



Joint Standing Committee on Electoral Matters
Inquiry into the funding of political parties and election campaigns
Submission of the Accountability Round Table¹

Introduction

“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.”²

In addition

“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.”³

It must also be faced that the present system provides real opportunities for corruption and the temptation to corrupt.

“The process creates a situation where persons who wish to engage in corrupt behaviour are given every opportunity, and the political party concerned becomes indebted to the people who made donations.”⁴

¹ For a recent overview of political funding see, Joo-Cheong Tham, *Money and Politics*”, University of New South Wales Press; see also, Sawyer, Abjorensen and Larkin, *Australia, the State of Democracy*”, in particular at 108-14,127-9,196-7.

² Accountability Round Table 2009 submission to the federal government on its Electoral Reform Green paper.

³ Ibid.

⁴ Tim Smith, *Corruption*, The Australian Collaboration, 2010, 46.

Public Funding –election campaigns

The Accountability Round Table's starting premise is that the cost of election campaigns should be borne entirely by the State.

Considerable public funding is already provided both directly⁵ and indirectly⁶, the latter through the allowing of tax deductibility for donations. The amount that has been allowed for such deductions per annum should be established by the Committee. Another matter that we submit the Committee should investigate and establish is whether tax deductions are claimed and allowed for money paid to attend functions to meet ministers and shadow ministers on the basis that they are business expenses and, if so, the amounts claimed and allowed per annum..

In support of its position, the Accountability Round Table makes the following additional points:

- 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.
- as election campaign expenditure has grown, so too has the time that has to be spent raising money by those we elect to govern for us. Such time would be better spent considering the complex policy issues that we face.
- 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.
- advertising expenditure by incumbent governments should be subject to rigorous guidelines based on the following principles:
 - material should be relevant to government responsibilities;
 - material should be presented in an objective, fair and accessible manner; and
 - material should not be directed at promoting party political interests.⁷
- more rigorous standards and monitoring of advertising expenditure by incumbent governments would also release funds for public funding.

The level of private funding from the business community for particular parties has varied according to the views held as to who is most likely to win the forthcoming election. This can be

⁵ In 2007, \$40m – Tham, Joo-Cheong (2010) *Money and Politics: The Democracy we can't afford*, 128

⁶ In 2008, \$10m per annum – Tham, Joo_ Cheong, op.cit., 138

⁷ Tham, Joo-Cheong (2010) *Money and Politics: The democracy we can't afford*

grossly advantageous to the party which is thought likely to win the election and grossly disadvantageous to all the other parties. As to the level of funding, the following should apply:

- a) The level of funding 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 are anything but excessive;
- b) 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 like matters;
- c) There is no reasonable democratic basis for restricting public funding to parties or candidates by reference to the percentage of the vote received. Major parties which achieve a strong electoral would receive disproportionate funding which has the effect of giving the incumbent government parties an unfair advantage at the following election. That anomaly could be addressed by placing a ceiling on 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.

To effectively achieve fairness in the electoral system, limits on campaign contributions should be complemented by limitations on expenditure by or on behalf of candidates and political parties. Accordingly:

- d) Campaign expenditure should be capped to correspond to the level of public funding to which a candidate or party is entitled.

To complement the limitations on private donations:

- e) conditions should be introduced into broadcasting licences to require that party campaign information be broadcast as community service announcements.

As to timing, public funding should be provided from the dissolution of the Parliament. See generally the Canadian model⁸, which was recommended at the 2020 Summit.

Private Funding

If private funding is to be permitted, it 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 to each

⁸ For the details of the Canadian scheme see Sebastian Spano, *Political Financing*, <http://www.parl.gc.ca/information/library/PRBpubs/prb0750-e.htm>. See also Young, L and Jansen, HJ, EDS (2011) *Money, Politics and Democracy*, assessing the impact of Canada's Party Finance Reforms. Vancouver.ubc Press.

registered party and candidate. Reference should be made to the Canadian model,⁹. 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.

Any such scheme must be transparent. This requires timely disclosure of donations. With modern technology, disclosure within one working day is simple and should be required. Also critical is the level at which disclosure is required. The recipient or the recipient's agent¹⁰ should be required to disclose any donation or commitment over \$200¹¹ and its original source. Electronic lodgement of the information and verification of it should be mandatory and facilitated. Any donations exceeding a total of \$1000 in a financial year should be forfeited to the Crown.¹²

In addition, the current practice of raising funds by offering access to members of parliament, particularly ministers and shadow ministers, should be made illegal¹³. It provides opportunities for corruption, damages the reputation of all politicians, and confidence in our democratic system. It gives unequal access to politicians based on the ability to pay for it.

If, however, the Committee decides not to make this practice illegal it is critical that it ensure that there be complete and prompt disclosure of each transaction. At present the legislation does not require¹⁴ disclosure of the details of monies received by political parties in return for access to their members of parliament, in particular, ministers and shadow ministers. The principal reason for that result appears to be the definition of the term "gift" in the *Commonwealth Electoral Act 1918*, s 287. It provides, so far as is relevant, that

“*gift*” means any disposition of property¹⁵ made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, ...”

Giving access is regarded as providing adequate consideration for the payment for access. As a result, details of such payments do not have to be disclosed.

⁹ above

¹⁰ Re “agent” see Electoral Act 1992 s 209 and 304

¹¹ This appears to be the Canadian requirement; Canada Election Act 2000 s 424 in quarterly returns filed within 30 days of the end of the period to which it relates approach and under s 451 and 453 within four months following the polling day re contributions received; see also Spano, above, p.15. For reasons above, we regard the periods specified in the Canadian legislation also as being excessive.

¹² As provided in Canada Election Act s 405(4)

¹³ In raising this issue, we express no view as to whether deriving financial benefits in this way may not constitute a common law offence. To date this aspect does not appear to have been pursued by any authorities.

¹⁴ Australian Electoral Commission, Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure, October 2000, para 8.4; http://www.aec.gov.au/pdf/committee/jscem/funding_disclosure/sub7.pdf see also the Submission of Joo-Cheong Tham and Graeme Orr, Part 111, <http://www.aph.gov.au/house/committee/em/donations/subs/sub5.pdf>.

¹⁵ Includes payments

Payments for access are already a significant source of funding for political parties¹⁶. Full details should be promptly disclosed. If more rigorous disclosure rules are to be applied to other sources of funding but not payments for access, that source is likely to become an increasingly popular way to seek and receive funding -- particularly for large amounts.

We are unable to point to any reason why such payments should be excluded from the present statutory disclosure scheme. They are included under the New South Wales legislation and the principal method employed there might be used under the Commonwealth system. The *Election Funding and Disclosures Act 1981* (NSW) provides in s 85(2):

“(2) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function) is taken to be a gift for the purposes of this section.”

It would also be necessary, however, to review the provisions of Division 4 of the Commonwealth Electoral Act, to ensure that they will require disclosure of the original sources and sums of moneys received for such purposes by “associated entities”¹⁷ or any other person or body that has raised funds for the ultimate benefit of candidates and parties.

We submit that, if the Committee decides to allow the practice to continue, it should recommend that the legislation be amended to include the provisions needed to address this serious gap in transparency in the statutory disclosure system. We forward with this submission suggested amendments (See Annexure A) to the Commonwealth Electoral Act prepared for the Accountability Round Table by a legislative draftsman together with an explanatory statement (See Annexure B)..

Proposals

The Accountability Round Table requests that the Committee

1. Establish and report on the precise levels of direct and indirect public funding of political parties at the federal level.
2. (a) Consider, and make recommendations on, the application at the federal level of the Canadian model of public and private funding of political parties.

(b) At the very least, recommend passage of the 2010 Bill presently before the Parliament.
3. Include in its recommendations the following,

¹⁶ See examples including individual sums of the order of \$50,000 referred to provided in Joo-Cheong Tham, *Money and Politics; The Democracy We can't Afford*, UNSW Press, 2010, 81-

¹⁷ Note that on the Electoral Commission's website, in the Record of receipts and payments included for 2008-9, there is the report of an “associated entity” of the ALP, “Progressive Business”. It organises fund raising events of the type in question. The report shows receipts by it of \$1.6 m but does not provide details of those receipts.

- a) A requirement that full details of the receipt of any private funding be disclosed within 2 working days of receipt,
- b) A ban on the soliciting and/or the payment of money or other benefits for access to members of the Commonwealth Parliament.
- c) Alternatively to b), enactment of the amendments proposed in Annexure A

Annexure A: Draft Amendment

2011

The Parliament of the
Commonwealth of Australia

Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2011

(Amendments to be moved by

- (1) Schedule 1, page 18 (after line 19), after item 27, insert:

27A Division 4 of Part XX (heading)

Add at the end “and fundraising”.

27B Subsection 303(1)

At the end of the subsection, insert:

participation charge has the meaning given to it in subsection (1A).

[definition, participation charge]

- (1A) For this Division, a general public activity or private event is a *reportable fundraising activity or event* if:

- (a) a person participating in the activity or event is required to make a payment or provide other consideration for participating (*participation charge*);

- (b) the amount or value of the participation charge (or, if there is more than 1 participation charge, the amount or value of the highest participation charge) is equal to or more than:
 - (i) the amount prescribed for the purposes of this paragraph; or
 - (ii) if no amount is so prescribed—\$1,000; and
- (c) some or all of the participation charges from the activity or event are provided, whether or not as a gift, to:
 - (i) a registered political party; or
 - (iii) a State branch of a registered political party; or
 - (iii) a candidate in an election; or
 - (iv) a member of a group; or
 - (v) a person or body (whether incorporated or not) specified, by legislative instrument, by the Electoral Commission; or
 - (vi) an associated entity.

[definition, reportable fundraising activity or event]

- (2) Schedule 1, page 19 (after line 14), after item 29, insert:

28A Section 304 (heading)

Add at the end “and participation charges”.

- (3) Schedule 1, Part 1, page 19 (line 25), section 304(2)

Insert after paragraph 304(2)(b):

- (ba) if the person received some or all of the participation charges in respect of a reportable fundraising activity or event held during the disclosure period:
 - (i) the date and nature of the activity or event;
 - (ii) the identity of any member of the House of Representatives, senator or member of a legislature of a State or Territory who participated in or was a guest at the activity or event; and
 - (iii) the amount or value of the participation charge for the reportable fundraising activity or event (or, if there was more than 1 participation charge, the amount or value of the highest participation charge); and
 - (iv) the total amount or value of the participation charges received by the person relation to the activity or event; and
 - (v) the identity of the person from whom the participation charges were received; and

[reporting obligations in respect of reportable fundraising activity or event: candidates]

- (4) Schedule 1, Part 1, page 20 (line 13), section 304(3)

Insert after paragraph 304(3)(b):

- (ba) if the group received some or all of the participation charges in respect of a reportable fundraising activity or event held during the disclosure period:
 - (i) the date and nature of the activity or event; and
 - (ii) the identity of any member of the House of Representatives, senator or member of a legislature of a State or Territory who participated in or was a guest at the activity or event; and

(iii) the amount or value of the participation charge for the reportable fundraising activity or event (or, if there was more than 1 participation charge, the amount or value of the highest participation charge); and

(iv) the total amount or value of the participation charges received by the group relation to the activity or event; and

(v) the identity of the person from whom the participation charges were received; and

[reporting obligations in respect of reportable fundraising activity or event: groups]

(5) Schedule 1, Part 1, page 20 (after line 25)

Insert after item 32:

32A Section 304(3A)

Insert “or participation charge” after “gift”.

(6) Schedule 1, Part 1, page 21 (after line 22)

Insert after item 42:

42A After subsection 305A(1)

Insert:

(1AA) A person must provide a return in accordance with this section if, during the disclosure period in relation to an election, the person provided some or all of the participation charges raised in relation to a reportable fundraising activity or event to any of the following:

(a) a registered political party;

(b) a State branch of a registered political party;

(c) a candidate in the election;

(d) a member of a group;

(e) an associated entity;

(f) a person or body (whether incorporated or not) specified, by legislative instrument, by the Electoral Commission.

[reporting obligations in respect of reportable fundraising activity or event]

(7) Schedule 1, Part 1, page 22 (line 2), insert:

Insert after item 46:

46A Subsection 305A(2A)

Insert:

(2B) In addition to subsection (2), if a return is required under subsection (1AA), the person must provide to the Electoral Commission a return setting out the required details of the reportable fundraising activity or event.

[reporting payments from reportable fundraising activity or event]

(8) Schedule 1, Part 1, page 22 (line 4), insert:

Insert after item 47:

47A After subsection 305A(5)

Insert:

- (6) For the purposes of this section, the required details of a reportable fundraising activity or event are:
- (a) the date and nature of the activity or event; and
 - (b) the identity of any members of the House of Representatives, senators and members of a legislature of a State or Territory who participated in or were guests at the activity or event; and
 - (c) the amount or value of the participation charge for the activity or event (or, if there was more than 1 participation charge, the amount or value of the highest participation charge); and
 - (d) the number of participants in the activity or event; and
 - (e) the identity of each participant in the activity or event in respect of whom a participation charge was paid or provided; and
 - (f) if a participant did not himself or herself pay or provide a participation charge in relation to himself or herself—the identity of the person who did pay or provide it; and
 - (g) for each of the persons mentioned in paragraph (1AA)(a)— the total amount or value of participation charges in respect of the activity or event provided to that person by the person submitting the return.

[reporting payments from reportable fundraising activity or event: contents of report]

Annexure B: Explanatory Statement

COMMONWEALTH ELECTORAL AMENDMENT (POLITICAL DONATIONS AND OTHER MEASURES) BILL 2011

EXPLANATORY STATEMENT FOR AMENDMENTS TO BE MOVED BY

Objectives

Detailed explanation

The amendments would require an enhanced level of reporting of fundraising activities in relation to election campaigns, particularly where fundraising activities involve payments made to political parties or campaigns for access to ministers or shadow ministers.

At present, the *Commonwealth Electoral Act 1918 (Act)* only requires the disclosure of “gifts”. The Bill continues this.

It is the accepted view that a gift is a payment (or the provision of something) “without consideration in money or money’s worth or with inadequate consideration”. Payment for access to Ministers or Parliamentarians is regarded as adequate consideration.

Fundraising events (such as “\$1,000 lunches with the Minister” arranged by or for a party) are therefore not caught by the disclosure requirements.

The amendments expand disclosure requirements to catch these fundraising efforts. They do this as follows.

- The amendments apply to **reportable fundraising activities or events** (defined in **amendment (1)**: proposed subsection 304(1A)). There are 3 criteria:
 - participants in the activity or event have to pay or provide consideration (**participation charge**) to attend;
 - the participation charge (or the highest of them) must be \$1,000 or the prescribed amount (consistently with the minimum level of reportable gifts); and
 - the amount raised (or some of it) must be given (whether or not as a gift) to:
 - a registered political party
 - a State branch of a registered political party
 - a candidate in an election
 - a member of a group
 - a person or body specified, by legislative instrument, by the Electoral Commission or
 - an associated entity.
- It is necessary to capture payments that are not gifts to ensure that the disclosure requirements cannot be avoided through arrangements for meeting the expenses of the fundraising event.

- A candidate's agent's report under section 304(2) of the Act must include the following details where the candidate has received amounts or other support from a reportable fundraising activity or event (**amendment 3**):
 - the date and nature of the activity or event;
 - the identity of any Parliamentarians (Commonwealth, State or Territory) who were at the activity or event;
 - what the participation charge was;
 - the total amount received;
 - who paid the candidate the proceeds of the activity or event;
 - the total amount or value of the participation charges received by the person in relation to the activity or event; and
 - the identity of the person from whom the participation charges were received.
- There are similar requirements for group's agent's reports under section 304(3) of the Act (**amendment 4**).
- The person who paid the candidate or group in relation to the fundraising activity or event must make a more detailed report (as that person will have or have access to this more detailed information). The person's report (see section 305A, **amendment 6, 7, 8**) must include:
 - the date and nature of the activity or event;
 - the identity of any Parliamentarians (Commonwealth, State or Territory) who were at the activity or event;
 - what the participation charge was;
 - the number of participants;
 - the identity of each participant by or for whom a participation charge was paid or provided;
 - who (if not the participant) paid the participation charge (for example, the participant's employer);
 - how the amount raised was distributed among:
 - registered political parties;
 - State branches of registered political parties;
 - candidate;
 - members of groups;

- associated entities;
- persons or bodies specified, by legislative instrument, by the Electoral Commission.