Panel of Experts – Political Donations

Submitted by Christian Democratic Party

Date: 26 September 2014
19 September 2014
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EXECUTIVE SUMMARY

Following not only the recent investigations by ICAC but also the historical and on-going involvement of Third-Party interest groups in the NSW election process, the Christian Democratic Party (CDP) fully supports the need to further reform the political donation process in NSW.

It does believe, however, that any model for full public funding of election campaigns must not further entrench the current Two-Major Party Governmental system which is the fundamental cause of the problems currently faced in NSW and the lack of real debate in the Chambers of the NSW Parliament which results from the subservience of many members of parliament to the interest groups that support and help them stay in office.

The overall position of the CDP is that it is the involvement of Third-Party interest groups that contribute to the major corruption of the political system and even with full public funding the system will still be open to manipulation by these third-party groups.

Therefore, CDP believes the most effective way forward is to actually limit the amount of expenditure at election time in conjunction with enhanced controls over Third-Party involvement.

Any proposed legislation must eliminate the ‘privatisation’ of the political process via large benefactor organisations and individuals outside the auspices of the Electoral Commission and the Election Funding Authority.

Entity donations should be allowed subject to current restrictions but this should be at a level equal to that permitted from individuals. It should only be allowed by the ‘parent’ organisation and not any ‘subsidiary’ organisation(s).

CDP believes that Permanent residents should be allowed to donate to a political party as they are very much affected by parliamentary decisions. If they are excluded, there is an anomaly with the current legislation because an entity operated by a Permanent resident is able to donate whereas the resident is not.

Legislation should be enhanced to allow for a much wider review of what could be deemed electoral communication expenditure and ‘donations and fundraising’ for political purposes that are generated outside political party structures.
SUBMISSION

1. Full Public Funding of Election Campaigns

We believe that at the heart of the current Election Funding legislation, there was a genuine desire to achieve a framework that removed both the perception of possible corrupt influences on the political process and also any opportunities for actual corruption.

Unfortunately, this desire was rapidly overtaken by the greater desire to seek and hold onto power through the on-going push to ‘privatise’ (or circumvent) the electoral process through the establishment of numerous Forums, Industry Groups, Trusts and Associations. Following the High Court challenge that has reintroduced the direct involvement of the Union movement and other non-individual donors as eligible donors into the NSW political donation arena, the Panel must decide if full public funding of State election campaigns will actually remove this tendency to try to ‘circumvent’ the process.

CDP believes that it will not as the flexibility open to ‘Third-Party’ organisations and individuals will still be available to manipulate the donation process.

Possible manipulation examples are:

1. Organisations such as GetUp, Union Bodies or other interest groups or individuals distributing material on election day or at pre-polling to influence voters

2. Individuals or organisations paying for election material outside the auspices of relevant ‘associated entity’ guidelines or spending amounts well over election limits under the guise of Public Information

3. Suppliers providing material free or at greatly reduced discounts

4. The inclusion of Independent Candidates who are effectively tools to channel preferences to a Political Party Candidate. These candidates can then be used to garner additional donations or generate material for which the sole purpose is to get someone else elected. All Independent Candidates should be made to declare all current Party Memberships as well as Parties in which they may have been a member in the 12 months prior to nomination. Also, they should declare all close family members who belong to a Major Party
If restrictions are not put in place, then the wider community will be subject to a biased influence from unreported electoral communication expenditure in the lead-up to and at elections. Some Political Parties will be significantly disadvantaged when “big money” organisations and individuals use these alternative ways to benefit opponent(s).

**Full Public Funding Model for Election Campaigns:**

CDP proposes the following model as a realistic solution which could provide a degree of equity to all candidates, both Party-affiliated and independents.

1. Increase each candidate’s nomination fee to $500 (to discourage frivolous nominations); then

2. Pay all candidates public funding based on the number of primary votes that each candidate receives (for reason of equity) as a reimbursement towards allowable electoral expenditure. Why should a candidate who receives 4.00% of votes cast receive funding but one who receives 3.99% get no public funding? This is unjust and discourages candidates from standing,

3. But also, gradually reduce the amount paid as the number of primary votes increases (i.e. a form of “means testing”, but without any “steps” in the payout).

A simple example of this proposal (using whole numbers) to illustrate the principle of the model could be:-

1. Candidate nomination fee = $500
2. Public funding per vote = $2 (say)
3. Reduction rate = 40% (say) on the percentage of primary votes received by each candidate. Hence, when candidates in an electorate of 50,000 voters (say), receives the following votes, the public funding would be :-

   - 0.2% of the votes (i.e. 100 votes), $2 \times 100 – \text{reduction} = $200 – ($200 \times 0.2\% \times 40\%) = $200.
   - 2% of the votes (i.e. 1,000 votes), $2 \times 1,000 – \text{reduction} = $2,000 – ($2,000 \times 2\% \times 40\%) = $1,984.
   - 20% of the votes (i.e. 10,000 votes), $2 \times 10,000 – \text{reduction} = $20,000 – ($20,000 \times 20\% \times 40\%) = $18,400.
   - 40% of the votes (i.e. 20,000 votes), $2 \times 20,000 – \text{reduction} = $40,000 – ($40,000 \times 40\% \times 40\%) = $33,600.
   - 60% of the votes (i.e. 30,000 votes), $2 \times 30,000 – \text{reduction} = $60,000 – ($60,000 \times 60\% \times 40\%) = $45,600.

Where the candidate has an outright win (i.e. greater than 50%), then the public funding gets noticeably less, and it could be reasonably argued that their success demonstrates the lack of need for proportionally greater funding. However, those candidates with only
a small % of the votes would all get funding approximately proportional to the votes they received.

One final point for consideration is that the public funding for a candidate should be limited to no more than 50% + 1 vote. The reason is that, in some seats where an outright win is historically normal, a significant amount of election expenditure may be considered unnecessary because the candidate will win anyway.

**Allowable Electoral Expenditure**

The current definition focuses solely on ‘Communication’ Expenditure and so does not allow reimbursement of necessary expenditure such as travel and accommodation, auditing of returns, hire of rooms for public meetings. The disallowance of such items is a hindrance to bringing equality to the electoral process as an incumbent member of parliament will be able to claim some of these items as ‘electorate’ expenditure.

CDP’s contends that public funding should never be based on party membership. We submit that any funding model based on the number of Party members is open to manipulation unless the membership fees charged and the duration of membership are realistic and taken into account. For example, it is possible for a party to offer free membership and/or sign-up members just before the Election Commission’s closing date for Party Registration.

### 2. State Election Expenditure Caps

The CDP believes that limits should apply and a reasonable model would be as follows:

1. A Maximum $50,000 per candidate per Legislative Assembly electorate
2. Plus a further $500,000 for the Legislative Council provided the Party or Group is standing a minimum of candidates in 50% of Legislative Assembly electorates
3. The Legislative Council amount drops to a Maximum $50,000 if a single candidate or $100,000 for a Group with at least 5 Candidates, otherwise, the $50,000 limit applies
4. A Political Party would be able to group the allowable maximum amounts towards a total campaign as it sees best up to a Grand Maximum of $5,150,000

### 3. Integrity of Public Funding for State Campaigns

One of the major hassles for Political Party EFA reporting is the differentiation of categories that have to be reported. To simplify this process and to bring integrity into the whole funding arena including the current Administration Funding:
1. A Party should be allowed to have only one Operation account from which to pay all its bills. It is easy within relevant Accounting Software to differentiate what is Electoral, Administrative, etc expenditure

2. A Party may be allowed to have other accounts to facilitate the earning of better interest rates on accumulated funds but these accounts must not be for paying of bills

3. The EFA will then be able to see exactly what a Party is expending & receiving

4. The EFA generate an on-line facility whereby Reportable Donations (including Fundraising payments) are recorded within 14 days of being banked to create an increased degree of accountability and transparency by being accessible for information only to the media and general public

5. Booth Managers on Election Day should do a reckoning of the number of corflutes and/or banners displayed by candidates at each polling place. This can be totalled and reconciled with what is actually disclosed to see if amounts and/or quantities seem reasonable as well as an invoice has been included by the Supplier. We are still waiting for the disclosure in relation to the Miranda By-election to be made available but the Labor campaign had several thousand erected – at one booth the ratio was approximately 1 per every 4 voters (actually being erected in contravention of the 8,000 square centimetre rule)

4. Third-Party Campaigns

As stated previously, CDP believes that this is where the integrity of any funding system can be perverted. To overcome and limit any attempts to pervert the system, CDP proposes the following:

1. All Third-Party advertising must have a pre-cursor statement saying ‘This Advertisement Supports XYZ Party’ and must carry an Authorisation Statement of the Party Agent for the relevant Party(s) or Group(s) and the Party Agent must have given a signed Authorisation Letter to the Third-Party

2. This must also apply for material distributed at pre-polling or on election day

3. All pre-polling & election day material from Third Parties must be registered as for Party How-to-Votes and other distributable material

4. With the pre-polling and Election day material, CDP also believes that the cost must be included in the Party or Candidate Caps for the campaign

5. If Caps are exceeded, then a fine of double the cost of the relevant material should apply to both the Third-Party and the Party and the Party’s and/or Candidate’s Cap for the next election will be reduced by the fine plus any Director of a Convicted Third-Party will be disallowed from being a member of any Third-Party Group in future with a possible gaol sentence if convicted

6. Third-Party Groups must also have only one Bank Account from which they pay for any electoral expenditure and the EFA must have complete authority to
request any Bank to provide details of the banking arrangements for any Political Party or Third-Party Interest Group
7. The EFA should have the necessary authority to audit order books and accounts of Suppliers for any given Candidate, Group or Party
8. We believe that some form of voting system should be applied to Third-Party Groups such that members have to give their agreement for the amount and degree of expenditure that can occur in relation to election-orientated advertising and/or material distribution
9. All affiliation fees from Community organisations should be allowed up to a maximum amount ($50,000) per year per ‘parent’ community organisation. This recommendation is to prevent numerous subsidiary organisations being used as a means to increase this amount.

5. Developer Campaigns

Although not directly part of the auspices of the Panel’s Terms of Reference, CDP believes that consideration needs to be given to the impact on State and Local Government Elections of Developers who stand as candidates.

1. Developers are excluded from donating to Political Parties but are not excluded from running for office. This obviously is a democratic right for the individual
2. The question should be asked as to why such a person would want to run as a candidate when they already have a significant business to operate which must conflict with the time available to represent constituents
3. Once a Developer runs as a candidate that person is permitted to self-fund
4. With State Elections there are tighter controls on the amount the Developer can self-fund but with Local Government, there is nothing stopping the Developer from expending considerable self-funds across the Group Campaign and thus help distort the election process
5. If a Developer wants to run as a candidate, they should be made to declare to the electorate that they are a Developer
6. A Developer should not be allowed to self fund
7. If they do not declare their position as a Developer prior to an election then they will lose their seat and will be liable for prison

6. Election Communication & Disclosure Periods

The CDP believes that the Election Communication Period should be extended to 1 year prior to the date of an election so as to avoid huge Third-Party Campaigns prior to the Communication period that fall outside any Expenditure Cap regime.
The Disclosure regime can be very time consuming from an Administration perspective and ideally needs to be simplified. One way of doing this is to take away the distinction between Administrative and Election Donations (except for Federal Election Donations which should be kept separate from the ‘State’ regime. This is because they all get lumped together when determining whether an individual donor has exceeded a Cap and it should be up to the Party to determine where it wants to expend these donations provided they all fall within the designated limits for Elections and that any Administration Funds provided are solely used for Administration.

7. Full Public Funding Impact on Minor Parties

Although the basic concept of Full Public Funding of Elections seems popular at the moment because of the issues that have arisen largely through Major Party ‘stretching’ of the donation framework, CDP believes that its introduction would create expensive Constitutional challenges and will only alleviate some of the irregularities currently known. In fact, it may help entrench the outside involvement of pseudo Public Interest Groups.

This would be detrimental to the involvement of Minor Parties in the electoral system and the introduction of alternative views into the political debate.

Also, any model of funding would have to take into consideration that a campaign needs funding to begin. If funding is to be based on results achieved there would be a huge time lag between the receipt of funding and the need to pay actual bills. This effectively implies that a Party/Candidate has to have a means of fundraising to get a campaign rolling. Without a fundraising capability, a New Minor Party would find it very difficult to initiate a campaign and existing Minor Parties would find it very difficult to disseminate their message and grow.