocations of the media is, in our view, fundamentally incompatible with the robust operation of a free press and the role a free press plays in a democracy: serving the public interest by informing readers, viewers and listeners about the important events of the day, together with analysis and commentary.
7. We submit that a clear exemption to the requirement to report on election or polling expenditure should be included in any legislative amendments that come out of the Green Paper review so as to remove any potential for confusion about the applicability of the

reporting requirements to a mainstream media organisation publishing in the ordinary course of its business, provided it meets the primary or dominant purpose test.

An example of a workable legislative exemption that has been provided to media organisations, both print and broadcast, is contained in section 911A(2) of the Corporations Act. This exempts media organisations from the requirement to hold a financial services licence under the Corporations Act in circumstances where the sole or principal purpose of the report is not the provision of financial advice. Although the specifics of this exemption may not be suitable in the context of electoral expenditure, it is an example of where the legislation recognises the potential of the financial services licensing regime to seriously inhibit or discourage free speech and discussion on financial matters without the provision.

Accordingly, in the context of the Green Paper, Fairfax Media respectfully urges that, if necessary, any ambiguity regarding any requirement that a media company report, under the *Commonwealth Electoral Act 1918*, on its expenditures on opinion polling or political coverage be removed clearly and unconditionally. We do not believe our expenditures on political reporting are required to be disclosed under existing law, and we urge that this status be fully maintained under the *Commonwealth Electoral Act 1918*.

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