

APPENDIX B

SUBMISSION TO THE INQUIRY  
INTO ELECTORAL EXPENDITURE

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(Electoral Matters)

SUBMISSION

1. NARROWNESS OF TERMS OF REFERENCE

- (a) Exclusion of monetary donations to a political party or trade union

If laws on electoral expenditure are to have any impact, they must cover donations to parties as well as expenditure by parties. If they do not, no person or body would incur expenditure on behalf of a candidate, rather they would donate the money directly to the candidate, who could then pay the donor to carry out services. But most importantly of all by excluding from consideration the greatest source of corruption in our political system, donations to parties and candidates. A fundamental principle of democracy must be that representatives do not owe allegiance to, nor should they be influenced by, undisclosed patronage.

Why we call for disclosure of donations as well as expenses

The A.L.P. is firmly of the view that giving money to a party to assist in its pursuit of public office is an involvement in the electoral process. No privacy should be attached to this involvement: the electorate has the right to know who is providing funds for parties and candidates seeking their votes. The same principles apply to parties and candidates spending funds, whether public or private in source.

Arguments that such disclosure endangers the secret ballot are specious. An individual is certainly entitled to his or her privacy up to and until the moment that they engage in public behaviour. Giving funds to a party or candidate is a public act. Accordingly, no privacy can be attached to this public act.

Indeed, many organisations donate to all major political parties. The making of a donation is thus in no way akin to the casting of a vote.

The aim of disclosure provisions is not to tell the parties and candidates what they can do, but to require them to tell the public what they are doing.

Although there are no firm statistics on the matter, most funding of election campaigns comes from private corporations. The employees of the companies (and indeed the shareholders) are rarely consulted about these donations, nor are the consumers who must make up the profit given to conservative parties in the form of higher prices.

We submit that donations to political parties and candidates should be made public. Disclosure of the sources and amounts of donations would ensure that any suspicion about a link between a donor and a party's or candidate's actions could be questioned openly. While ever funding, of political parties in particular, is allowed to remain secret the electoral system can appear to be tainted. There should not only be fairness in the system, but such fairness should be visible.

In a recent parliamentary debate over amendments to the Electoral Act, two speakers made the following points.

"Money in politics is becoming a subject of increasing concern and is generally regarded by an ever growing number of people in the Australian community as, at best, a necessary evil. What concerns us all is the problem of finding ways to eliminate or to restrict the most obnoxious campaign practices while at the same time discovering alternative methods of political financing which recognise the growing cost of campaigning for political parties and for candidates and the need to establish public faith in the basic honesty of our whole democratic political system."

"Most Australians are not so naive now as to be unaware of a direct relationship between money and political power. They are, I think, well educated, sophisticated and perceptive enough to look at lavish campaign spending similar to that which occurred in the 1977 campaign. Their attention will be directed not so much to any message that might be conveyed in those campaign operations but at the cost of campaign. Most perceptive Australians - many of them have told me this - when they see this spending say: 'What did this function or advertisement cost? Where did the money come from? What strings are attached to that money?'

"Then they ask: 'What are those strings costing me as an Australian citizen?' That might be the final question that the perceptive person might ask himself or herself."

An individual or organisation should not be prevented from providing funds to a party which represents the donor's political philosophy or even which is most likely to act in the donor's general interests. However, such donations should be open to public view so that their possible consequences can be judged.

The argument is sometimes advanced that people or organisations may want to assist a party or candidate financially but at the same time to keep these political preferences private. We suggest that, to accept such an argument, is to accept and approve the possibility of making secret political deals in exchange for campaign funds.

It must be presumed that there is some limit below which a donation could not reasonably be said to have any substantial influence. A minimum level should be set of, say, \$100 in the case of an individual candidate and \$500 in the case of a party, before a donation has to be revealed. This would avoid the need for a party to list ordinary membership income and for an individual to list minor assistance. The limit would apply to the making of several donations over a year which totalled more than the chosen minima, and to treat as one the several parts of an organisation to ensure that intent of disclosure was not evaded by the use of subsidiaries and branches. The value of donations in kind, whether goods or services, should be included, as should arrangements for others to pay particular accounts.

The disclosure requirements, in the case of a political party, would have to be continuous and not limited to an election period. An annual return should have to be lodged with the Electoral Office. Thus there would be disclosure of the major sources of basic support of a party's structure between elections, which is of real value to that party's ability to fight elections. This would also ensure that any attempt to avoid disclosure by notional substitution - a party saying that membership fees paid for an election while major donations paid for its normal running costs - would be made visible. Individual candidates and non-party groups should have to lodge a return showing the sources of political funds for a period of at least 12 months prior to their nomination.

The government has stated that "the public interest is served by public disclosure of electoral expenditure". We submit that this means all electoral expenditure which includes donations to parties and candidates, and have drafted our submission accordingly.

- (b) The assumption in point 2 of the terms of reference that any disclosure should be after the close of poll

If disclosure is to play its proper role of enlightening the public as to what expenditure is being incurred and by whom, disclosure should be made before the declaration of the poll.

- (c) Period for which the Laws would apply

Because of the use of the term "expenses incurred", the limiting of disclosure to expenses incurred between the issue of writs and the close of the poll is absurd. Expenses could be brought forward to a date before the issue of writs, and therefore need not be disclosed. Disclosure should be made on a continuous basis, with annual audited returns.

## 2. WHAT IS ELECTORAL EXPENDITURE?

Here we would refer the Inquiry to Bills introduced by the A.L.P. Government in 1974 and 1975. In particular, the Electoral Bill 1975, section 145, part of which states:

'electoral expenditure' means expenditure for or in connexion with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or of influencing, directly or indirectly, the voting at an election, but does not include -

- (a) expenditure for the purchase of electoral rolls;
- (b) reasonable personal living and travelling expenses of a candidate;
- (c) expenditure for the sole purpose of promoting or opposing the election of a person or persons to a legislature other than the Parliament;
- (d) a payment made by one party to another; or
- (e) a payment made by one branch, division or other part of a party to another.

3. REGISTRATION OF POLITICAL PARTIES

We submit that all parties and candidates participating in any election or referendum shall be registered.

We further submit that all parties and candidates be required to register with the Chief Electoral Office. And any such register shall be open to public inspection.

The Constitution Alteration (Senate Casual Vacancies) Act 1977 has destroyed any argument against the registration of parties because of any doubts over political parties legal status and recognition.

4. ROLE OF THE AUSTRALIAN ELECTORAL OFFICE

We recommend that the Australian Electoral Office be solely responsible for the administration of all legislation to do with elections.

5. DESIGNATION AND DUTIES OF OFFICIAL AGENTS

Each political party and candidate shall designate an official agent. We submit that the duties, privileges and prerogatives of the official agents be:

- (a) To receive all contributions.
- (b) To pay all bills.
- (c) To keep all financial records on the forms designed and supplied by the Chief Electoral Officer, together with all receipts, invoices, etc.
- (d) To render all reasonable assistance to the auditor.

- (e) To report, in the case of a candidate's agent, to the returning officer; and in the case of a party's agent, to the Chief Electoral Officer.
- (f) To receive all reimbursements from the Chief Electoral Officer.

We submit that, during an election, all election expenses must be authorised by the appropriate official agent of a candidate or of a registered party.

We submit that, any other time, all expenses of registered parties must be authorised by their respective official agents.

We submit that any person, corporation, association, organisation or registered party which directly or indirectly incurs election expenses or makes such expenditures, or which between elections incurs any expenses or makes such expenditure on behalf of any registered party, without authorisation by the appropriate official agent, be guilty of an offence against the Act.

We submit that any candidate or any official agent of a candidate or of a registered party who authorises election expenses otherwise than as permitted by the Act, be guilty of an offence against the Act and of a corrupt practice.

We submit that the penalty section complementary to the above offence sections contain a provision that, in addition to any other remedy permitted by law and to any penalty imposed by law, any political party, candidate or official agent may apply to the court for an injunction restraining such activity.

It is further submitted that this extended standing as to injunctions related to corrupt practices apply generally under the Commonwealth Electoral Act.

For more details how one system of agents may operate, we refer the Inquiry to the second report of the Special Committee on Election Expenses of the Canadian House of Commons.

We would also again refer the Inquiry to the Electoral Laws Amendment Bill 1974, and related bills, for sample legislation in this area.

6. PERIOD AFTER CLOSE OF POLL WITHIN WHICH DISCLOSURE SHOULD BE MADE

We dispute that disclosure should be made after the close of polls, and instead submit that any expense should be disclosed before the declaration of the poll.

This would enable any disputes to be resolved in a Court of Disputed Returns, before a candidate sits in the Parliament.

7. CREATION OF CENTRAL REGISTER

We submit that a central register be created, for the Chief Electoral Officer to enter all expenses and donations as they are reported by the official agents, and that the register be open to public inspection, as set out in the Electoral Bill 1974.

8. THE FORM OF DISCLOSURE - FINAL REPORTS

We submit that each candidate through his or her official agent be required to deliver to the returning officer his or her own audited report prior to the declaration of the poll, or at worst, upon the declaration of the poll.

We submit that each party through its official agent be required to deliver to the Chief Electoral Officer its own audited report within 2 months of the last day by which the writs must be returned.

We consider that each audited report must be prepared and certified in the usual way by a chartered accountant or other licenced public accountant, and that the official agents of candidates and of the registered parties make available to their respective auditor all their vouchers, receipts, cheques and other pertinent documents for all receipts and disbursements.

We would also like to quote the report of the N.S.W. Joint Committee on the topic of disclosure of donations.

"Disclosure will be required by means of an audited financial statement. The parties prepared these documents anyway for their own purposes, but some choose to treat them as confidential, to the point that their own membership is denied access. This disclosure would not impose any additional burden on the parties. Their system of accounting, however, would now be subject not only to party scrutiny but to public examination."

### CONCLUDING COMMENTS

Once again, we would wish to protest again at the narrowness of the terms of reference. We submit that without:

- disclosure of donations to political parties and candidates
- some form of public funding at election campaigns
- limits on campaign spending, (see here the bills referred to above)

any rules for disclosure of expenditures will do little to remove the current inequalities of our electoral system, and may indeed worsen them.

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