



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

Email: electoralreformsecretariat@pmc.gov.au

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Submission on **Electoral Reform Green Paper**.

Overview

Electoral funding may be inextricably linked to participatory democracy yet it can so easily be construed as a vehicle for both good and evil. Old sayings like, “he who plays the piper calls the tune” rings in ones ears but if contributions to political parties are spontaneously given as a true reflection of popular opinion then the electoral outcome that follows such opinion can be seen as an honest and viable action. But the latter is to see the world through the brightest and clearest of spectacles. More often in our modern world we view it through a glass darkly, unable to readily see the shifty eyed intention of many a large donor.

To take a recent example, there is no doubt the huge moneys raised by Barack Obama reflected popular opinion but anecdotal evidence from the United States and Australia in recent years of obscurely sourced donations and insidious links between corporate donations and the appearance of political favour have tainted the view that the money genuinely follows public opinion. Freeing himself of the baggage of political patronage will be but one of the challenges facing President Obama.

Participatory democracy is a constantly changing dynamic. There is never a lasting or perfect solution. The ever fertile human brain will seek to turn to advantage whatever system we put in place and in terms of political honesty the current love affair with marketing as the be all and end all of selling the political product has moved the funding of campaigns into dangerous territory.

So is it time for a radical rethink of how we fund political campaigns? Or is it not so much a radical rethink so much as a refocus of our current laws? This submission explores a concept that may either be construed as radical or simply a further step in a current regulatory trend. It depends on how wedded one is to the current system.

Our starting premise is that the cost of election campaigns should be borne entirely by the State. Lest this be seen as a further impost on the ever-suffering taxpayer it has to be pointed out that the majority of privately funded donations, whether from corporations or individuals, are a cost borne by the consumer, and one which in the case of corporations and trade unions may not necessarily be in accord with the wishes of the ultimate source.

Correspondence: Ms Anne Mancini,
Secretary, Accountability Round Table,
27 Valetta St
Malvern VIC 3144

mancini_anna@optusnet.com.au

Our next premise is that the purpose of election campaigning should be to enable voters to go to the ballot box with a reasonably informed view of how they want to cast their vote rather than to sell the political party or candidate.

A third premise would be that elections should be fixed term, held on predetermined dates as a number of States.

Responses to questions posed in Chapter 11.

1. Public funding and support:

»» Are the original principles which underpin the current public funding regime still relevant and appropriate?

The Green Paper indicates:

“3.7 The expressed aims of introducing public funding were to:

- provide registered political parties and independent candidates with equal opportunity to contest elections;
- promote fairness in the electoral system, as between political parties and candidates contesting elections; and
- promote the integrity of the electoral system, by reducing political parties' and candidates' reliance on donations, which could compromise their ability to represent their electorates properly.”

These principles remain relevant and appropriate. Unfortunately, these principles are not fulfilled and reflected in outcomes.

Transparency alone is clearly insufficient to fulfil these principles.

»» Is the current public funding regime meeting its aims and objectives effectively and efficiently? Is it effectively facilitating fair elections, ensuring adequate transparency and assisting political parties to contribute to the political process?

The regime has improved the fairness of elections but does not ensure adequate, timely transparency or equality of political opportunity. Furthermore, there is little evidence that the delayed publication of campaign contributions serves the implicit objectives of transparency i.e. to provide information to voters to assist informed decision-making at the time of voting.

»» Has public funding of political parties fuelled the increase in the costs of campaign expenditure? Would the withdrawal of public funding reduce campaign spending pressures?

The relevant consideration is the sum total of available funding, not the particular source. While public funding has increased the pool available, its withdrawal would increase the pressure to seek private funding. What is required is that campaign expenditure be reasonably funded by public funds and be confined to those funds. Present levels are sufficient for that purpose.

»» Should political parties and/or candidates receive public funding and support for elections?

Yes.

»» At what level should such support be set? Why?

The level should be sufficient to ensure that parties and candidates can communicate adequately with the voting public. There is no reason to think that current levels of aggregate expenditure resulting from public and private funding is anything but excessive.

»» What should public funding comprise (financial assistance, material assistance, subsidised advertising etc)?

Public funding should comprise financial assistance sufficient to meet all reasonable campaign expenses plus a broadcasting licence condition that campaign information be broadcast as community service announcements.

»» Should public funding be limited to specific expenses by political parties and candidates? If so, what should those expenses be?

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Public funding should comprise financial assistance sufficient to meet all reasonable campaign expenses. In addition to funding advertising public funding should cover other campaign expenditure such as campaign rooms, preparation of advertising material, pre-poll and postal vote canvassing and so on.

»» At which point or points in the electoral cycle should public funding be provided?

Public funding should be provided from the dissolution of the House of Representatives or announcement of a half-Senate election.

»» Should the formula for the entitlement to public funding (a threshold of 4 per cent of the formal first vote) be changed? If so, why and what are the alternatives?

Yes, there is no reasonable democratic basis for restricting public funding to parties or candidates which achieve a threshold proportion of the formal first vote.

»» Does the current formula for calculating public funding provide an equitable outcome between major parties, minor parties and candidates? If not, what are the options for resolving the situation?

No. There is no reasonable democratic basis for restricting public funding to parties or candidates which achieve a certain threshold proportion of the formal first vote.

Major parties which achieve a strong electoral support receive disproportionate funding which has the effect of giving the incumbent government party of coalition an unfair advantage at the following election. This anomaly could be addressed by placing a ceiling in the amount received such that the governing party or coalition should not receive more than the Opposition party or coalition e.g. an average of the total entitlements (per vote) that each of the Government and Opposition parties would otherwise receive.

»» Does the current public funding formula provide recipients with an adequate and equitable amount of public funding? What is the case for increasing or decreasing the amount of public funding?

The amount is adequate except in the case of parties and candidates falling below the threshold. It is inequitable in the advantage it gives to the incumbent governing party of coalition.

»» Are the current eligibility requirements for public funding adequate to facilitate political equality of access, including for new participants in the political process? Are there alternative approaches which provide fairer access?

They do not. We suggest the above alternatives

2. Private funding:

»» Should political parties and/or candidates or other participants in the political process be able to receive private funding and support?

No. Private funding and support should not be available, with effective regulation being through limits on expenditure. We address the issues raised in the remaining questions on the assumption that a mix of private and public funding for administrative expenditure is allowed to continue

»» If so, what restrictions, if any, should be placed on the kind of funding or support they can receive?

Funding should be limited to membership dues and donations in all forms by natural persons totalling not more than \$1,000 per person in each calendar year. Such funds could be applied to a variety of purposes, for example, administration, research, training of candidates and so on during the period between elections but not during the three months immediately prior to the general election.

»» Should electoral laws ban private funding from specified categories of persons and organisations? If so, which categories of persons or organisations?

Direct and indirect donations by corporations should be banned absolutely. Donations by organisations existing to serve the social and political interests of their members should not be limited, consistent with the argument

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Secretary, Accountability Round Table,
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put by Joo Cheong Tham (2008) in '[A Case Against Uniform Contribution Limits](#)', [Democratic Audit Discussion Paper 6/08](#)'.

»» Should corporations or organisations be treated differently from individuals?

Direct and indirect donations by corporations should be banned absolutely.

»» Is the introduction of specific provisions relating to a requirement for shareholders' or members' approval for all political expenditure by companies and unions necessary or desirable?

Direct and indirect donations by corporations should be banned absolutely. Donations by unions and other organisations existing to serve the social and political interests of their members should be subject to members' approval.

»» Should Australia cap donations or private funding? If so, at what level?

Funding should be limited to membership dues and donations in all forms by natural persons totalling not more than \$1,000 per person in each calendar year.

Direct and indirect donations by corporations should be banned absolutely. Donations by organisations existing to serve the social and political interests of their members should not be limited.

»» Should Australia ban, cap or restrict loans made to political parties and other participants in the electoral process? If so, at what level?

Loans should not be permitted except according to normal commercially available terms.

»» Should certain transactions be exempt from a ban or cap on private funding? If so, which ones?

No

»» Is the current Electoral Act definition of 'gifts' wide enough to include all forms of financial and in kind support for political parties and candidates that should be regulated?

No. The definition should include a "catch all" provision covering any current or future benefit. All gifts having a known or potential value of \$1,000 or above should be disclosed. Any donation above the legal limit of \$1,000 would be subject to automatic forfeiture to the Consolidated Fund.

»» If not, what other kinds of contributions should the definition be expanded to apply to?

The definition should include a "catch all" provision covering any current or future benefit.

»» Should Australia make public funding of political parties and candidates contingent on compliance with bans or caps on private funding?

Yes.

»» If private funding is limited, how should this be reflected in public funding?

Public funding is already sufficient to cover reasonable campaign expenses.

»» Are there other matters that need to be considered on the issues of capping or banning private financial contributions?

None that we have identified except that corporations and individuals who believe in the democratic process would be encouraged to donate funds above the limits to the Electoral Commission and these donations would be added to the distribution pool without deduction. These donations would be tax deductible.

3. Donation disclosure:

Correspondence: Ms Anne Mancini,
Secretary, Accountability Round Table,
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Malvern VIC 3144

mancini_anna@optusnet.com.au

»» What kinds of private contributions should be covered by disclosure requirements? All private contributions having a known or potential value of \$1,000 or above should be covered by disclosure requirements.

»» What level of private contribution ought to trigger disclosure obligations?

All private contributions having a known or potential value of \$1,000 or above should trigger disclosure obligations.

»» Should payment at political party fundraisers be deemed to be gifts and donations? Who should bear responsibility for such disclosure – the contributor or the recipient? Or both?

Contributions by all political party fundraisers should be deemed to be gifts and donations; both contributors and recipients should bear responsibility for such disclosure.

»» Does the present disclosure scheme place too much reliance on self-declaration? Can this be addressed by a better definition of 'gift' in the Electoral Act?

The primary responsibility for compliance should rely on self-disclosure by political parties, complemented by an enhanced definition of "gift" as discussed above and strengthened requirements for disclosure of the original sources of contributions by related entities and other intermediaries and effective bans on subversion of the principles underlying the regime.

»» What kind of penalties would be appropriate for breaching the disclosure requirements, and who should be liable?

Political parties and candidates receiving contributions in breach of regulations should forfeit such contributions plus be subject to a penalty equal to the value of the illegal contributions.

»» Are the current disclosure requirements extensive enough to ensure transparency?

This question overlooks the fundamental weakness in the regime, which arises from the unnecessary delay in disclosure. A contribution and any commitment to make a contribution should be publicly disclosed by recipient parties and candidates within 24 hours of receipt and simultaneously reported to the Electoral Commission.

»» Should disclosure requirements that apply to donations made to political parties and candidates, be extended to donations made to associated entities, Senate groups and third parties? Would extending the disclosure requirements enhance the transparency of the system? What would be the practical effect of such requirements?

Yes, as discussed above.

»» Should disclosure take place more often than the current post-financial year and post-election cycles? If so, how often?

Yes. A contribution and any commitment to make a contribution should be publicly disclosed by recipient parties, candidates and related entities within 24 hours of receipt and simultaneously reported to the Electoral Commission.

»» Should a different disclosure requirement apply to donations over a certain amount? If so, what should the amount be, when should the donation be disclosed and when should the disclosure return be published?

No. The requirements should be uniform.

»» In addition, should different reporting timeframes be applied to different participants in the political process and should those timeframes be varied during election periods?

No. The requirements should be uniform.

»» Should electronic lodgement of returns be facilitated and made mandatory to enable returns to be published more quickly?

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Yes. A contribution and any commitment to make a contribution should be publicly disclosed by recipient parties, candidates and related entities within 24 hours of receipt on their websites and simultaneously reported to the Electoral Commission.

»» What should the timing be for the publication and release of the disclosure returns to the public?

A contribution and any commitment to make a contribution should be publicly disclosed by recipient parties, candidates and related entities within 24 hours of receipt on their websites and simultaneously reported to the Electoral Commission. The Electoral Commission should publish details received within 24 hours.

4. Expenditure:

»» Should Australia cap election expenditure? By what means?

Yes. See suggestions above.

»» Should expenditure caps apply to all participants in the political process?

Yes.

»» If so, what level of expenditure cap would be appropriate? Should different caps apply to different types of participants?

The aggregate expenditure cap should be limited to the highest current level of public funding and be increased periodically by the CPI increment. Caps for different types of participants should reflect the proposal above for a ceiling in the amount received such that the governing party or coalition should not receive more than the Opposition party or coalition

»» What types of campaign expenditure should be included in the cap?

All campaign expenditure should be caught by the cap.

»» Over what time period should the caps apply (for example, during the formal election period, 12 months preceding an election, or over the entire election cycle)?

It is important that the caps should apply throughout the entire electoral cycle paralleling disclosure regime for contributions.

»» Should expenditure by political parties and candidates be subject to disclosure requirements? If so, how much detail should be disclosed?

All expenditure should be subject to disclosure subject to aggregation similar to that provided in reporting by public sector agencies.

»» When should expenditure disclosure be required to be made?

Continuous disclosure should apply throughout the entire electoral cycle paralleling disclosure regime for contributions.

»» What level of expenditure should be caught by such requirements?

All expenditure should be disclosed subject to aggregation similar to that provided in reporting by public sector agencies.

»» Should Australia make public funding of political parties and candidates contingent on compliance with caps on campaign expenditure?

Yes.

»» Are there other matters that need to be considered on the issues of capping political expenditure?

None that we have identified.

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5. Third parties:

»» Should non-party, non-candidate participants in the political process be subject to donation, disclosure and expenditure regulation?

Yes.

»» How might such third-party participants be appropriately defined?

We do not have a specific proposal. We believe the development of such a definition should involve a wide cross section of interested parties. We would be interested in participating in such an exercise.

»» Should there be a registration system for third parties engaging in election related expenditure over a set limit?

Third party endorsements are a critical issue as they present the opportunity to support a candidate without a direct link between the third party and the candidate. It would seem an abrogation of free speech to deny the capacity to offer third party endorsements however the fact that third party endorsements may also not coincide with the opinion of those who bear the ultimate cost, be they shareholder or union member, is an offsetting factor.

In an endeavour to balance these factors it is suggested that third party endorsements not be allowed within three months of the election except as part of the advertising allocation for the endorsed candidate or party and within Electoral Commission guidelines.

»» If third parties are subject to regulation, should they be subject to the same requirements, similar requirements, or quite different requirements to political parties and candidates? What level of detail should be disclosed?

They should be subject to the same requirements, in order to limit opportunities for contrived arrangements to subvert the principles of the regime.

»» If disclosure obligations are to continue to apply to expenditure by third parties, does the current definition of 'political expenditure' require clarification?

The definition should include a catch-all provision to catch any attempts to circumvent to principles underlying the regime.

6. Political parties:

»» Should the laws and regulations covering political parties and the way they administer and organise themselves be changed? If so, in what way?
No proposals are advanced

»» Should registered political parties be required to disclose their associated entities?

Yes.

»» Should political parties be required to disclose their balance sheets?

Yes.

»» Should individual party units, such as local branches of political parties and campaign committees, be required to lodge returns separate from the central party accounts? Would the benefit of making that information available to the public outweigh the cost to political parties of complying with the requirement?

Political parties' individual party units, such as local branches of political parties and campaign committees should be required to record receipts and expenditure and make them available for independent audit

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»» Should disclosure requirements be extended to unregistered political parties?

Yes, if any member of the organisation received any support from the organisation's members to contest an election.

7. Associated entities:

»» Is the definition of 'associated entities' wide enough to include all organisations through which donations are made to political parties and candidates? If not, how should the definition be expanded?

There should be a catch-all provision allowing the Electoral Commission to issue a "show cause" to such organisations requiring them to demonstrate why they should not be subject to the regime

»» Does the definition of 'associated entities' apply to entities without a sufficient association with a political party to justify regulation?

It justifies regulation.

»» Should associated entities provide detailed disclosures of their expenditure? Should they be required to disclose their balance sheets?

Yes.

8. Creating an overall regulatory regime:

»» What kind of overall regulatory regime should we establish for Australia?

The regime should build on the strengths of the existing regime through incremental reform - see above

»» What regulatory elements (such as disclosure rules, donor rules, donation caps or expenditure caps) should be part of our system? How should the elements of a scheme be combined?

See above

»» How do we create an electoral system which meets our objectives?

We have no comments beyond those above.

»» What flow-through effects might it have on other aspects of Australia's electoral system?

It should be fundamental that every party or candidate contemplating involvement in the election process should have a clear and detailed manifesto to put to the voter. In so many recent campaigns, despite all the high campaign costs, there has been a paucity of detail on which to make an informed decision. Indeed they have been largely emotionally charged messages of doubtful veracity. Perhaps the lodging of a manifesto document with the Electoral Commission might be an early requirement for access to official electoral funding in the same way that parties need to have a minimum number of paid up members.

Once parties and candidates have lodged their manifestos the next step would be to ensure that, in proportion to the area they are contesting, they are given adequate and fair coverage in newspapers, and on radio and television. The object would be to factually and responsibly inform the electorate on the merits of candidates and their parties. No censorship or editing would be allowed provided the material met all conventional and legal standards. It would be a requirement that manifestos be lodged no later than three months prior to the election. Material which might be referred to as a 'fine tuning' could be lodged as a supplementary document no later than one month before the election. Adequate and fair coverage would require a balance of size, placement and timing. Electoral material lodged with the Commission would be distributed across media outlets in conformity with a defined and rigid timetable developed by the Commission after consultation with the parties. Content could be varied during the campaign providing it was consistent with the manifesto. The cost of mailing out an election brochure would also be covered.

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mancini_anna@optusnet.com.au

The traditional practice of the parties and candidates distributing 'how to vote' material on polling day would be abolished in favour of authorized material displayed in each booth which the voter could access. The only party representatives allowed in or near polling stations would be scrutineers to observe fair and proper conduct in and around the booths during polling hours and for the counting of votes.

9. Conclusion:

The philosophy of these suggestions is to put substance before emotional hype allowing the voter to objectively weigh the values of candidates and thus make a reasoned decision in casting their vote. It is hoped they will stimulate discussion.

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