



ALP Submission

 A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	8
DATE AUTH'D FOR PUBLICATION	8.9.10

ACT Legislative Assembly Inquiry into Campaign Finance Reform

A strong case for better disclosure and reform

The Australian Labor Party welcomes the opportunity to provide input into the Legislative Assembly's Inquiry into Campaign Finance Reform.

We understand that the terms of reference for this Inquiry cover the regulation of donations to political parties, campaign expenditure, financial disclosure laws, candidate and election funding, as well as Commonwealth and ACT laws.

In addition to the recent Green Paper on Commonwealth Electoral Law Reform, this ACT Inquiry provides an important opportunity to improve the democratic process in the ACT and across Australia and reinforce the important values which this process serves.

The Australian Labor Party strongly supports improvements to campaign funding and disclosure which will improve accountability, transparency and the integrity of the democratic process.

At a federal level the Australian Labor Party has already moved to improve these aspects of campaign funding and disclosure with the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 to:

1. Reduce the campaign disclosure threshold to \$1,000, thereby reversing the previous Liberal Government's huge increase in the disclosure limit from \$1,500 to over \$10,000;
2. Banning donations from overseas and from non-Australian companies, ensuring donations come from a jurisdiction where Australian Law applies and accountability is feasible;
3. Binding election funding to reported and verified electoral expenditure directly incurred by a candidate or party for an election, thereby stopping undemocratic profiteering from candidates;
4. Closing the loophole whereby separate divisions of a political party are treated as separate entities, so preventing large donations from being hidden by paying portions across state and territory branches of the same Party; and
5. Increasing public scrutiny of donations by releasing donations and disclosure returns every six months.

The Australian Labor Party believes that these measures would have an immediate impact on the Australian electoral system, improving our system of disclosure by increasing transparency and accountability.

Unfortunately these efforts by the Australian Labor Party to improve Australia's national electoral system with better disclosure that would increase transparency and accountability have so far been stymied by a recalcitrant Liberal/National Coalition.

Labor's strong local record of improving disclosure

For its part, Labor has moved forward despite the obstacles presented by the Liberal Party and has been able to recently amend ACT electoral regulations to reflect Labor's desire for better disclosure. In

2008 the ACT Government amended the ACT Electoral Act 1992 to reduce donation disclosure limits from \$1,500 to \$1,000, thereby bringing them into line with Labor's federal intentions.

At a recent meeting of this Inquiry in the ACT it was revealed that the ACT Liberal Party had left the source of 60% of their donations undisclosed (a similar proportion to that which was also undisclosed by the Green Party but *three times the proportion* that was undisclosed by the ALP). This leaves no doubt that the Labor Party is not only proposing beneficial reforms in this area but is also clearly pursuing, through its actions, the principles and democratic values in its policies and submissions. We need better regulations to ensure better disclosure and more accountability in campaign donations by all sides.

Labor continuing its record of electoral modernisation

Labor's record of improving disclosure and electoral reform is also reflected in our strong history of electoral modernisation and stands in strong contrast to the record of our political opponents. The clearest example of this was the Howard Liberal Government's draconian measures to close the electoral roll early (recently overturned by the High Court) and introduce repressive proof of identity measures which disenfranchised hundreds of thousands of potential voters in federal elections.

From an ACT and a federal perspective there is clearly a preference for uniform national reform rather than piecemeal changes in different state and territory jurisdictions. Labor supports measures to ensure national uniformity of campaign finance regulation. Uniform regulations would encourage understanding and compliance and promote wider confidence in an area that has received adverse publicity but is essential to our democracy.

The case for expenditure caps

Each subsequent election at the Assembly and Federal levels marks a new high tide mark in campaign expenditure. This puts more pressure on parties and candidates to raise more money. The ALP has previously supported an expenditure cap to be placed on parties and candidates. In other countries such as New Zealand, Canada and the UK, caps operate on campaign expenditure and encourage a level playing field in which campaign expenditure is not the most significant factor in electoral success.

In the ACT it is clear that the ALP has been at a financial disadvantage for several election cycles. As the Party of Government since 2001, the ALP has been the effective target of the well-financed negative advertising by the Liberal Party, Green Party, Australian Democrats and a long list of conservative independents for some years.

Table 3 (page 29) from the ACT Electoral Commission's submission to this inquiry illustrates clearly the contrast between the Australian Labor Party and its political opponents in regard to "receipts" from fundraising and other sources for several election cycles.

Over the past 13 years (at elections held in 2008, 2004, 2001, 1998) the ALP received less money than its opponents in each of those election campaigns.

The same is true of the local campaigns in the 2007 federal Senate election, where the Green Party and Liberals each individually outspent Labor's campaign. As neither the Green Party nor Liberal Party seriously contested either of the House of Representatives Electorates there is little point making a similar comparison at that level.

The case against donation caps

The ACT Branch of the ALP believes that donation caps should only be contemplated as an option in conjunction with other reform measures such as regulation and disclosure of third party activities.

The US offers a broad experience of how donation caps can be circumvented and illustrates that where there is a will there is inevitably a way.

Fundamentally unenforceable donation caps in the US have inevitably led expressly to the creation of third party organisations such as "election funds", "political action committees" and "campaign committees". These "funds" are simply artificial fronts and vehicles for rich donors to circumvent the cap on direct donations and support their preferred candidate or Party.

The US experience is that donation caps simply reduce accountability and transparency. This is because money is artificially funnelled into issue-specific "fighting funds" and "political action funds", which are usually a veiled conduit to fund overtly negative campaigns directed at specific candidates in marginal electorates. These funds are much less accountable to the public than legitimate parties and publicly scrutinised candidates. It can be legitimately concluded that donation caps have effectively ensured more money is being spent on negative campaigning against specific candidates. Money that would otherwise be spent on legitimate party-wide and local efforts is instead funnelled into negative attack advertising, as third parties are much less likely to advocate on behalf of registered political parties or candidates.

Artificial donation caps would also restrict the right of legitimate representative membership-based organisations such as trade unions, industry bodies, community groups and chambers of commerce to participate in and contribute to the democratic process. Artificial donation caps may also breach the "implied right of political communication" identified by the High Court in the 1992 Australian Capital Television case.

The case for better public funding

Ultimately, there is no substitute for public funding as the best way to ensure a level political campaigning playing field. The ACT Branch of the Australian Labor Party, consistent with the Party nationally, would argue that it is from this perspective that elements such as donation and disclosure should be considered. It is for this reason that the ALP introduced federal public funding in the 1980s as an essential platform for political participation and equality in our electoral system.

Elections ACT itself has provided valuable contributions to the public discussion about the various options available to improve public funding models and outcomes in its submission to the Inquiry. The ALP looks forward to more public debate about this issue, particularly exploration of benefits of expenditure caps and public funding to help level the electoral playing field.

The Position of Labor's ACT Political Opponents

No proper analysis of campaign funding reform would be complete without some discussion of the ongoing hypocritical attacks and sour grapes from the Liberal Party regarding publicly declared donations to the Australian Labor Party in the ACT.

After the most recent attack by Brendan Smyth and Zed Sezelja on Community Club donations received by the ALP in the 2008/2009 financial year, it was embarrassingly revealed that the Liberals also receive donations from Community Clubs in the ACT. Their regular attacks on the Canberra Labor Clubs now include demands that all Community Clubs be banned from participation in democratic processes. This is despite the fact that such activities help fulfil their Articles and Memorandum of Association.

The history of this hypocrisy resides unambiguously in the very different choices made by the Australian Labor Party and the Canberra Liberals to secure funding for their political activities outside of public funding. In the 1970s both political parties sought to invest in local enterprise which would provide some income security for their future activities and their continued full participation in democratic elections.

Wisely, the decision-makers in the Australian Labor Party at the time chose to establish a community-based Club through which local supporters of the Labor Party could participate and contribute to the electoral efforts of the ALP. The Articles and Memorandum of Association of the Labor Clubs clearly outline the original objectives of this community-based Club. These Articles and Memorandum of Association clearly comply with both the relevant Corporations Act and clearly also define a continuing contribution of donations to the Labor Party as one of the fundamental reasons the Club exists.

In contrast, the Canberra Liberals chose to invest in commercial property, primarily in Deakin and for a variety of reasons, over time, their investment has not been as well managed, protected or as successful for them as that of the Australian Labor Party. At the same time that 30 year old decision by the ACT Liberal's to invest in commercial property rather than in a Community Club has also not provided any of the subsequent community benefits of the Community Club model.

These choices are of course the province for the political parties themselves.

For its part, the ALP fully supports recent public recommendations contained in the Gambling and Racing Commission Review of the Governance Provisions in the Gaming Machine Act 2004 and will be amending the Rules of the ACT Branch of the Australian Labor Party accordingly.

We would hope that the Committee would not be distracted from its valuable work and deliberations by party political bias.

Conclusion

The ACT Legislative Assembly is the property of the ACT community, not of the political parties who are its occupants. It is in the public interest that campaigning for a place in the Assembly be rendered as accessible as possible. That necessitates not just a level playing field but reasonable resources by which to participate. Chief amongst those reasonable resources is public funding and it is that resource which can potentially have the greatest positive effect on ensuring fairness in election contests.

September 2010.