Panel of Experts – Political Donations

Submitted by Ben Franklin
NSW National Party

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Dr Kerry Schott
Chair
Panel of Experts – Political Donations
GPO Box 5341
SYDNEY NSW 2001

By email: DonationsReform@dpc.nsw.gov.au

Dear Dr Schott

Please find enclosed submissions on behalf of the National Party of Australia – NSW to the Panel of Experts’ current inquiry.

My Deputy and I look forward to meeting with you during the Panel’s private discussions with stakeholders on 25 September.

If we can be of any further assistance we would be pleased to make ourselves available to meet with the Panel at another stage in the course of the Panel’s investigations.

Yours sincerely

[Signature]

Ben Franklin
State Director
Submission to the Expert Panel on Political Donations

– September 2014 –
Introduction

Public concern about the influence of private funding to political parties and candidates has been ongoing over the past several years in particular. This has been addressed in an ad-hoc basis through changes to political finance laws first to ban property developer donations, and subsequently to introduce limits and further prohibitions on both donations to and expenditure that can be incurred by political parties and candidates.

The changes that took effect in January 2011 were also accompanied by the regulation of third-party campaigners, whose influence would have arguably dwarfed that of parties and candidates in the absence of such regulation.

More recently, public attention has been even more keenly focussed on the issue of political donations, and there is in our experience an increasing public appetite for further reform in this area to limit the influence of private funding.

This submission recommends amendments to the current donations, expenditure and funding regime with a view to reducing the influence of private funding on political parties by increasing public funding and introducing stricter controls on donations.

Full public funding?

Significant doubts have been raised as to the constitutional validity of a system of complete public funding, which by its very nature would necessitate a total prohibition on political donations. We do not profess any particular expertise in matters of constitutional law, and would defer to the opinions of experts such as Professor Twomey and Professor Williams.

We have prepared this submission on the assumption that full public funding will be found not to be feasible due to it being constitutionally impermissible and/or practically unfeasible. Indeed, practical considerations become redundant in the event that such a system is not constitutionally valid in the first place.

However, the growing public appeal of full public funding should not be ignored. Any new system ought to provide for funding at a level sufficient to allow parties to run their campaigns on public funding alone, without the need for recourse to private donations.

Donation controls

The focus of public concern surrounding donations flows from the perception (whether real or not) that significant donors may exert some form of undue influence on the decision-making of elected representatives. The surest way to address such concerns is to impose more stringent limits on the quantum of donations that can be given. This can be achieved in two ways: reducing the maximum allowable donation;
and removing the party / candidate distinction in the case of endorsed candidates to prevent double-dipping on donation limits.

The maximum allowable donation for state campaign purposes is currently $5,700 for donations to parties and $2,400 for donations to candidates per financial year. This creates an effective donation limit of $8,100, because while there are provisions that aggregate donations toward the candidate donation cap in relation to candidates of the same party (candidates of the same party can only receive up to $2,400 per year in aggregate from the same donor) there is no such aggregation as between a party and the candidates endorsed by it.

This maximum allowable donation should be significantly reduced. A limit of $2,000 would be less than one quarter of the current maximum donation, while a limit of $1,500 would bring this amount into line with tax deductibility for donations. (This amount has also been used in the past as the disclosure threshold federally.) While it would be impossible to completely remove concerns about the potential of a donor unduly influencing a parliamentarian, a substantially reduced donation limit should tangibly reduce the perceived opportunity for undue influence.

This lower limit will be more meaningful if it is coupled with changes that prevent a donor from giving to a party as well as to that party’s endorsed candidates. It is suggested that this be achieved by removing the separate treatment of candidates endorsed by a political party from the party itself by bringing all of their financial activities within the ambit of the party. The party agent is already by default the agent for all candidates endorsed by a party, and most parties centralise the financial functions associated with their candidates’ campaigns. This would take that one step further and remove the conception of a candidate as distinct from the party organisation for financial purposes.

The other issue that requires consideration when dealing with controls on donations is the categories of persons who are entitled to donate. At present, there are several provisions that operate to restrict the ability to donate, with various categories of natural persons and organisations being prohibited. We made our views in relation to these restrictions known in our submission to the Joint Standing Committee on Electoral Matters’ inquiry into the state’s political finance regime, especially in the context of low donation caps, and will not repeat those issues here.

We do, however, think it is essential that in the event any restrictions or prohibitions are to apply to prevent particular people from donating they be well-defined and clearly understood. These definitions should also seek to avoid the anomalies that are created by current definitions. For example, one of the largest poker machine and licenced venue operators in the state (Panthers Group) is entitled to make donations, but the owner of a small country pub with two poker machines would be prohibited.
Expenditure controls

In the context of an increasingly regulated environment for political finances, it seems inappropriate to countenance removing caps on expenditure. As such, they ought to be maintained. The issues to be considered in relation to spending caps are whether they are set at an appropriate level, whether they apply to the correct categories of expenditure, and whether their current form is practical.

Spending caps seem broadly to be set at an appropriate level, however in regional areas they are far more restrictive than is the case in urban and suburban areas due to the increased cost of campaigning. This results from a number of factors. Television and radio advertising is expected of individual candidates, and while air-time is obviously much cheaper than in metropolitan markets the need to produce commercials for individual candidates in addition to broader party-messaging advertisements adds cost, and the presence in some of the larger electorates of multiple TV markets adds further to these cost pressures. Charges for regional television advertising in particular have been increasing at a much faster rate than inflation.

Delivering electoral material to households within regional electorates is also more expensive, with fewer delivery services operating in regional areas and those which do being confined to built-up areas in larger towns. This means that effective delivery of printed materials can only be achieved through Australia Post, whose charges are much higher than those of other delivery services.

For these reasons, we would suggest that consideration be given to increasing spending caps overall, or to establishing two or more tiers of electorate-specific spending caps to take account of higher local costs. This could possibly be offset by reducing a party’s non-electorate-specific spending cap by an equivalent amount, so that the total spending cap for each party is the same (if contesting the same number of electorates) – the only variation would be the electorate-specific cap from one electorate to the next.

Consideration should also be given to the categories of expenditure that are subject to spending caps and those that are not. For example, there seems to be little justification for excluding spending on research from the expenditure cap. However, the amount of the spending cap needs to be reconsidered along with any change in the scope of items that are applicable to the cap – including further categories of expenditure within the cap would effectively amount to a cut in the spending cap absent other amendments. Whatever amendments are made, we would be opposed to any changes that have the result of including fundraising expenditure within the spending cap.

The other change we suggest in relation to spending (which is also suggested in relation to donations and public funding) is to remove the often artificial distinction between spending incurred by a party and that incurred by a candidate. In practice, most parties have centralised financial functions, and it is the party that is collecting donations and public funding and incurring expenditure.
The removal of this distinction between party and candidate should not give parties carte blanche to incur very substantial expenditure within an individual electorate to the detriment of non-party candidates. To ensure the retention of a level playing field, the spending cap currently applicable to an endorsed party candidate should be added to the sub-cap of party expenditure in respect of that electorate. This will ensure a party’s effective spending limit within any electorate is the same as that of any non-party candidates.

Public funding

In line with the suggestion that private funding sources be further limited, it would be appropriate that public funding for election campaigns be increased to compensate. A system of base funding, plus a further payment of a rate per vote, is suggested to move away from the current system of partial reimbursement which forces all parties and candidates to raise private donations if they wish to fund more than a nominal campaign. A system that provided a set base of funding, plus further funding based on electoral performance, would improve the current system in three ways.

First, it would allow some parties and candidates who choose to run a more modest campaign (spending only part of their expenditure cap) to potentially do so while being fully publicly funded. The sliding scale of partial reimbursements in the present system means that there will always be a gap to be filled by private funding in any campaign that expends more than 10% of the applicable spending cap. This has the (perhaps unintended) consequence of forcing parties and candidates to seek private funding, notwithstanding the increase in public funding in the current system compared to its predecessor.

Second, it will ensure an element of proportionality to the funding that is paid. Under the current system a party that spends $50,000 and receives just 4% of the vote gets the same funding as a party with equivalent spending which receives 60% of the vote. Public support (as measured by electoral performance) ought to play some part in the quantum of funding a party is eligible to receive. This principle is already accepted and well-established in the threshold for funding eligibility, but from that threshold a one-size-fits-all funding quantum does not seem appropriate.

Third, it would provide the appropriate balance between funding certainty for participants and recognition of public support. One of the criticisms of the former rate per vote funding model in NSW was that parties and candidates could not know until after an election event the quantum of funding they would be entitled to. The current system, by moving to a reimbursement model, well and truly provides certainty in relation to public funding (subject to meeting the eligibility threshold), but as noted above can produce somewhat perverse outcomes given a single, low qualification threshold. Base funding, plus a further payment per vote, offers an ideal blend between these two models.

It is suggested that the funding provided on a rate per vote basis be equivalent to that provided under federal funding legislation. While the addition of base funding would have the result of state-based funding being more generous than that available federally, this would be appropriate in the context of the onerous donation
restrictions that are proposed for state elections compared with the quite laissez-faire approach federally, where the only condition that attaches to donations is the need to report an amount above $12,800.

In addition to the quantum of funding, there is a need to reconsider the types of expenditure to which funding potentially attaches. In the event that funding remains in some way tied to expenditure (even if only by capping funding at an amount equivalent to spending) that funding/spending link should reflect the full range of expenditure incurred by parties and candidates on campaigns. This means taking into account not only "electoral communication expenditure" under the current Act, but also any other electoral expenditure (such as research, travel and accommodation). This will ensure the fairest possible treatment of all players and not result in some being advantaged or disadvantaged because of the mix of their spending.

To the extent that any base funding is capable of being determined prior to an election event, all or part of this sum should be paid to parties and candidates in advance of the election. This would avoid the unnecessary cost of privately financing the period that would otherwise pass between incurring expenses and the receipt of public funding. By providing upfront funding parties will not be required to seek donations to cover interest charges on borrowing, once again assisting by reducing the imperative to seek donations that is inherent within the current system.

For registered political parties, in line with the suggestions concerning donations and expenditure, all funding should apply directly to the party and not to individual candidates.

**Third parties**

The relatively privileged position of third parties as compared to political parties and candidates needs to be reconsidered. In our view the expenditure caps applying to third parties are already too high. For example, a third party enjoys a spending cap equivalent to that of a party that contests the Legislative Council only. While there must be an opportunity for third parties to participate in election campaigns should they choose to do so, we consider that campaigns should primarily be contested between those parties and candidates who are actually participants in the election.

The need to reconsider the limits that apply to third parties is even more apparent in the context of potential further restrictions on parties and candidates. Applying such further restrictions in the absence of tightening the regulation of third party campaigners will likely encourage the rise of third party campaigns as a dominant tactic in future elections, in much the same way that (largely unregulated) "Super PACs" in the United States are coming to overshadow candidates’ and parties’ own (comparatively heavily regulated) campaigns. This is a development that we do not believe would be welcome in New South Wales.