

**A SUBMISSION ON THE
ELECTORAL REFORM GREEN PAPER**

**ON
DONATIONS, FUNDING AND EXPENDITURE**

FROM

ERIC LOCKETT

FEBRUARY 2009

SUMMARY

Partly because of the present political funding regime, Australian electors are poorly served with respect to empowering them to make a well-informed choice from a wide range of high quality candidates in order to ensure a parliament that adequately reflects their views and wishes. Some tightening of the regulatory regime is also needed to guard against parliamentarians becoming too beholden to their financial benefactors.

The Green Paper sets down some sound principles for the regulation of electoral funding and disclosure in section 2.1 (p17). It also identifies many, but not all, of the deficiencies of the present system.

The following suite of proposals outlines the main changes needed to allow a better-informed electorate voting in fairer elections to choose parliamentarians who will be better able to represent them and less subject to questionable financial inducements. The ultimate result should be a more democratic and more representative parliament.

Public funding and support

- Given that public funding can only be justified where it provides a public benefit, abandon the present ineffective and inequitable system for one involving the distribution of information on all candidates and parties to all voters in a uniform format at public expense.
- If something like the present system is retained, make it fairer by adjusting the arbitrary funding threshold of primary votes in inverse proportion to the number of candidates in the electorate being contested.

Private funding

- Ban political donations from sources other than individual citizens, as in Canada.
- Impose a cap of around five thousand dollars on personal donations.

Disclosure of donations

- Require disclosure by the recipients (including associated entities as well as party organisations and candidates) of all donations above a threshold of around one thousand dollars. The same requirement should apply to donations received by third parties that are not associated entities where the money is primarily intended for use in political campaigns.
- If feasible, mandate the use of electronic record keeping so that disclosure can be brought up-to-date prior to each election.

Expenditure caps

- In conjunction with revised public funding, impose caps on election expenditure on all candidates and parties, according to the number of seats

contested, from at least six months before each election. Individual caps should apply to non-party candidates.

- Draw on the UK experience to define election expenditure quite broadly.
- Set the caps at a level that would result in significantly less total spending than on recent elections.
- Impose a separate cap on expenditure by non-associated entities, subject to the condition that their activity is designed to promote a particular policy position rather than a particular party or candidate.

Disclosure of election expenditure

- Require disclosure of election expenditure within three months of each election in sufficient detail to ensure that caps have been met. Any over-spending should result in a correspondingly reduced cap for the next election.
- Include expenditure by associated entities within party caps and require such associated identities to be registered and identified by parties and candidates.
- Require non-associated entities to disclose election expenditure where it exceeds a threshold of around one thousand dollars.

BACKGROUND

Free and fair elections are an important test of a true democracy. Australian elections are free in the sense that all citizens may participate, but contesting an election is anything but free in a financial sense. Partly for this reason, it would be a gross exaggeration to call our elections truly fair.

I have for some time been concerned about a number of deficiencies in our electoral system and have lodged detailed submissions for improvements to the Joint Standing Committee on Electoral Matters inquiries following the 1998, 2001 and 2007 federal elections, to little effect beyond some quotes in the body of their reports.

I also have direct experience of those deficiencies through having contested upper house elections as an independent candidate at both state and commonwealth level.

The current Green Paper gives a welcome and fair-minded outline of the principal issues related to political funding. Although my past experience in seeking reform has not been encouraging, and I have previously likened my efforts to pleading with a bank robber who is holding a shotgun to hand over the keys to the safe, I feel I can't abandon the cause without one more try. I am therefore taking this opportunity to provide a further submission to this review in the hope of achieving better results.

Some basic principles

The underlying objectives behind any democratic electoral system should be threefold:

- to provide an opportunity for any citizen to offer themselves, on an equal footing, as a representative of the electors;
- to equip all electors to make an informed judgment on who would best represent them;
- to ensure that the diversity of electors' views is adequately reflected in parliamentary representation.

These objectives need to be met in a way that is consistent with the principles set out in para. 2.1 (p17) of the Green Paper and satisfies the constraint of ensuring reasonable stability of government.

While electors face a tension between selecting the best representatives and choosing a party for government, it can be argued that, at least for the House of Representatives, political parties are necessary to ensure stable government. But this argument is less convincing for the Senate.

Although the Senate was originally envisaged as a states house, it has for decades (with the notable exception of Senator Brian Harradine) been a de facto party house, with the parties largely controlling who is elected and in what order, and tight party discipline prevailing in the chamber. This is aided by both the current electoral system itself and the current funding arrangements. I believe that if it had more of a role as an independent house of review the Senate could help ameliorate some of the worst effects of the adversarial party system, resulting in legislation more in accord with the wishes of the majority of Australians who no longer pay unquestioning allegiance to any one party.

It would be a bold person indeed who asserted that our current parliamentarians are the best people available for that role. I believe the Australian people would be better served by a system that provided a better opportunity for the election of the most able representatives regardless of party affiliations. Although other changes are also needed (and I have some suggestions for consideration in the forthcoming Green Paper) funding arrangements can play an important part in providing a parliament that is more democratic and more representative.

Adverse consequences of the present system

The Green Paper has at least recognised many of the adverse consequences of our present funding system, although I could add more. The main problems I see are as follows:

- The cost of election campaigns discourages many of the most able people from standing for election unless they are independently wealthy or have party backing.
- The reliance of parties on private funding for election campaigns creates suspicion that influence can be bought and a payback will eventually be required.
- The vast majority of public funding goes to the parties that least need it because they gain the lions' share of free media exposure, they have the greatest access to private funding and their positions are already best known.
- There seems to be no evidence that the introduction of public funding has in any way reduced the parties' use of private funding, it has simply added another layer of unaccountable expenditure that provides no public benefit whatsoever.
- The parties' electoral advertising often does very little to inform voters about the merits of their policies or candidates – much of it is better characterised as saturation indoctrination through simplistic sloganeering.

The net result is that a large amount of money, both private and public, is spent on electoral funding without any discernible public benefits in terms of ensuring a wide choice of high calibre candidates or better informed voters. Indeed, the present arrangements have the effect of converting what is inherently a far from level electoral playing field into a veritable cliff to be scaled by candidates who do not have the backing of established parties.

Effects on candidacy

Voters are unlikely to choose even the most capable representative unless they are already a well known 'personality' and/or have party endorsement. Any little known candidate starts well behind scratch and few could afford the cost involved in making their policy stance and credentials sufficiently well known to have a reasonable chance of election even within a compact House of Representatives electorate. An effective state-wide campaign for a Senate seat is generally not possible in the absence of any assurance of crossing the four per cent threshold to qualify for public funding. Many fine potential candidates must be lost because they can't afford to mount an effective campaign or are not prepared to risk penury.

Admittedly, campaign expenses are tax deductible but, as I found after contesting a Senate election, the costs of even my modest campaign greatly exceeded my tax liability for the year, which reduced the offsetting effects of tax deductibility. Yet, had the timing of the campaign been such as to span two tax years I could have obtained twice the offset. Perhaps this is an anomaly that deserves attention.

Excessive party power can impoverish parliament in two ways. Especially in the Senate, where the first two positions on a major party ticket provide safe passage to Canberra, it can effectively provide a seat in parliament as a sinecure to party 'hacks' in return for past services to the party. It can also result in opposing parties competing to endorse high profile 'personalities', such as sporting figures, who may have little understanding of, or commitment to, politics but can help gain a seat for the party and, once elected, can be brought under strong party discipline. The present arrangements whereby the vast majority of not only private but also public funding goes to the major established parties only helps entrench these adverse effects.

Although all citizens are theoretically entitled to contest any election, such a system pays little more than lip service to citizens' rights to offer themselves for election and makes a mockery of the notion that electors are given the opportunity to choose their representatives on their merits.

Factors such as above-the-line ticket voting in the Senate also contribute to these outcomes, but funding arrangements that add to the inherent handicaps of worthy candidates from outside the major parties cannot be absolved from blame.

SOME SPECIFIC ISSUES

I will now address a number of the issues raised in Part 7 of the Green Paper for further discussion.

Public funding and support

Public funding is justifiable, but only when it is designed to provide a public benefit. This could be expected to take the form of better informed voters and/or a better choice of candidates.

Deficiencies in the present regime

- The original principles listed in para. 4.13 (p34) as underpinning the current public funding regime are notable in that they are all viewed from the perspective of the parties or candidates. The two most important benefits of public funding, the provision of better informed electors and a better choice of candidates, are glaringly absent.
- The present threshold for public funding is grossly inequitable and inherently undemocratic. It favours those least in need of it. The major parties can predict in advance within fairly close margins what their entitlements will be and spend accordingly. By contrast, small parties, newcomers and independents have no assurance that they will cross the threshold and may not be able to fund effective campaigns without bankrupting themselves.

- With respect to the five reasons listed for public funding, only the second (helping parties to meet increasing costs) and fourth (providing parties relief from constant fund raising), neither of which confers a real public benefit, are adequately satisfied by the present regime. While there is no limit on spending the system cannot adequately guard against the acceptance of funds with conditions attached. And the distribution of public funding is so skewed against new parties or interest groups as to fail dismally in ensuring that no participant is hindered by lack of access to adequate funds. The current regime is only likely to add to their disadvantage. Clearly, it is not effectively meeting even its original, inadequate aims.

Improvements needed

- I don't believe that withdrawal of public funding would in any way limit pressures to spend. Only caps on spending can achieve that.
- The setting of a level of support is inherently arbitrary, but I believe that something like the current amount of public funding, or perhaps a modest increase in it, could provide significant benefits if it was used more effectively to level the playing field and provide better information to voters.
- The Constitutional Convention election of 1998, in which I was a successful candidate, set a national precedent for a much more effective system of public funding. It is also a system that is very widely used throughout the community. This is the funding of a booklet circulated to all electors that sets out the policies and credentials of all candidates in a uniform format. Admittedly there would be logistical challenges in getting out such booklets in the space of short formal campaigns, but with the aid of modern technology I believe it should be possible. This satisfies the required justifications for public funding and has the effect of levelling the playing field rather than tilting it more steeply against newcomers, small parties and independents. With this system there is no need to specify what expenses are entitled to attract public funding.
- If something like the present system with a threshold to filter out non-serious candidates (and this is questionable in principle – better to fund a few unworthy candidates than to exclude someone capable of attracting, perhaps 100 000 votes as a NSW Senate candidate) is to continue, then its basis needs revising. It is grossly unfair that the same threshold should apply to a House of Representative electorate with, say, three candidates as to a Senate electorate with, say, fifty candidates, especially given that the cost of effectively contesting the Senate seat is vastly greater. It is much harder to attract four per cent of the primary vote against forty-nine other candidates than against two.

I therefore reiterate my previous proposal to the JSCEM that the threshold should be adjusted according to the number of candidates. If it was set at 20% of the average vote per candidate, for example, this would equate to 4% of the total primary vote in a House of Representatives seat with five candidates and 0.4% in a Senate seat with 50 candidates. The votes of candidates who do not cross the threshold should be excluded from the party tally for the purpose of calculating the party entitlement.

Private funding

I recognise the complexities involved in seeking to regulate private funding without compromising an individual's right to provide financial assistance to their chosen party or candidate. I also recognise that it would be virtually impossible to close all loopholes. Nevertheless, we should do the best we can.

Some problems with funding restrictions

- It would be an unwarranted constraint on democracy to deny people the opportunity to support their preferred party or candidate financially.
- It would also be neither feasible nor desirable to prohibit other forms of support such as 'in kind' or labour contributions while allowing financial contributions.
- I don't believe that legislators should presume to sit in judgment on who are worthy or unworthy contributors to the political processes, provided that the money contributed is obtained legally.

Improvements needed

- As parties, and certainly parliament, are supposed to represent people rather than organisations or corporations, I believe there is a strong case for following Canada's lead and prohibiting financial contributions from other than individuals. Members of organisations that wish to support particular parties or candidates would then have to channel that support individually, obviating the need for measures such as requiring shareholders' or members' approval. If this means that the major parties will have to spend less on their campaigns that is no bad thing.
- If donations from other than individuals are prohibited, this, in combination with a cap on election spending and adequate disclosure requirements, would restrain the most obvious avenues for the purchase of political favours. Nevertheless, some limit on personal donations still seems desirable. As too low a cap may constitute an unjustifiable constraint on political activity, a cap of around five thousand dollars may be an appropriate compromise.

Donation disclosure

My own position on disclosure is clear from the fact that I undertook to disclose all contributions above twenty dollars when I contested a Senate seat (as it happened, no one wanted to know anyway). It is difficult to specify in such a way as to avoid loopholes the kinds of donations that should be disclosed, but I believe the net should be cast as widely as possible. A prohibition on contributions from other than individuals may ease some of the problems of definition.

Improvements needed

- Given that such a small sum as the twenty dollars I committed to disclose is unlikely to buy significant political favours, perhaps something of the order of a thousand dollars is a more realistic and practical disclosure threshold. It is hard to see that this would be any more difficult to implement than an even higher threshold and it is best to err on the side of comprehensiveness.

- It would be difficult to fairly define when such things as purchases made at political auctions or payments for fund-raising dinners go beyond normal commercial transactions and become gifts to the party or candidate. Rather than trying to separate such payments into a commercial component (which may be difficult to determine for something like an auction) and a gift component, it may be best to set a threshold of, say, an arbitrary two hundred dollars above the normal disclosure threshold and require the recipient to disclose the source of any payments over that figure.
- I have some reservations about the effectiveness of the current double disclosure requirement. Is a reconciliation of returns from recipients and donors done by the AEC? The Green Paper seems to imply in referring to discrepancies (para. 6.34, p51) that at least some checking is done. In general, I think it would be less onerous and more effective, especially if donations from other than individuals were prohibited, to require disclosure by candidates and parties, which should have proper accounting systems in place, than by donors, many of whom may have no knowledge of their duties of disclosure.

If double disclosure is persisted with to provide a cross-check, then the requirements for donors should match those for recipients. The AEC can then ask for an explanation of any discrepancies.

- The same requirements for disclosure by recipients should apply to clearly associated entities and Senate groups as to parties and candidates. Third party organisations that are not clearly associated with specific parties or candidates should also disclose their sources where funds are used primarily for political campaigns.
- While donation disclosure is necessary to ensure transparency, its effectiveness in guarding against the purchase of political favours is severely limited by the fact that donations leading up to an election are generally not reported until well after the election when it is too late for voters to express their approval or disapproval. If mandatory electronic record keeping can facilitate, say, weekly disclosure of at least major contributions during an election campaign then I believe it should be required in Australia. Some safeguard is needed though to ensure that these requirements aren't thwarted by donors deliberately promising funds but delaying their actual delivery until after the election.

Expenditure limits

Much of the current election expenditure leaves people little the wiser about the policy stance or suitability for office of the candidates. I believe that, as well as reducing the parties' reliance on private contributions and the perceptions of undue influence that arise from it, a limit on campaign spending would be welcomed by most Australians as a means of inhibiting the saturation indoctrination campaigns of recent years.

Improvements needed

- There is a strong case for capping election expenditure, in combination with improved public funding measures and banning contributions other than from individuals. Parties should have an overall limit based on the number of seats they are contesting. This should include expenditure by party candidates as well as by the party organisations. Non-party candidates should have individual limits. While the escalating cost of campaigns may be a concern to the parties, I don't believe that the saturation indoctrination involved has benefited the voters. The imposition of caps should also reduce the incentive for parties to become beholden to large benefactors.
- Expenditure caps should be set at a level that, in combination with the new public funding arrangements, would result in significantly lower campaign spending than in recent elections.
- Spending subject to the caps should be defined on the basis of the UK experience, with the aim being to encompass all expenditure designed to promote a party or candidate's chances of success at the next election. I remember gnashing my teeth as I sat through an hour long "human interest" feature about one of my opposing senate candidates on ABC TV that (coincidentally?) happened to be shown in the closing weeks of the 2001 campaign. I knew that, although its advertising value would have been huge, it would be declared neither as election expenditure nor as a (quite improper) donation from the public.
- While electoral advertising has in recent times begun well in advance of elections, I am sceptical about the influence on voting patterns of advertising more than six months in advance. For this reason I would be happy for the cap to apply from six months preceding an election. The existence of a cap would mean that parties knowing an election was imminent would have to exercise restraint if they wanted to save their resources for the campaign proper.
- Electoral expenditure should be disclosed in sufficient detail to allow the AEC to ensure that caps have been complied with. These details should be publicly available.
- Disclosure should be required within, say, three months after each election, as earlier disclosure may be impractical. Any expenditure in excess of the cap for one campaign should incur a corresponding reduction for that party or candidate in the following one.

Associated entities and third parties

With expenditure caps, a difficulty would arise in ensuring that expenditure wasn't simply diverted from political parties and candidates to third parties.

Improvements needed

- While various organisations have a right to participate in the political process, by sponsoring their own advertising for example, any expenditure by clearly associated entities (e.g. ALP affiliated unions) should fall within the party cap. For this reason, all associated entities should be registered prior to each

election and political parties should be required to disclose their associated entities.

- Electoral expenditure by each non-associated entity should be permitted within a separate and much lower cap, on condition that the expenditure is designed to promote a policy position rather than a particular party or candidate.

February 2009