

# **State Subsidies for Mainstream Political Parties as a Means to Prevent Political Corruption – An Australian Perspective**

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## **Background**

### **Who we are – Where have we come from?**

As I am to give you an Australian perspective it is important that you know something of us, our short history and the political system in Australia.

Australia has a recent history post dating the original indigenous peoples of the Australian continent dating back over 30,000 years.

European settlement of Australia dates from 1788 with the arrival of the First Fleet comprising mostly convicts transported from the British Isles and Ireland together with their jailers. It may surprise some in the room but to claim First Fleet convict ancestry is a mark of considerable distinction in Australia – I can make such a claim to both First and Third Fleets convicts including an Irish political prisoner. I am sure some of you are thinking only an Australian would make such a claim.

You may also be thinking that a Nation with a convict background would be certain to have major issues of political corruption. Can I assure you, we have improved beyond the wildest expectations of our English jailers.

Between 1788 and 1901 various parts of Australia were settled as Crown Colonies. The transportation of convicts from the British Isles had ended in 1868 and Australia was starting to take shape as a group of Crown Colonies directly administered from Whitehall with a common language, British institutions and embryonic Parliaments styled Legislative Councils.

After a few false starts the Australian Federation was formed in 1901. The six Crown colonies of NSW, Victoria, Queensland, South Australia, Tasmania and Western Australia became the foundation States of the new Commonwealth of Australia – the Federation. The States created the Australian Nation and not the other way round. Later the Northern Territory and the Australian Capital Territory were granted Self Government and formally took their place in the Australian Federation but not with the same representative rights as the original States.

The States formalised their Legislative Councils into a new Parliamentary model comprising an Upper House (the old Legislative Council) and a Lower House (a Legislative Assembly). All have survived with that model except

Queensland. They abolished their Upper House in 1922. Both Territories have a single lower House – they are what we style unicameral.

The Commonwealth has a Lower House – the House of Representatives and an Upper House – the Senate. Notwithstanding our British heritage our founding fathers borrowed heavily from the United States of America. We have in essence a Westminster system with a North American flavour. The original theory held that the Senate would represent and protect the interests of the States whilst the House of Representatives comprising single member electorates of near equal constituents determine who made up the Federal Government of the day based on a simple majority.

In the early years of our Federation the Senate kept true to its mandate as a States House but over time Party politics has supplanted the interests of the States although every so often there is a break out by individual Senators.

For a political party to achieve a majority in both the Senate and the House of Representatives is rare.

Australia also has local governments – shires, towns and cities that comprise elected officials who manage various functions and utilities at a local level.

In Australia voting is compulsory so in that sense every Australian citizen of voting age has a vested interest in how our parliamentary democracy is funded and sustained.

That ends the very brief history of Australian Parliamentary democracy to date. The reason I have taken this time to tell you about us is because in dealing with the very issue we have before us in Australia we can't have this discussion unless we deal with every tier of Government – Federal, State and Local.

If we are serious about the topic before us then it must embrace all levels of government; political and associated activity impacts on all levels of the political process.

I challenge the proposition that only Mainstream Political Parties should be the subject of this discussion. All Parties and all individuals engaged in the political process should be the subject of this discussion.

Further I don't use the word subsidies for what it implies in a western context – hand outs - rather I talk about public funding; proactive expenditure by Government for a sustainable purpose. This discussion is about the funding of political parties and the funding of election campaigns to ensure the strength, integrity, fairness and transparency of the democratic process.

In Australia at present the issue of political donations and the corruption of the political process is the subject of some discussion. This is not I hasten to add because of widespread corruption in Australia but rather because of a number of highly publicized cases that have occurred at a State and Local Government level that have generated considerable media comment and interest.

For example, recently the Independent Commission Against Corruption (ICAC) in New South Wales has revealed that a number of property developers have made donations to the Australian Labour Party in return for favourable consideration of their property developments. Away from Australia there have also been allegations and counter allegations in the wake of the Loans for

Honours scandal in the United Kingdom that has captured the imagination and interest of Australian media.

On the election of the Rudd Labor Government late last year and the controversy attaching to documented corruption in the Australian Labor Party in New South Wales there has been an expectation that electoral reform insofar as it related to donations is overdue.

The Rudd Government has already announced certain amendments to the Federal Electoral Act and foreshadowed an Electoral Reform Green Paper to be released in two parts – the first looking at disclosure, funding and expenditure issues has already been tabled; the second examining a broader range of options aimed at strengthening other areas of our electoral laws. That part of the paper will be released for discussion in October 2008.

The Prime Minister wrote to the Premiers and Chief Ministers to seek their cooperation in progressing electoral reforms and asked them to nominate a relevant Minister to work with the Commonwealth on the green paper process.

Meanwhile the Coalition Liberal and National Parties are in the process of formulating their position and they make the point that notwithstanding their commitment to the reform process recurring breaches of the Electoral Act and documented corruption of the political process has largely been confined to the Australian Labor Party.

It is timely that The Australian Newspaper today carries on its front page story titled ***A Watchdog for Every House*** a story documenting misfeasance in Australian politics this past 20 years; there is the somewhat absurd observation, quote *“The Rudd Government is considering leading by example...But there is no guarantee”*. That leads me to pose the question; what example might that be? History records that it was a Liberal Premier in NSW, Nick Greiner and a Nationals Premier in QLD Mike Ahearn who did *‘the leading’* with the establishment of the ICAC and CJC (now CMC) 20 years ago. It also leads me to the firm belief that until you achieve a bipartisan and agreed position between all the stakeholders we will make limited progress with an agreed reform agenda.

There is no doubt that in having a discussion about the matter before us there is a continuum of conduct – blatant corruption to unethical and questionable behavior – one should not confuse an act of criminality with poor judgment or boorish behavior.

We in Australia can look forward to a vigorous debate in the time ahead.

Returning to the matter at hand, the Rudd Government claimed as part of their electoral mandate amendments to the Electoral Act notwithstanding the Green Paper. The Special Minister of State, Senator Faulkner, tabled the amendments last week to coincide with the Governments Budget.

One could be perplexed about why reforms have been introduced into Parliament before the Electoral Reform Green Paper is published. One might offer the view that it's more about grandstanding and making symbolic gestures than it is about having a serious discussion on a bipartisan basis to achieve an outcome that supports and nurtures the Australian democracy.

**More importantly we should get the current discussion in context – the existing electoral law is not broken notwithstanding it could work better; rather Labor has consistently broken and flouted the law. That is a finding of fact. It's not the law that needs to be repaired; rather it's the compliance and enforcement by one particular political party that needs redressing.**

The tabled Amendments to the Electoral Act styled as the **COMMONWEALTH ELECTORAL AMENDMENT (POLITICAL DONATIONS AND OTHER MEASURES) BILL 2008** are best understood as set out in the Explanatory Memorandum. Paraphrasing that memorandum the Bill contains provisions that:

- reduce the disclosure threshold from 'more than \$10,000' (indexed to the Consumer Price Index annually) to \$1,000 (non-indexed);
- Two new levels of disclosure;
  - 1) Over the thresh hold – disclosure within 8 weeks after polling;
  - 2) Under the threshold – disclosure within 8 weeks after 31 December and 1 June each year rather than following the end of each financial year as is currently the case.
- ensure that for the purposes of the \$1,000 threshold, related political parties are treated as the one entity;
- make unlawful foreign donations and provide for recovery when detected;
- prohibition of anonymous gifts and provide for recovery when detected;
- Public funding limited to declared expenditure or the sum payable calculated on the number of first preference votes received where they have satisfied the 4% threshold, whichever is the lesser;
- Introduce new offences and penalties related to the new measures and increase the penalties for existing offence provisions.

What then does all this mean for Australia?

First permit me a comment about the proposed amendments. Some of these proposed amendments are benign and coincide with a number of my own private views. Where they fail is the motive – to damage and undermine one's political opponents, that is everyone but the Australian Labor Party. As such the amendments are predictably opportunistic. I can only hope that the minor parties in the Australian Parliament are paying attention to what's a foot – a sleight of hand dressed up as a reform.

It will become apparent in my presentation why I have come to this view about such a self serving approach to donation and funding reform.

From an Australian perspective – my perspective as someone who has been very hands on in fundraising and running campaigns as well as holding office - I have three options to share with you.

Being *'hands on'* has drawn the usual fire from my political opponents; more recently on 14 March 2007 a number of allegations were made against me in the Queensland Parliament under parliamentary privilege. Those allegations included money laundering including irregular, secret and illegal transactions. I was described as *"the Liberal Party's bagman and laundryman"*. I reject all of the foregoing and have done so in writing but predictably an apology has never been forthcoming.

I also make it very clear that the views expressed here today are my views; they do not represent the views of the Liberal Party and should not be construed as foreshadowing any position likely to be adopted by the Liberal Party in the forthcoming debate. I also point out that I no longer hold any elected position in the Liberal Party but do undertake various reviews and reports when requested and time permits.

I also insert the rider that I am not one of those from the West who seek to impose a template viewed through the western prism as what is best for you. There is no defining template for democracy or for funding of political parties.

Only you in your own system can determine what's best for you but that does not mean that we cannot learn from each other and agree on certain core principles and values.

For example I am sure we all agree that politicians must not solicit money in exchange for votes or Government decisions; that a Ministers discretion and decision making is not for sale; that full disclosure of donations and benefits received by political parties and candidates is fundamental to public trust and confidence. Also that no one individual, corporation or trade union should *'own'* or control a political party. I would hope that by the end of this Conference that we can agree a number of fundamental principles and practices that we can embrace and commit to.

In that spirit I have attached as an Appendix to this paper a summary of what happens elsewhere in some other jurisdictions. In preparing the Appendix emphasis was given to the United Kingdom, New Zealand, Canada and the United States of America since those systems of government are closest to our own in Australia.

I also acknowledge that the Secretariat made available a very helpful **Draft Report on Different Cases of State Subsidies for Mainstream Political Parties** which was of great assistance to me.

### **The Way Forward - Which Model?**

This is the question; which model in my view best serves the Australian democracy?

What should we be trying to achieve?

What are the options?

- First, *the status quo* which amounts to business as usual; this involves some public funding, general fund raising in the form of donations being solicited from supporters with limited tax deductibility and disclosure – I call this the *'begging bowl'* model and it is the one I have lived through most of my political involvement

- Secondly, a *Full Public Funding Model* which means the tax payer foots the bill for political parties and campaigns in their entirety;
- Thirdly, the introduction of a *Capped System* allowing associated entities but no corporate, third party or trade union donations with a degree of public funding, tax deductibility and sensible disclosure.

So that you are not kept in suspense I favour the latter – a *Capped System* – a middle way that draws down the best of the status quo and the fully funded model.

The Capped System has the clear and unambiguous aim of encouraging and fostering the maximum participation of all Australians regardless of political belief and disposition.

Although we have different tiers of Government as previously outlined, my remarks are made in the context of the Federal arena as it would be a fair assumption that whatever is ultimately decided at the Australian Federal level it will either trickle down or be imposed on the overall political process in Australia. More likely since every Government in Australia – Federal, State and Territory – is now controlled by the Australian Labour Party.

Whichever model we select – *the status quo*, *full public funding* or a *capped* model - the public needs to feel confident and believe in the political process, a process in Australia they are required at law to participate in at a Federal, State and Local level.

Every Australian has the right to aspire to elected office; to aspire is one thing, to achieve another. Unless we have a well resourced level playing field we sow the seed of discontent and disengagement from our democracy. We need more Australians involved in the political process – not less.

Also I have been reminded today by Professor Eom Kihong of the Kyungpook National University about the importance of political engagement being about a contest of ideas and not as he described it – a *'beauty contest'*; a contest of candidates rather than of policy and substance.

In a political system where political parties and candidates are either bereft of funds or lopsided in resources there is no real contest.

Further Professor Henry Sirgo of McNeese State University warned of the 'politics of spoils', the inevitable outcome of a political system where donors are *'owed'* and political parties owned. Professor Sigio could have made the point no better than to quote late Democrat Governor Earl K Long of Louisiana when he stated "*Those who contribute to my campaign in the first primary get jobs; those who contribute in the run-off get good government*".

On that note I return to my question – what are the options?

There is one preliminary point I would like to emphasis. When I make reference to a new supervising entity with the coercive powers of the Australian Taxation Office I am advocating a judicial appointment that is beyond *'political reach'*.

As I said above the law is not broken; rather the Australian Labor Party has consistently broken and flouted the law. It's not the law that needs to be

repaired; rather it's the compliance and enforcement by one particular political party that needs redressing.

## OPTION 1

### The Current arrangements – the *status quo*

Currently Australian political parties largely generate revenue in three ways:

1. Business activities which are largely limited to modest real estate holdings, share portfolios and sponsored events;
2. General fund raising with donations being solicited from supporters with limited tax deductibility and disclosure – I call this the '*begging bowl*' approach and it is the one I have lived through most of my political involvement; I don't like it, it is open to abuse and makes for an uneven playing field when you are up against the might of the Australian Trade Union movement;
3. Public funding where Australian political parties receive public (taxpayer) support based on the Commonwealth Electoral Act 1918 (*The Act*). According to the Act, candidates who receive 4% or above of the formal first preference votes in a Federal election or by-election, and Senate groups who receive at least 4% of votes in a Senate election are entitled to public election funding. In the case of endorsed candidates and Senate groups, funding is normally paid to the party agent or the endorsing party or parties. The funding entitlement is calculated by multiplying the number of formal first preference votes received by the funding rate set in the Act, which is reviewed every six months and linked to increases in the consumer price index. As at 1 January, 2008 to 30 June, 2008 it is 214.018 cents per eligible vote - \$2.14 thereabouts. After a federal election 95% of the entitlement is paid automatically in the 4<sup>th</sup> week after polling day, on the basis of votes counted at the 20<sup>th</sup> day after polling day. The remaining 5% balance, is paid when the full entitlement is known.

Taking the current arrangements in Australia I support the view that we cannot continue to finance our democracy and the participation of political parties and individuals in the way that we have to date.

Times have changed; the system has been abused and corrupted with breaches of electoral law and damaging headlines that diminish the political brand and behaviour that strikes at the heart of a healthy competitive democracy.

I don't propose taking you through all the legislative requirements as they currently exist because quite frankly they will not survive the reform process – they are destined for the legislative draftsman's shredder. There will be change as the status quo is not sustainable.

So what next – the Full Public Funding Model?

## OPTION 2

### Full Public Funding Model

The *Full Public Funding Model* would mean that all donations from individuals, corporations and associated entities would be prohibited as well as third party campaigning. However there are certain Constitutional questions surrounding the prohibition of donations which need to be resolved.

Under the Australian Constitution this model may not be possible.

That said the *Full Public Funding Model* aims to remove all possible conflict between donations, candidate contributions, associated entities, third parties and associated entities that may potentially corrupt the political process. It strips away all donations from individuals, corporations and associated entities as well as third party campaigning.

To understand the model there are various aspects of a full public funding system that must be examined including; the actual amount of public funding, donations, gifts in kind, third party activity, associated entities, total campaign expenditure and reporting. What follows are some preliminary suggestions that would ensure the workability of such a public funding model.

By reason of time constraints the proposals are by necessity short on detail but give the overall flavour of what would in my view work.

First we need to understand that the significant increase in the cost of campaigning at a Local, State and Federal level has to be confronted – you cannot run an election on fresh air.

A healthy democracy is dependent on a vigorous contest between those of opposing points of view it should not be as Professor Eom Kihong states a '*beauty contest*'. It is important that all contestants believe that they have had a fair go including an opportunity to have their say in an environment that is open, safe and not subject to recrimination.

Most importantly a healthy democracy abides the decision of the electors and the transfer of Government is seamless.

In Australia we are proud of the fact that Government has always, without exception changed without a shot being fired. Our democracy is vigorous, adversarial, combative, open and transparent but it comes at a price.

The addition of new public and private media mediums and their purchase; new printing types; campaign launches and diversified social research methods, means a reasonable re-calculation of the amount per vote of public funding available to political parties and candidates.

So what would comprise the new measures or initiatives? They could arguably include the following which is not intended as an exhaustive list;

- *Increase the base rate of public funding per formal first preference vote and for Senate Groups;*
- *Create a new entity in place of the Australian Electoral Commission (AEC) to oversight and acquit the new public funding system and empower such an entity with the same coercive powers as the Australian Tax Office;*

- *Marginally lift the threshold minimum votes for all Senate groupings and individual candidates required to qualify for public funding;*
- *Provide annual threshold funding for Political Parties with representation in either house of Parliament and with Party status towards the cost of operating their respective party headquarters;*
- *Maintain the annual public funding for Political Parties with representation in either house of the Parliament and with Party status for the cost of operating their respective 'think tanks', international activities and general research capacities;*
- *Allow each political party with representation in the Parliament and holding party status to apply for a one off election year grants for the production of their respective campaign launches (this is similar to the US system);*
- *Allow Independent candidates to apply for grants, paid against properly acquitted political expenditure based on a minimum percentage preference vote;*
- *Allow Groups of Independent Senate candidates to apply for a public funding grant on the same basis as the foregoing;*
- *Consistent with like powers of the Australian Taxation Office legislate the supervising entity to be empowered with forensic accounting and full audit powers to investigate any political party or candidate that breaches any aspect of the new legislation;*
- *Ensure all electoral offences constitute criminal offences.*

Further subject to sorting through the issues as to whether or not banning political donations would breach the Australian Constitution the following would also follow:

- *Ban all political donations from individuals, corporations, associated entities, third parties, trade unions and foreign nationals.*
- *Continue to allow endowments by individuals after death regardless of value. Compel all such endowments and bequests to be disclosed;*
- *Prevent candidates from contributing to their own campaigns; any such contribution would be considered a donation and as such would be prohibited.*
- *Permit political parties to continue to hold assets, funds, property and other investments as long as the holding companies are retained within the political parties operating framework. These companies could not be associated entities; they would form part of the party organisation and be controlled by a party's executive.*
- *Compel twelve monthly annual disclosures of any endowments, loans and campaign expenditure*

The foregoing deals with straight up donations but what about the gifts in kind, the free advertising, the trade union official who clocks in at the union office but goes to work for a political candidate or the businessman who pays for printing

or photocopying on behalf of a candidate? These are gifts-in-kind and often the hardest to identify.

Gifts-in-Kind are currently defined as goods, assets or services for which no payment (in cash or in kind) or a payment of less than true value is made. In theory gifts-in-kind are disclosed at the commercial or sale value of the item or service as evidenced by arms-length quotations, comparative advertisements or expert assessment. There is only one way to deal with such gifts-in-kind.

- *Impose a total prohibition on gifts-in-kind.*

Labour given or gifted from an organisation that is not a political party towards a political party or candidate would be a breach of the new model. The new supervising entity would be given powers to require information from employers as to the person's employment leave arrangements if any such persons are brought to the attention of the supervising entity. There would be the power to disqualify candidates if it is found that candidates have knowingly received such labour. These restrictions would apply from the time an election was called to the day the final results were made public by way of declaration of the poll.

A distinction would be made with volunteers who are to be considered just that, not employees of an organisation linked or affiliated to a political party but a person who performs a service willingly and without pay. The right of an individual to identify contribute and volunteer is essential to a thriving democracy.

What then of loans; this has been a very topical issue in the UK.

As is the case currently, loans over the disclosure threshold amount are disclosed in the annual and campaign disclosures released by the Australian Electoral Commission. A suggested approach would be as follows.

- *Require by legislation that all loans be on commercial terms; further the requirement for proof of repayments, commercial interest paid and the scheduled repayments be made disclosable.*

That brings me to third parties; often they are proxy organisations set up to assist political parties without breaking cover. The most dominant in Australia is the Australian Council of Trade Unions and they have been at it for decades. The Australian Labor Party I am sure would return fire and claim that that the Business Council of Australia has a similar history. I am always ready to have that argument.

Let's face it to be a Labor Parliamentarian you have to be a member of an Australian trade union; on the conservative side no such demand is made to belong to a business, trade or professional organisation.

Currently, there are no limits on the amount of money that a third party can donate to a political party or spend on political expenditure.

There is however disclosure requirements - the most recent changes to the Australian Electoral Act ensure that organisations, associations, corporations and associated entities that spend money on items of political expenditure or make a donation to a candidate or political party are subject to disclosure.

There are a range of opinions as to the constitutionality of a prohibition on third party political expenditure, but given the model is purely based on public

funding and not a mixture of public and private, such a ban would correctly fall into a full public model. My solution is straight forward.

- *There would be a ban on third party campaign activity;*

One area that Australian Labour Party and Liberal National Coalition disagree on is tax deductibility.

In my submission tax deductibility is a core measure for the equalisation within the overall political participation spectrum. The ability for members of political parties to claim a deduction for their membership fees up to a value per financial year is standard across many jurisdictions and equalises the value of membership across all political parties. The solution is to retain tax deductibility but cap the amount.

- *Tax Deductibility limited to the membership fees paid by members of political parties and limited to a maximum of \$AUD1000 per financial year subject to CPI.*

Next is one of the more problematic areas – free time and advertising.

Currently, under the Broadcasting Services Act 1992, the Australian Broadcasting Corporation (the ABC) and the Special Broadcasting Service (SBS) are required to provide the Government and Opposition parties with 45 minutes of free time on television and radio at a Federal election and 22 minutes at a State and Territory election.

The current allocation for both TV and Radio is 45 minutes divided into:

- 1) 27 minutes for the respective Party election launch;
- 2) 18 minutes, split into six 3 minute spots for policy announcements.

The following in my view would make for a more equitable arrangement.

- *On the ABC and SBS the level of free time for the Government and Opposition be raised to 1 hour, split 30 minutes for the Party election launch and ten 3 minute spots;*
- *Minor parties who constitute a political party in either House would have an entitlement of 30 minutes split 15 minutes for the Party election launch and five 3 minute time slots;*
- *Commercial television would be required to provide similar free time as above as a term of their license;*
- *The same for community and commercial radio;*
- *In relation to all time slots on all telecasters and broadcasters they would be made available during prime time on all stations at the option of the political parties on a rotated or balloted basis;*
- *All other TV and radio broadcasting would be limited in expenditure and be subject to full acquittal.*

I am also firmly of the view that print media should carry their share of 'free time' or 'free space' including on their web sites.

It would be unreasonable to expect television and radio to carry the burden alone. Since print media commentators have been at the forefront of a reformist

agenda calling for change they should accept that under the new arrangements there will be less paid print advertising and a greater opportunity for opinion pieces by candidates and political parties published in their newspapers to keep the public informed.

This space should be reasonably limited (as adjudicated by the supervising entity if required), yet prominent and free.

That brings me to how one would define a political party for the purpose of this fully funded model.

Currently, a political party is an organisation whose objectives or activities include the promotion of the election of endorsed candidates to the Australian Parliament. It may be a body corporate, an association of persons or organisations (whether incorporated or not), or a branch or division of one of these.

A political party that is eligible for registration is an organisation with at least one member who is a member of the Commonwealth Parliament, or with at least 500 members eligible to enrol on the Commonwealth electoral roll.

The party must be established on the basis of a written constitution describing the aims of the party, one of which must be promotion of the election to the Senate or to the House of Representatives of candidates endorsed by it.

Political parties that are not registered with the AEC do not receive election funding on behalf of their candidates. They are classified as donors or third parties for the purposes of the disclosure provisions of the Act should they make or receive donations, or incur electoral expenditure.

The Application fee to be registered as a political party is \$500. It cannot be varied by the AEC and is not refundable if the application is refused, or is withdrawn.

Independent candidates are required to be nominated by 50 electors, 50 people entitled to vote at the election for which they are standing. The names of the 50 electors are recorded on the Nomination Form.

Largely consistent with the foregoing I recommend the following.

- *Party registration fee to increase substantially;*
- *Political parties or independent candidates that are not registered not receive public funding or be eligible to receive grants;*
- *Increase substantially the number of registered electors Independent candidates are required to be nominated by;*
- *Political Parties would be prohibited from collecting levies, multiple membership payments or annual payments from its members and its members of parliament, as these financial contributions potentially corrupt the full public funding model and constitute a donation.*

Having dealt with what comprises and defines a political party what then of associated entities?

Currently, associated entities are classified as an entity that is:

- 1) controlled by one or more Federally registered political parties; or

- 2) operates wholly or to a significant extent for the benefit of one or more Federally registered political parties; or
- 3) is a financial member of a Federally registered political party, or
- 4) on whose behalf another person is such a member; or
- 5) has voting rights in a Federally registered political party, or
- 6) on whose behalf another person has such voting rights.

The above definition is wide enough to ensure the integrity of the full public funding system is maintained if associated entities are excluded. Accordingly, I would endorse the following prohibition.

- *Associated entities prohibited from donating, contributing to or providing paid labour or any other item of political expenditure to political parties.*

I would not propose any change to the registration requirements for a group of Senate candidates.

Also, I acknowledge that the addition of third party campaign disclosures to the Australian electoral system by the former Howard Government was a recent and important reform that based its credence on elements characterised as *political expenditure*.

Currently, and covering a wide range of transactions and engagement with the public, *political expenditure* is defined as:

- 1) Public expression of views on a political party, candidate or member of the Federal Parliament or on an issue in an election by any means;
- 2) Public expression of views on an issue in a federal election by any means;
- 3) Printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business;
- 4) Broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of schedule 2 to the Broadcasting Services Act 1992; and
- 5) Opinion polling and other research relating to an election or the voting intention of voters.

It would be argued that these provisions would be retained and used to define the prohibitions on third party campaign expenditure and the items and activities that could be financed through public funding.

That ladies and general is a very general overview of a *Fully Public Funded* model that one might consider for Australia.

I now come to the *Capped Model*, my preferred model and the one that draws down the best of the *Status Quo* and the *Fully Funded* models and which is in my view realistic, enforceable and consistent with the aspiration of a robust parliamentary democracy based on the Westminster system.

It also sits well with the proposition that the tax payer should not be expected to pay for everything.

### **OPTION 3**

#### **The Capped Model**

In summary no corporate, third party or trade union donations; personal donations and public funding are the mix.

There are certain risks associated with such a model for political parties who have become too reliant on 'big' donors whoever they are – corporate, individual or trade union. The case in point is Canada.

This proposal puts forward a comprehensive model that in my view limits the chances of improper influence being exerted on Australia's political system and strengthens the integrity of the electoral donation process.

The *Capped Model* recognises the rights of individuals to participate in the political process through the donation of funds while restricting the influence of corporations, third parties, employer groups and trade unions.

Not wishing to repeat myself there are certain recommendations that are common to the *Full Public Funding* and *Capped* models.

I would still recommend increasing the base rate of public funding; creating a new entity and empowered that supervising authority with like powers of the Australian Taxation Office with forensic accounting and full audit powers; lifting the threshold minimum votes to qualify for public funding; provide a lesser annual threshold funding for Political Parties to assist with the cost of operating their respective party headquarters; maintain the annual public funding for the cost of operating '*think tanks*', international activities and general research capacities; allow a reduced one off election year grants for the production of campaign launches similar to the US system; allow Independent candidates to apply for grants, properly acquitted based on a minimum percentage preference vote; allow the same for Groups of Independent Senate candidates; and increase the penalties for electoral offences.

In essence the above represents a part public funding scenario where those wishing to participate in the political process still carry a responsibility to contribute financially to the political process.

That then brings me to the way in which one pays, or put in another way subsidises the agreed public funding – donations and fundraising.

The Australian Commonwealth Electoral Act currently allows donations or gifts to be received by registered political parties, unlimited in amount but made public over a certain level, currently the disclosure limit is set at \$AUD10, 500 per financial year, including CPI indexation.

Part 1 of the AEC annual return requires details of gifts or donations made to a candidate or member of a Senate group totalling more than \$AUD10, 500.

Where a number of smaller gifts or donations were made or received, these should be aggregated and reported if they total more than \$AUD10, 500.

Part 2 requires disclosure of gifts or donations of more than \$AUD10, 500 received and used (wholly or partially) to make donations reported in Part 1, regardless of when they were received.

Only donations currently totalling more than \$AUD10, 500 are reported.

In the interest of openness and transparency and given that the taxpayers are stakeholders in an enhanced part public funded model the following measures are recommended.

- *No corporate, trade union or third party donations;*
- *Permit donations from individuals that are on the electoral role up to the value of \$AUD10,000 per person per financial year, indexed CPI;*
- *Donations to candidates of the same political party as other donations to the division the candidate is a member of would be considered one in the same and count towards the overall \$AUD10,000 limit;*
- *Donations to third parties or different political parties would be treated as separate donations and thus would be subject to an individual limit of \$AUD10, 000 per financial year;*
- *Count the multiple divisions of a political party as separate political parties recognising the long held different structures of party organisations;*
- *Make it a criminal offence for an organisation, association, and business or associated entity to gift or otherwise provide funds over and above legitimate paid remuneration to an employee on the understanding the money is provided to a political party.*
- *Endowments would not be considered donations and as such the same rule would apply as in the full public funding model;*
- *Associated entities be distinguished from the above as set out below;*

The belief that people can take part in the political process without fear of the consequences, while respecting the right of the public to know who is funding political parties is a fine balance that this model aims to achieve.

All donations should be disclosable above \$AUD1500 indexed CPI. It is totally impractical to require complete disclosure by reason of the cost of maintaining such a record. To be brutally frank I would have great difficulty in accepting that someone would or could be compromised for \$AUD1500. There are times when common sense has to prevail and this is one such occasion.

It follows that disclosure – over \$AUD1, 500 up to \$AUD10,000 - would include full particulars of the donor.

The current reporting time frame for political donations is 12 monthly as well as 60 days after a Federal Election. The disclosures consist of donations, gifts-in-kind, loans and political expenditure. Those arrangements would continue on foot.

Gifts-in-kind consistent with the full public funding model would be eliminated in their entirety with the same consequences for breach with exception of Associated Entities referred to later in this paper.

Volunteers would continue to be exempt.

The same rules would apply to loans as in the full public funding model.

This brings me to the very topical issue of Third Parties under a *Capped Model*.

The *Capped Model* aims for campaign transparency by only allowing donations from individuals and so limits the influence of corporations, associations, and trade unions on the political system. All Third party campaign activity and donations would be prohibited.

Again the rider of whether such total prohibition is permissible under the Australian Constitution remains to be determined.

Currently the tax deductibility of political donations is set at \$AUD1500 per financial year. I recommend that the tax deductibility be increased to \$AUD10,000 to encourage citizens to contribute towards the costs that would otherwise be met under a Full Public Funding Model by the tax payer in their entirety.

This deduction would be in addition to that allowed for membership dues set out below.

So with a part public funded model, limited donations, no third party involvement or gifts in kind save for associated entities what role the media or free time in a *Capped Model*?

As with the Full Public Funded model this remains one of the more problematic areas – free time and advertising.

Just to remind you currently the Australian Broadcasting Corporation (the ABC) and the Special Broadcasting Service (SBS) are required to provide the Government and Opposition parties with 45 minutes of free time on television and radio at a Federal election and 22 minutes at a State and Territory election.

The current allocation for both TV and Radio is 45 minutes divided into:

- 1) 27 minutes for the respective Party election launch;
- 2) 18 minutes, split into six 3 minute spots for policy announcements.

When it comes to broadcasting there are aspects of the *Full Public Funding Model* I would adopt, others I would abandon. This would be a far more simplistic approach and in effect represent an improvement on the current arrangements.

Put simply I would maintain the recommendation that the ABC and SBS level of free time for the Government and Opposition be raised to 1 hour, split 30 minutes for the Party election launch and ten 3 minute spots.

Also those minor parties who constitute a political party in either House would have an entitlement of 30 minutes split 15 minutes for the Party election launch and five 3 minute time slots.

I would abandon the requirement for Commercial television, community and commercial radio to provide similar free time.

Further all other TV and radio broadcasting would be unlimited in expenditure I would also abandon any expectation of the print media.

There would be no change to Party registration.

The tax deductibility of party membership would be retained at the same level recommended for the Full Public Funding Model - \$AUD1000. This amount would be in addition to the \$AUD10, 000 general donations by individuals.

I can hear the howls now; my simple plea is try thinking outside the square. It's simple, give people every reason to be involved even if it involves foregone revenue. Give Australians an opportunity to participate in an open and transparent system where all can participate on the same playing field without being blown away by the might of the Australian Trade Union movement, big business or powerful individuals aligned to both major political parties.

Importantly I would not seek to ban the participation of Associated Entities in the political process under the *Capped System*.

Currently Associated Entities are classified as an entity that is; controlled by one or more Federally registered political parties; or operates wholly or to a significant extent for the benefit of one or more Federally registered political parties; or is a financial member of a Federally registered political party, or on whose behalf another person is such a member; or has voting rights in a Federally registered political party, or on whose behalf another person has such voting rights.

Currently, associated entities are required to declare the total receipts and payments for the financial year, and total debts as at 30 June each financial year:

- Details of amounts of more than \$10,500 received during the financial year;
- Details of debts of more than \$10,500 incurred during the financial year;
- Details of capital contributions (deposits) from which payments to a federally registered political party were generated are declared to the AEC.

Any donation to an individual or groups candidates would be considered to be the same as that to a political party.

Associated entities have in the past been a conduit to safeguard and protect the accumulated assets of political parties. Without taking anything away from the broad membership of political parties time and again we have seen assets squandered and wasted by Party leaders and executives with little regard for the longevity of the organisation they serve. Many cannot see beyond the next election.

Associated entities that I am familiar with are taxpaying entities; act as the custodians of Party assets; are able to draw upon a level of expertise that at times is not on offer in the broader Party membership; generally act in terms of what is best for the Party or their political spectrum rather than the campaign of the moment. Such organisations are in my view to be encouraged.

I would recommend that the definition of associated entities be reworked and tightened to resist an attempt by a Third Party to masquerade as an Associated Entity. I further recommend that all Associated Entities be registered as such and subject to the authority of the supervising authority. Further that the supervising authority determine according to the legislation whether an entity falls to be registered as an associated entity for the purpose of the legislation.

Finally that associated entities be permitted to make donations of up to \$AUD200, 000 per annum indexed CPI in cash and kind. All such donations would be disclosable in detail on an annual basis.

There would be no change to the registration requirements for a group of candidates.

Political expenditure under a *Capped Model* would need to be redefined and strengthened to capture the new prohibitions; in particular an all encompassing definition of paid or subsidized labour given or gifted to a political party, candidate or group of candidates. A new strengthened definition could be used to define the prohibitions on third party campaign expenditure.

As I indicated from the outset the *Capped Model* is my preferred option – it offers transparency, removes the influence of third parties, the capacity of any one individual, groups of individuals, large corporate or the Trade Union Movement having ownership of a political party to the detriment of its members and Australia's democracy.

The *Capped Model* removes the temptation of participants in the political process to promise outcomes when in Government and lowers the expectations of those who expect something in return for their support. Most importantly the *Capped Model* is more conducive to the National Interest and goes a long way to ensuring that policy remains the province of members of political parties and those bothered to participate in our democracy.

The model I advocate would have prevented for example the documented corruption in New South Wales by the Australian Labor Party.

Whatever the outcome of the current debate I do sincerely hope that we reach an agreement on an agreed system of donations, disclosure and funding that works for the Australian democracy – not necessarily just for political candidates or their respective parties. I believe we have a unique opportunity in our political cycle to get this right. I don't claim to have all the answers but hope that I can be part of the discussion. Regardless of political affiliation if we can all agree a new regime that addresses all concerns – perception and real then we can only be a better democracy for the exercise. Senator Faulkner's pre-emptive strike is not the way to go.

Finally I would like to draw your attention to the work of the **International Institute of Democracy and Electoral Assistance**, an IGO based in Stockholm, Sweden. IDEA has many areas of interest including the funding of political parties. To quote from one of their publications *'the role of money in politics is an issue of daily debate in old and new democracies alike. The ways that parties get access to money can influence the outcome of elections, determine the relationships between party leaders and members, affect the number of women elected and condition the level of public trust as a whole'*.

I recommend to you The International IDEA ***Handbook on Funding of Political Parties and Election Campaigns*** which looks at the strengths and weaknesses of different national political finance laws and regulations from a global and regional perspective, and analyses the problems of enforcement and the opportunities for effective public disclosure of funds. The Handbook also discusses the advantages and disadvantages of funding for parties and explains how political participation works. It contains probably the largest collection of information on party finance regulations that exists to date: the **Matrix on Rules and Regulations on Party Finance**.

I also remind you that I have appended to this paper an Appendix that provides an insight into the funding of political parties and campaigns in the USA, New Zealand, the UK and Canada.

In conclusion I thank you for this opportunity to share an Australian perspective on this very important topic. I congratulate our Korean hosts on organising this work shop on behalf of ICAAP, their hospitality, courtesies and assistance.

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<sup>1</sup> ***The Honourable Shane L. Stone AC, QC, PGDK (Sabah), B.A (ANU), LL.B (Melb), Grad Dip Ed Admin (Adel), Dip Tchg (Sturt), T.P.T.C (Vic), FACE, FAIM, FAICD.***

Shane Stone is a former primary school teacher, barrister by profession and a company director. He is Executive Chairman of the APAC Group of Companies. He is an alumnus of the Australian National University, Melbourne Law School, Adelaide and Sturt Universities. He is a former Visiting Fellow at Cambridge University (International Law). He is also a Fellow of the Australian College of Education; Australian Institute of Management; Australian Institute of Company Directors.

Shane is a former President of the Australia's Northern Territory Country Liberal Party (1986-89), member of the Northern Territory Parliament (1990-2000), Cabinet Minister and Chief Minister (1990 – 2000).

He was elected Federal President of the Liberal Party (1999) during the Howard Government. He chaired the successful 2001 federal election campaign and the historic fourth general election victory on 9 October 2004 which resulted in an increased majority and control of the Australian Senate – a first in over 20 years. As Federal President he also served on the Federal Finance Committee, the Strategy Committee and the Board of the Liberal Party 'think tank' the Menzies Research Centre. He was actively involved in Party fundraising throughout his term. He retired from the Liberal Party Presidency in July 2006.

He maintains an interest in politics and government as Assistant Chairman of the International Democratic Union (IDU) <http://www.idu.org/>. He also serves on the Expert Panel on Political Parties of the International Institute for Democracy and Electoral Assistance (IDEA) <http://www.idea.int/> based in Stockholm, Sweden.

Shane is a recipient of the ***Panglima Gemilang Dariah Kinabalu Yang Amat Mulia (PGDK)*** (Most Honourable Order of Kinabalu – Knight Commander; Sabah, Malaysia) and the ***Bintang Jasa Pratama*** (Order of Service, Republic of Indonesia). He was made a Life Member of the Philippines Australia Business Council in Manila in 1999 – only the second Australian to be accorded the honour at that time. That same year he was awarded the ***ALKI Award*** by the Justice for Cyprus Committee.

He is a Life member of the Greek Orthodox Community of Northern Australia, The Kalymnian Brotherhood and Cypriot Community of Darwin. He was conferred an honorary citizen of Kalymnos in the Greek Dodecanese, Pothia in 1995. He is Patron of the Italian Club of Darwin.

Shane Stone has consistently sought to help promote good governance and the rule of law in the Asia Pacific region. In recognition of his commitment he was made an Honorary Life Member of LAWASIA in 1996.

In 2006 Shane was conferred a *Companion of the Order of Australia (AC)* in the Queens Birthday Honours. The *Companion of the Order of Australia* is awarded for eminent achievement and merit of the highest degree in service to Australia or humanity at large. It is the most senior civilian award conferred in Australia. His citation read '*For service to politics contributing to strengthening Federal-State-Territory intergovernmental processes, to furthering the bi-lateral relationship between Australia and the Asia/Pacific region, and to the oil and gas industry*'.

He has been married 30 years and has two children.

**Appendix**

**Funding of Political Parties and Political Campaigns**

**Overseas Jurisdictions – Summary Paper**

**April 2008**

## **Executive Summary**

Each overseas jurisdiction treats differently aspects such as donations, public funding, political broadcasting and disclosure requirements in the way they seek to regulate political parties, their financing and campaign activities.

The purpose of this summary paper is to clearly layout the different systems that regulate political parties and election campaigns in Canada, The United States of America, the UK and New Zealand (see below table summaries).

As recently as December 2007 changes to the New Zealand Electoral Act brought about more stringent regulation of political parties and the ways they are financed. In the wake of the Loans for Honours scandal in the UK considerable work has been undertaken, under the guise of increasing accountability and restoring the public's confidence in their electoral system.

Recently the Independent Commission Against Corruption (ICAC) in NSW has revealed that a number of property developers have made donations to the ALP in return for favourable consideration for their developments.

The recent ICAC hearings as well as several cheery picked changes to Federal Government legislation has forced political parties, across the spectrum, to closely examine the way they are funded and how they finance themselves going forward.

## Table Summaries

### Public Funding

Country	Public Funding
Canada	<p>Political parties can receive quarterly allowances but in return must submit quarterly returns detailing the total amount of contributions, the number of contributors, and the amount and date of each contribution. Any member of the public may inspect these returns.</p> <p>Political parties may receive a refund of 50% of their election expenses provided they receive a minimum of 2% of the national vote and 5% of the votes cast in the electoral district in which they endorsed a candidate.</p> <p>Candidates who are either elected or receive a minimum of 10% of the votes cast in their riding may be refunded 60% of their election expenses.</p>
New Zealand	No direct public funding is provided to political parties or candidates. However, funds are made available for the purchase of broadcasting media.
UK	Whilst political parties do not receive state funding, they do receive direct and indirect state assistance in the form of free mailings, free use of rooms during an election, free airtime for political broadcasting and policy development grants.
USA	Public funding is available to Presidential candidates. However, if they choose public funds they must agree to campaign expenditure limits.

### Disclosure

United States	Canada	New Zealand	United Kingdom
<p>Disclosure is generally required monthly. However, during the election campaign, must report 12 days before and 20 days after election.</p> <p>Candidates are to disclose the</p>	<p>Quarterly reports are required as a condition of receiving quarterly allowances.</p> <p>Annual and post – election disclosure is also required.</p> <p>Candidates to</p>	<p>Annual returns are required.</p> <p>Parties must disclose the details of donors that contribute \$10,000 or more. May be listed as anonymous if the donor's identity is not</p>	<p>Weekly donation reports during the election period.</p> <p>Quarterly donations reports.</p> <p>Annual statements of accounts.</p>

details of any contributor who donates more than US\$200.	<p>report any gifts received with a total value exceeding \$500. Exceptions are provided for gifts received from relatives.</p> <p>Registered parties and registered associations prohibited from transferring money to candidates directly from a trust fund.</p>	<p>known.</p> <p>Donors can avoid the disclosure laws as donations can lawfully be split into several smaller donations each under the disclosure threshold if made from different 'straw' donors.</p>	
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### Donation Prohibitions

Country	Restrictions
Canada	<p>Donations from foreign parties are banned. Only citizens or permanent residents may make donations.</p> <p>Total ban on donations by corporations, trade unions and associations.</p> <p>Individuals may contribute \$1,000 annually to a particular registered party.</p> <p>Individuals may contribute \$1,000 annually to registered associations, nomination candidates and candidates of a particular registered political party.</p> <p>Individuals may contribute \$1,000 to an independent candidate.</p> <p>Individuals may also contribute \$1000 to the leadership contestants in particular leadership contest.</p> <p>Candidates, nomination contestants and leadership contestants can contribute \$1,000 to their own campaign.</p>
New Zealand	Overseas donations and donations from body corporates incorporated outside New Zealand, unincorporated bodies headquartered or having

	<p>their principal place of business outside New Zealand are limited to \$1000.</p>
United Kingdom	<p>Donations from foreign parties are banned.</p> <p>Trade unions need to ballot their members every 10 years for authorisation to promote their political agenda. Any political expenditure must be made from a separate political fund. Members have the right to not contribute to this fund.</p> <p>Companies must seek authorisation from their shareholders every four years before they may make political donations or expenditure.</p>
United States	<p>Persons or corporations with contracts with federal Government may not make political donations.</p> <p>Donations from foreign parties are banned</p> <p>Corporations and labour unions cannot directly contribute to candidates or parties.</p> <p>The limits on individual donations to candidates are as follows: US\$2100 to each candidate per election cycle; US\$40,000 to all candidates per election cycle; and US\$101,400 per election cycle for all contributions.</p> <p>The limits on individual donations to parties, etc are as follows: US\$26,700 to each national party committee per election cycle; \$US5000 to each political committee or state party committees per election cycle; US\$61,400 for political committees per election cycle; and US\$101,400 per election cycle for all contributions.</p>

### Campaign Spending Limits

	USA	Canada	NZ	UK
Spending Limits	<p>Yes co-ordinated expenditure counted towards contribution limits.</p> <p>Condition of election funding for Presidential primaries and elections.</p>	<p>Yes and calculated according to the number of listed electors in the contested electoral district.</p>	<p>Yes</p> <p>If contests party vote, limit of NZ\$1 million plus NZ\$20,000 for each electorate candidate nominated by the party.</p> <p>If does not</p>	<p>Yes and calculated according to seats contested.</p>

			contest the party vote, limit of NZ\$20,000 per nominated candidate.	
Other Limitations			General ban on electoral broadcasts.  However, there are exemptions for programs broadcast during time allocated to the political party and paid for with allocated to political party.	

### Third Party Expenditure

<b>Countries</b>	<b>Third Party Campaign Expenditure Prohibitions</b>
Canada	<p>Third parties must not spend more than \$150,000 during an election period on election advertising expenses.</p> <p>Third parties who incur electoral advertising expenses of \$500 or more must immediately register.</p>
New Zealand	<p>Those who are not candidates or parties may broadcast election advertising but must not name or directly advocate for or against a party or candidate.</p> <p>Third parties do not have to disclose how much they spend on election related advertising.</p>
United Kingdom	<p>Companies must obtain shareholder approval before they donate to a registered party or EU political organisation. Shareholder authorisation is not required for donations which do not exceed £5000 in the qualifying period.</p> <p>All political expenditure by companies must be authorised and the directors' report is to provide information on political donations and expenditure.</p> <p>Third parties must prepare a return at the end of the</p>

regulated period stating all payments made in relation to controlled expenditure, disputed claims, certain unpaid claims, and relevant donations.

Controlled expenditure limits apply to third parties. For third parties who register with the Electoral Commission, the limits are £793,500 for England, £108,000 for Scotland, £60,000 for Wales and £27,000 for Northern Ireland. If they do not register, the relevant limits are £10,000 for England and £5000 for each of Scotland, Wales and Northern Ireland.

Under the Electoral Administration Act 2006 details of all loans to a political party of over £5000 (and thereafter each additional £1000 from the same lender) must be reported to the Electoral Commission.

## **Canada**

### **Political Donations and Disclosure**

In Canada reforms were made to the donor prohibitions in December 2006, effectively introducing a limit of \$1,000 (down from \$5,000 previously) on the amount an individual may contribute to a party or candidate in a given year.

Further, previously corporations and trade unions and associations could contribute to individual candidates or electoral district associations (but not to national political party organisations or candidates in the leadership contest for a party).

Such contributions were subject to an annual limit of \$1,000. Since December 2006, however, contributions of this kind have been banned altogether. These reforms were introduced under Part One of the Federal Accountability Act, which was assented to on 12 December 2006, and which relevantly amends the Canada Elections Act.

In more detail, the reforms amend the Canada Elections Act to:

- reduce to \$1,000 the amount that an individual may contribute annually to a registered party, and create a distinct \$1,000 annual limit on contributions to the registered associations, the nomination contestants and the candidates of a registered party;
- reduce to \$1,000 the amount that an individual may contribute to an independent candidate or to a leadership contestant;
- reduce to \$1,000 the amount that a nomination contestant, a candidate or a leadership contestant may contribute to his or her own campaign in addition to the \$1,000 limit on individual contributions;
- totally ban contributions by corporations, trade unions and associations by repealing the exception that allows them to make an annual contribution of \$1,000 to the registered associations, the candidates and the nomination contestants of a registered party and a

contribution of \$1,000 to an independent candidate during an election period;

- ban cash donations of more than \$20, and reduce to \$20 the amount that may be contributed before a receipt must be issued or, in the case of anonymous contributions following a general solicitation at a meeting, before certain recordkeeping requirements must be met; and
- increase to 5 years after the day on which the Commissioner of Canada Elections became aware of the facts giving rise to a prosecution, and to 10 years following the commission of an offence, the period within which a prosecution may be instituted.

Other amendments to the Canada Elections Act prohibit candidates from accepting gifts that could reasonably be seen to have been given to influence the candidate in the performance of his or her duties and functions as a member, if elected. The wilful contravention of this prohibition is considered to be a corrupt practice. A new disclosure requirement is introduced to require candidates to report to the Chief Electoral Officer any gifts received with a total value exceeding \$500. Exceptions are provided for gifts received from relatives, as well as gifts of courtesy or of protocol. The amendments also prohibit registered parties and registered associations from transferring money to candidates directly from a trust fund.<sup>i</sup>

### **Membership fees**

An individual's membership fee in a registered party is not a contribution, so long as the fee is not more than \$20 per year for up to five years.

### **Income tax credits**

When Parliament changed the *Canada Elections Act*, it also changed the *Income Tax Act* to allow higher income tax credits for political contributions by an individual:

- for contributions up to \$400, a credit of 75 percent (for example, a \$300 credit for a contribution of \$400)
- for contributions from \$401 to \$750, a credit of \$300 plus 50 percent of the amount over \$400 (for example, a \$475 credit for a contribution of \$750)
- for contributions over \$750, the lesser of \$650 or \$475 plus 33⅓ percent of the amount over \$750 (for example, a \$650 credit for a contribution of \$1,275)

The credits apply to contributions – supported by authorized receipts – to a registered party, a provincial division of a registered party, a registered electoral district association, and a candidate.

### **Public funding by quarterly allowances**

All qualifying registered parties now receive quarterly allowances from public funds. To be eligible, a party must have received in the general election preceding the quarter:

- at least 2 percent of the valid votes cast, or
- at least 5 percent of the valid votes cast in the electoral districts in which the party endorsed a candidate

The size of the fund from which the allowances are paid is determined by multiplying:

1. \$0.4375 multiplied by the total number of valid votes cast in the general election preceding the quarter, by
2. the inflation adjustment factor for the quarter.

The Act provides the formula for calculating the inflation adjustment factor, which is based on the annual average consumer price index published by Statistics Canada.

Each party's share of the quarterly allowance fund is its percentage of the valid votes cast in the general election preceding the quarter.

### **Reimbursement of election expenses**

A political party that meets the requirements set out in the Act is entitled to a reimbursement from public funds of a portion of its election expenses. Previously the portion was 22.5 percent; it is now 50 percent.

## **USA**

Some contribution limits set in federal campaign finance laws are adjusted every election cycle to account for changes in the consumer price index (CPI). In odd-numbered years, the FEC publishes the adjusted limits immediately after it receives the CPI figures from the Department of Labor -- typically in February or March. Until then, the Commission encourages donors not to exceed the limits for the previous election cycle. The chart below lists the limits for the current election cycle.

Table below – page 15

### **What is a 527 Organisation?**

Entities organized under section 527 of the tax code are considered "political organizations," defined generally as a party, committee or association that is organized and operated primarily for the purpose of influencing the selection, nomination or appointment of any individual to any federal, state or local public office, or office in a political organization. All political committees that register and file reports with the FEC are 527 organizations, but not all 527 organizations are required to file with the FEC. Some file reports with the Internal Revenue Service.

### **PAC's**

The term "political action committee" (PAC) refers to two distinct types of political committees registered with the FEC: separate segregated funds (SSFs) and non connected committees. Basically, SSFs are political committees established and administered by corporations, labor unions, membership organizations or trade associations. These committees can only solicit contributions from individuals associated with connected or sponsoring organization. By contrast, non connected committees - as their name

suggests - are not sponsored by or connected to any of the aforementioned entities and are free to solicit contributions from the general public.

### **Public Funding**

To be eligible for public funds, a Presidential candidate or a party convention committee must first submit a letter of agreement and a written certification in which the candidate or committee agrees to:

1. Spend public funds only for campaign-related expenses or, in the case of a party convention, for convention-related expenses;
2. Limit spending to amounts specified by the campaign finance law;
3. Keep records and, if requested, supply evidence of qualified expenses;
4. Cooperate with an audit of campaign or convention expenses;
5. Repay public funds, if necessary; and
6. Pay any civil penalties imposed by the FEC.
7. Primary candidates must additionally certify that they have met the "threshold requirement" for eligibility by raising more than \$5,000 in each of 20 states. Presidential campaigns seeking public funding should consult the *Guideline for Presentation in Good Order* (2008) for detailed guidance.

The public funding of Presidential elections is not financed by a standard Congressional appropriation. Instead, the program is funded by the three dollar check off that appears on federal income tax forms.

The Millionaires' Amendment is a part of the McCain-Feingold Law passed in 2002 that increases contribution limits for candidates who face opponents who put substantial sums of their personal funds into their own campaigns.

- There is a \$350,000 threshold that triggers the Millionaires' Amendment in House races.
- In Senate races, it depends on how populous the state is. For example in Arizona the threshold is \$663,040, and in Connecticut it is \$514,960. In a large state like California, the millionaire would have to put in at least \$2,454,000 before the Millionaires' Amendment is triggered

## Contribution Limits for 2007-2008

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year <sup>1</sup>	Special Limits
Individual may give	\$2,300*	\$28,500*	\$10,000 (combined limit)	\$5,000	\$108,200* overall biennial limit: <ul style="list-style-type: none"> <li>• \$42,700* to all candidates</li> <li>• \$65,500* to all PACs and parties<sup>2</sup></li> </ul>
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$39,900* to Senate candidate per campaign <sup>3</sup>
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate) <sup>4</sup> may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,300*	\$28,500*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000 <sup>5</sup>	No limit	No limit	\$5,000	No limit

\* These contribution limits are indexed for inflation.

<sup>1</sup> A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. 11 CFR 110.6. See also 11 CFR 110.1(h).

<sup>2</sup> No more than \$42,700 of this amount may be contributed to state and local party committees and PACs.

<sup>3</sup> This limit is shared by the national committee and the national Senate campaign committee.

<sup>4</sup> A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).

<sup>5</sup> A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). 11 CFR 102.12(c)(2).

## UK

### Public Funding and Donations

In the UK funding political parties has been a source of controversy for many years. Public funding is limited in nature. Under the *Political Parties, Elections and Referendums Act 2000* policy development grants schemes are subject to a statutory limit of £2 million per annum. By resolution, direct financial assistance from the public purse is also provided to support Opposition parties, called in the House of Commons 'Short money' after its originator Edward Short, and in the Lords 'Cranborne money' after the then Leader of the House when the scheme was introduced in the Upper House in 1996. Various forms of indirect funding are also available, notably in the form of publicly funded party political broadcasts; this in the context of a system which prohibits paid political advertising on radio and television.<sup>ii</sup>

It remains the case, however, that the bulk of funds for political parties come from non-public sources. Traditionally, the Labour Party has relied primarily on the trade unions for financial support, to which the Party has constitutional links. The Conservative Party, on the other hand, has relied historically on fundraising at the local constituency association level and on donations from individuals and corporate backers.<sup>iii</sup>

In respect to donations, demands for transparency grew during the 1990s, as did concerns about a perceived growth in national campaign expenditure. This resulted in the passing of the *Political Parties, Elections and Referendums Act 2000*. The Act's main provisions were:

- registration of parties, so that parties had to supply details of income and expenditure;
- disclosure of donations made to national parties, individual candidates and campaign groups associated with parties;
- national expenditure limits<sup>iv</sup> supplementing constituency limits in force since the 19th century; and
- creation of an Electoral Commission partly to oversee the new rules, but without powers of prosecution.

Expenditure limits apply to all parties contesting a relevant election and are determined by the number of constituencies contested. The limit on campaign expenditure in a parliamentary general election is £30,000 multiplied by the number of constituencies, or, if greater, £810,000 in relation to England, £120,000 in relation to Scotland, and £60,000 in relation to Wales.<sup>60</sup> Candidate expenditure is also subject to limits. However, these limits are separate to those that apply to political parties.

However, problems remain after the passage of the *Political Parties, Elections and Referendums Act 2000*. In March 2006 it became clear that further regulation of loans to parties was necessary, when details emerged of loans made during the 2005 general election which appeared to circumvent the relevant statutory requirements.

The Government responded under the *Electoral Administration Act 2006* to ensure that loans to political parties were 'governed by a similar regime of transparency and permissibility to that set out for donations to parties in the

*Political Parties, Elections and Referendums Act 2000*. In particular, details of all loans to a political party of over £5,000 (and thereafter each additional £1,000 from the same lender) had to be reported to the Electoral Commission. Further, a party would only be permitted to take out loans from the same sources as are permitted to donate to a political party.<sup>v</sup>

In the wake of these developments, two major reports have been published. Published in December 2006 was the report of the Select Committee on Constitutional Affairs, *Party Funding: first report of Session 2006-07*. The Committee's report was based on a comparative review of funding arrangements in Canada, Germany and the US. Its basic finding was that the increased cost of campaigning had placed strain on political parties, which were suffering from a fall in membership. Large donors offered most in terms of easing the financial burden, but this only provoked public unease. Further, the increased transparency provided for under the *Political Parties, Elections and Referendums Act 2000* had not restored faith in the political system, but had instead fuelled public concern.<sup>vi</sup>

The Committee produced a unanimous report, but in some areas of detail it was non-specific; the report concluded that national expenditure limits should be reduced and that expenditure should be capped over a five year election period to take account of constant campaigning. It wrestled with the issue of a cap on donations, given the issue of trade union links to the Labour Party, concluding that a binding but voluntary limit should be agreed between the parties in the context of a discussion of alternative funding, including state funding. The Committee recommended that any extension of state funding would need to be accompanied by robust regulation and be focused towards the local level.

The Committee recommended a series of reforms that were to be introduced in two stages; the Committee recommended a stronger and more robust regulatory framework within which the changes to the system of party funding were to include:

- an overall cap on spending, both at local and national level;
- greater transparency about the sources of all elements of party funding, and
- a voluntary agreed binding framework for the limiting of all large donations leading to an increase in state funding for political parties.<sup>vii</sup>

### **Phillips Review**

Running alongside the Committee inquiry but arising directly from the 'loans for honours' affair was the review of the funding of political parties conducted by Sir Hayden Phillips. The review was announced by the Prime Minister on 16 March 2006 and established officially four days later. The Phillips report, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, was published on 15 March 2007. Underlying the report's findings was the observation that the dominant political parties, which sustained our democracy from most of the twentieth and twenty first centuries, now seem to be in decline.

The Phillips report went on to note that declining trust in political parties, in the UK and beyond, is a major challenge for democracy, stating: "Our

Parliamentary democracy cannot operate effectively without strong and healthy political parties. The debate about financing of our political parties is therefore a debate about the health of our democracy and how we can improve it.”

A key proposal of the Phillips report was that donations should be capped at £50,000 from any one source, whether individual or organizational. After discussing the experience of the 2005 general election, where Labour and Conservative spent around £90 million in the 12 months leading up to the election, Phillips commented: ‘Driven by a determination to gain a competitive advantage over their opponents, it is no surprise that the parties will seek large donations to fuel their spending’. He said he endorsed the argument put forward by the Select Committee on Constitution Affairs:

The UK currently limits expenditure but does not limit donations, while in the USA, donations are capped but spending is not. Both systems lead to significant problems. In Canada, both income and expenditure are comprehensively capped and regulated, and we were convinced by the strengths and benefits of this model.<sup>viii</sup>

It was recognised by Phillips that a cap on donations could create particular problems for the financial relationship between Labour and the unions. Phillips observed:

In seeking a possible solution, much will turn on the treatment of the decisions by individual trade union members to pay money to the party to which their union affiliates. In my view these payments may be regarded as individual donations for the purposes of the new limit if, and only if, the decisions reached are clearly transparent and it is possible to trace payments back to identifiable individuals.<sup>ix</sup>

The Phillips report also advocated an increase in the amount of public funding for political parties. It recommended this should be by:

1. a scheme where the amount of funding received by a political party is directly linked to the votes received. Phillips proposed eligible parties should receive 50p each year for every vote cast for them in the most recent general election, and 25p for every vote cast for them in the most recent elections for the devolved administrations in Scotland and Wales and for the European Parliament.
2. a matched funding scheme where eligible parties would be invited to establish a registered subscriber scheme, primarily using the Internet, through which any voter could subscribe a minimum of £5 to support the party. Each subscription would be matched with £5 of public funding.

## **New Zealand**

### **Donations to Candidates, Political Parties and Third Parties**

- Anonymous donations to any of the above may not exceed \$1000, with anonymous donations larger than this to a political party or third party

able to be made through the Electoral Commission. (see 'Protected donations' below). Limits apply.

- Donors giving more than \$1000 (whether directly or through an intermediary) must be identified to the recipient and will be named in public returns if limits are reached:
- to electorate candidates of more than \$1000 towards an election campaign
- to political parties of more than \$10,000 in a calendar year
- to third parties of more than \$5000 towards an election campaign.
- Donors may not give more than \$1000 to any recipient unless they are: living in NZ, or are NZ citizens, or registered electors, or bodies incorporated in NZ, or unincorporated bodies headquartered or having their main place of business in NZ.

### **Protected Donations**

A donation protected from disclosure is a mechanism for any person who wants to make a donation of more than \$1,000 to a registered political party or listed third party and does not want their identity to be disclosed to either the public or to the party receiving the donation.

The Electoral Commission puts your donation together with others and passes it to the party at regular intervals without identifying the value of individual donations, or the number or names of donors involved.

### **Limits**

Please note that:

- the maximum amount that an individual or body can donate to any one political party through this process is \$36,000 between two successive elections (but you may donate to more than one party in this way, and to a \$36,000 limit for each)
- no political party may receive more than \$240,000 from donations protected from disclosure between two successive elections.
- the maximum an individual or body can donate to any one listed third party through this process is \$1,800 between two successive elections (but you may donate to more than one listed third party in this way, and to a \$1,800 limit for each)
- no listed third party may receive more than \$12,000 from donations protected from disclosure between two successive elections.

If a donation or contribution takes an individual or party over their limit then the Electoral Commission will return the excess.

### **Confidentiality**

It is an offence under the Electoral Finance Act 2007 to tell a party that you intend to, or have made, a donation or to provide such information that may allow them to deduce that you intend to, or have made, a donation.

Offence provisions also apply to people permitted to know this information. The only people permitted to know this information are:

- a member or employee or other person engaged by the Electoral Commission
- any officer, employee, relative, adviser, or agent of the donor or contributor
- any other person to whom the identifying details must be supplied to enable the donation to be made (for example, an employee of a bank who processes a cheque by which the donation is made)
- any person to whom the identifying details must be supplied to comply with one or more of the Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994)
- the Auditor-General
- any other person entitled to the information in question in accordance with any search warrant, summons, or any process under rules of Court, or in the course of any proceedings.

The details of those who make a donation protected from disclosure, including all contributions to a donation, cannot be supplied under Official Information Act 1982.

### **Election Spending Limits**

In New Zealand a uniform limit or cap on spending exists for individual candidates and political parties. For individual candidates, the cap is \$20,000. For political parties, it is \$1 million plus \$20,000 for each electorate contested by the party. Thus, a party contesting all 69 electorates may spend up to \$2.38 million on its 'election expenses'.

While this system may be seen as something of a model for reform in Australia, it is the case that New Zealand's 2005 general election campaign was not without controversy. These were as follows:

- The Labour Party exceeded the statutory maximum on its election expenses by over \$400,000, primarily due to the costs associated with distributing a pledge card to voters shortly before polling day. Furthermore, the use of parliamentary funding to produce and distribute this campaign material prompted a post-election review by the Auditor-General, which concluded that a range of parties and individual MPs had misused this source of funds for campaign purposes.<sup>x</sup>
- The report found that a total of \$1.17 million of parliamentary funding had been improperly spent on electioneering, as follows:
  - Labour Party, \$768,000;
  - New Zealand First, \$150,400;
  - Green Party, \$80,900;
  - United Future, \$63,800;
  - ACT, \$17,800;
  - National Party, \$11,300
  - Maori Party, \$48<sup>xi</sup>

## **NZ - Broadcasting Act 1989**

The broadcasting of 'election programmes' (that is, campaign advertisements) is also strictly controlled in New Zealand. The broadcasting of an election programme is prohibited by section 70 of the *Broadcasting Act 1989*. This ban is, however, subject to a number of exceptions. Specifically, a programme broadcast during time allocated to a political party is exempt from the ban, as are election programmes paid for with money allocated to the political party.

Registered parties are restricted to the use of funds allocated by the Electoral Commission and any free time when advertising for the party vote. The Electoral Commission determines the time allocated to political parties. The amount of money available to parties is the same as the previous election unless changed by Parliament. Prior to 2005, the amount was \$2.08 million.

However, \$3.212 million was available for the 2005 general election. When determining the allocation of time and money, the Electoral Commission is to consider: the number of persons who voted for the party and its candidates at the previous election; the number of persons who voted for the party at any subsequent by-election; the number of members of Parliament; any relationships between the political party and another party; any indications of public support; and the need to provide a fair opportunity for each political party.

## Endnotes Appendix:

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- <sup>i</sup> Government of Canada, *Federal Accountability Act – Text of Bill C-2* - [http://www.faaifi.gc.ca/faa-lfi/faa-lfi00\\_e.asp](http://www.faaifi.gc.ca/faa-lfi/faa-lfi00_e.asp)
- <sup>ii</sup> This account is based on O Gay, I White and R Kelly, *The Funding of Political Parties*, House of Commons Research Paper 07/34.
- <sup>iii</sup> O Gay, I White and R Kelly, n 58, p 23.
- <sup>iv</sup> For a summary of the law see – T Drabsch, *Election Finance Law : An Update*, NSW Parliamentary Library Briefing Paper No 13/2005, p 29-34..
- <sup>v</sup> O Gay, I White and R Kelly, n 58, pp 29-30.
- <sup>vi</sup> The 2000 Act: established the Electoral Commission, which is independent of Government and reports directly to Parliament; required political parties to register with the Electoral Commission; set down accounting requirements for political parties; introduced controls on donations to parties and their members; controlled campaign expenditure, both for parties and third parties in national election campaigns; amended ruled on the donations received and expenses incurred in election campaigns; and required companies to obtain approval before making political donations - O Gay, I White and R Kelly, n 58, pp 7-8.
- <sup>vii</sup> Select Committee on Constitution Affairs, *Party Funding: first report of Session 2006-07*, December 2006, para 154.
- <sup>viii</sup> Quoted in H Phillips, n 66, p 9; Select Committee on Constitution Affairs, n 65, para 152.
- <sup>ix</sup> H Phillips, n 66, p 10.
- <sup>x</sup> New Zealand Auditor General, *Advertising Expenditure Incurred by the Parliamentary Service in the Three Months Before the 2005 General Election*, October 2006 -[http://www.elections.org.nz/uploads/crown\\_law\\_re\\_anonymous\\_donations\\_25\\_jan\\_07.pdf](http://www.elections.org.nz/uploads/crown_law_re_anonymous_donations_25_jan_07.pdf)
- <sup>xi</sup> New Zealand Auditor General, n 43, pp 33-34. Figures in two tables are combined to produce a total. See also – ‘2005 New Zealand election funding controversy’ -[http://en.wikipedia.org/wiki/2005\\_New\\_Zealand\\_election\\_funding\\_controversy](http://en.wikipedia.org/wiki/2005_New_Zealand_election_funding_controversy)
- Election Finance Law: Recent Developments and Proposals for Reform