Panel of Experts – Political Donations

Submitted by Australian Cyclists Party

Date: 28 September 2014

Date of Submission
Submission to Expert Panel on Political Donations

Dr. Kerry Schott
Chair,
Expert Panel on Political Donations
GPO Box 5341
SYDNEY NSW 2001

26 September 2014

Dear Dr. Schott,

The Australian Cyclists Party was established in 2013 and registered as a NSW party in 2014. Our perspective, as a new political party, is that the current electoral funding laws are too complex and imprecise and that the process for managing disclosing donations is a major burden on new and minor parties.

While we have an interest in reform that simplifies the current laws, we do not believe that full public funding of State election campaigns as proposed is appropriate, fair or feasible. We would prefer a more transparent system in which the management and disclosure of donations is shifted from parties to a central authority.

Of the terms of reference for the panel, we wish to address only those below:

1. Whether or not it is feasible and in the public interest given all considerations (including legal, constitutional and others), to provide full public funding of State election campaigns.

The Australian Cyclists Party perceives significant problems with full public funding of State election campaigns. In principle, the democratic basis of the Westminster system presumes that the State (or Crown) is indifferent to party which forms government. No doubt any proposal for public funding would see the larger parties receive a larger proportion of the State’s money. This doesn't represent an appropriate separation or indifference of the State to the interests of the parties that compete to form government. It could be viewed as collaboration between the major parties and the Crown to ensure perpetual favouritism to those who are in a position of power already. Private donations are a fairer source for parties’ income because parties represent private interests. The State is supposed to represent public interests.

Furthermore, the proposal for public funding in the terms of reference only refers to “State election campaigns”. However, a major proportion of party expenditure is administrative, rather than electoral. As it stands, donations will still be required to pay for the cost of running a party during the remainder of the time outside of state election campaigns. Unless the State proposes to pay for party administrative expenditure on a permanent basis, as well as electoral expenditure, the possibility for corruption remains and smaller parties will continue to shoulder a disproportionate burden for their unrecoverable costs.

3. If full public funding of State election campaigns is to be provided: [...] (c) what is the impact on minor parties and independent candidates;

Full public funding would have a deleterious impact on minor parties unless it covers administrative costs and provides for a minimum and equal starting point. We presume, for instance, that under a publicly-funded regime, the Liberal or Labor parties would receive significantly more electoral funding than most other parties as a starting point thus favouring the incumbents. As a recently-registered party, public support of the Australian Cyclists Party has not been tested at an election. It is difficult to understand how an equitable provision of public funds could be made for new parties
such as ours before an election which we are contesting, is held. This would place us at a distinct disadvantage to other parties that have had their support tested at an election.

4. If full public funding of State election campaigns is not to be provided, what models are recommended, taking into account issues including:
(a) What is the appropriate level of caps on political donations;

The Australian Cyclists Party believes the current caps represent a fair level of restriction on private donations. The current maximum of circa $5700 provides ample scope for an individual to provide financial support to a party of his or her choosing without being so large as to constitute a danger that undue influence is being sought. A combined donation cap could also act as further insurance against orchestrated influence.

We do believe that there is need to review the cap on “in-kind” donations. The current cap of $1000 is much too low if it were to include “in-kind” support. It is too easy to inadvertently exceed this figure, especially for small parties who rely on donated time from supporters for professional advice because we can’t afford to employ or engage professional legal, financial, or communications expertise. A fairer and simpler approach would be to cap all donations, whether monetary or in-kind at the indexed rate and/or consider making in-kind donations that are explicitly administrative (legal and accounting support towards party registration for example) as exempt of a fixed cap.

Alternatively, an administrative function could be made available by the EFA that provides or underwrites fully qualified administrative functions in an “opt-in” scenario for parties wishing to partake.

Ensuring all parties have adequate resources to run a properly administrated party would be in the best interests of the public as well as the government and its oversight functions – and more cost effective than extensive audits.

5. In considering all reform options, the Panel should consider:
(a) what controls should apply to the making of donations, such as
i. whether or not particular entities or groups of donors should be excluded;

The Australian Cyclists Party does not understand the purpose of banning completely donations by people or close associates in the tobacco, gaming, alcohol or property development industries. Whilst we understand public perceptions of these industries’ influence in politics, corruption will still occur even from outside these industries. There is no reason to believe that other industries could not just as easily also gain favour by not being included. It is simpler to properly police the donation caps. It is difficult to conceive how a property developer could seriously attempt to buy undue influence with a $5700 donation to each member of parliament, especially if this donation is transparent. However a cap on total donations could be used to ensure this.

We do believe that the lack of consistent and coordinated state and federal funding regulations not only provides for a wide open “back-door” to donations as we have recently seen through ICAC revelations but also makes it easy for a party with enough sophistication to fund various activities through the most accommodating jurisdiction.

Furthermore, the Australian Cyclists Party has found navigating this part of the legislation difficult. Without a list, it is impossible to tell whether a donor is prohibited until after the list is reviewed by the EFA. There is ample room for abuse or even purposeful illegal donations to undermine a party’s reputation.

 [...] (b) the appropriate frequency and timing of disclosure obligations under election funding laws.

The Australian Cyclists Party believes that the current disclosure reporting procedures are opaque and burdensome. Annual disclosures ensure that the donation event and its placement on the public record can be separated by up to 15 months or more. As we have recently witnessed, an election can benefit a party and help it achieve government with any disclosure or penalties unable to right the wrongs in time to call into question the very legitimacy of a government’s election success. An online, near-real-time disclosure system is more suitable and highly feasible with current technology.
Our preference for a simpler and more transparent process for receiving and disclosing donations in which donations are managed by a centralised authority that distributes donations to the intended party. This way the assessment of whether donors are on the electoral roll is easy to manage. Disclosure would also be made real-time by this method and it avoids any possibility for parties to inadvertently or deliberately fall foul of the rules.

We understand that traditional fundraising efforts, such as raffles, and selling of branded merchandise, etc, might be impacted by this method, but we also recognise that these represent only a small (and shrinking) percentage of party donations.

The management of in-kind donations and electoral communication expenditure be incorporated into this system. The current system of reimbursing parties for political expenditure could also be managed via this process.

Even without any other changes to political donation disclosure such as been proposed here, there is no reason why NSW hasn't already implemented a system to manage and lodge annual disclosures online, such as the Commonwealth’s “eReturns” system.

8. Any other matters relevant to political donations.

The current system of disclosure of donations is slow, burdensome and costly to minor parties. Unlike major parties that can employ full-time staff to manage disclosures, have access to complex funding software (including from financial institutions), minor parties rely heavily on donated time and labour and meeting disclosure obligations is a disproportionately heavy burden.

The increasing impact of online activities in support of parties or candidates creates both an opportunity for better management and a new frontier that requires clarity of regulations to avoid being abused.

The delay of penalties to those purposefully abusing the funding rules appears to work too late after elections to provide adequate deterrence or remedy election results. Major parties may even find the upside worth the future risk.

A party trying to register in multiple states and/or federally increases its exposure to additional levels of complexity arising from inconsistent funding regulations. The best resourced parties appear better able to find ways to avoid or circumvent unfavourable restrictions as a result.

The cost of preparing and auditing the Australian Cyclists Party disclosure for financial year 2013-2014 represented a significant portion of our administrative expenses for that year. If a centralised authority that received, distributed and disclosed political donations in near-real time, this would create a more level playing field for all parties and improve public confidence in the system.

In summary, as a party not yet one year old, we appreciate the opportunity to provide input to this very important aspect of not only election funding but ultimately of fairness in our democratic institutions. We believe that parties currently in power should not enjoy public funding advantage just for being incumbents - nor to only able to be challenged by wealthy new parties. The funding framework must also operate fairly and provide new entrants with the best opportunity possible to ensure they run themselves correctly and are not disadvantaged in being unable to afford basic administrative compliance assistance.

Regards,

Omar Khalifa
President
Australian Cyclists Party

Angus Harker
Secretary and Treasurer
Australian Cyclists Party