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The Parliament of the Commonwealth of Australia

Advisory report  
on the Commonwealth  
Electoral Amendment  
(Political Donations and  
Other Measures) Bill 2008

Joint Standing Committee on Electoral Matters

October 2008  
Canberra

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## Chair's foreword

The committee believes that the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 will significantly improve the transparency of financial support given to, or received by, political parties and candidates as well as the political expenditure and income of other participants in the electoral process.

The committee has made two recommendations to amend the bill. The first is to expand the definition of 'electoral expenditure' to allow for reasonable administrative expenses related to campaigning. This will ensure that minor parties will not be disadvantaged by the proposed changes, which are designed to ensure that 'celebrity' candidates cannot profiteer from public funding.

The second recommendation relates to the proposal to ban receipt of anonymous donations. As currently provided, the bill may create an onerous burden in minor situations such as small-scale raffles and fund raising activities. The amendment proposed by the committee is that a cap of \$50 apply below which anonymous donations can be received.

It will be important that the Government allocates appropriate resources to the Australian Electoral Commission so that they are able to implement the proposed arrangements in a manner that minimises compliance costs on participants and ensures that compliance processes operate effectively.

The guiding principle for a funding and disclosure regime is that there must be a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties and other participants in the electoral process. This is an essential precondition if the disclosure system is to be effective. Timely public disclosure and publication of this funding is also important in bringing greater transparency to the flow of funds.

While some inquiry participants have argued that the proposals included in the bill should be deferred and considered as part of broader review processes underway – including a government green paper process and a separate inquiry by this committee – the incremental reforms proposed by this bill are based on

the overriding principle of openness and transparency in the financial transactions of participants in the electoral system.

This principle will remain notwithstanding any reforms which are progressed into the future.

Changes to financial disclosure arrangements by the previous government – in particular the lifting of the disclosure threshold from \$1,500 to more than \$10,000 (indexed to inflation) – have allowed significant funding to be provided to political parties and candidates without being disclosed. The lengthy delay in the publication of disclosures made above this higher threshold has meant that up to one year and three months may elapse after a donation has been made before it is made public.

These arrangements clearly do not allow information to be provided to the community about financial support for political parties and candidates in a timely manner. The proposals in the bill seek to lower the disclosure threshold to \$1,000, introduce biannual reporting in place of annual reporting, shorten the reporting timeframe from up to 20 weeks to 8 weeks and facilitate a reduction in the time taken to publish disclosure returns. The proposals included in the bill will result in significantly more information being available, and the publication of some disclosure returns in less than half the time as current arrangements.

While the proposed changes may lead to some additional compliance costs for participants in the political process, the committee believes that they achieve the appropriate balance between transparency and the freedom to participate in political process.

I would like to thank the Members and Senators of the committee for their contribution to the report and those that participated in the inquiry by making submissions or appearing at the public hearings. I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham MP  
Chair



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## Membership of the Committee

Chair            Daryl Melham MP

Deputy Chair   Mr Scott Morrison MP

Members        Mr Michael Danby MP

Hon Bruce Scott MP

Mr Jon Sullivan MP

Senator Simon Birmingham

Senator Bob Brown

Senator Carol Brown

Senator Steve Hutchins

Senator the Hon Michael Ronaldson

## Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr Kai Swoboda
Technical Advisor	Mr Terry Rushton
Administrative Officer	Ms Natasha Petrovic



## Terms of reference

On 18 June 2008 the Senate agreed to the following resolution:

That the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be referred to the Joint Standing Committee on Electoral Matters for inquiry and report on 30 June 2009 in conjunction with the committee's inquiry into to the 2007 Federal Election.





# Summary and recommendations

## 2 Public funding

The committee notes the history of public funding, which was originally introduced for the 1984 election and was designed to provide for the reimbursement of legitimate campaign expenses. Parliament sought to prevent the public from being required to fund frivolous election campaigns, by initially requiring that candidates achieve a threshold of 4 per cent of the formal vote, before being eligible to receive any public funding. This threshold has remained unchanged and generally serves to discourage frivolous candidates campaigning in order to receive public funding.

It is both unfortunate and undesirable that public funding has moved from providing a reimbursement of legitimate and verifiable campaign expenditure, to being a vehicle by which some candidates can use the public funding provisions to reap financial windfalls which far outweigh any legitimate campaign expenses.

While acknowledging that there will be an increase in the compliance costs associated with the proposed regime, the committee considers that these are not likely to be particularly onerous and are balanced by the benefits associated with greater transparency and confidence in the system of public funding.

### Recommendation 1 (paragraph 2.47)

The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make the entitlement to public funding conditional on a candidate meeting the 4 per cent threshold and demonstrating that they have incurred genuine campaign expenditure (whichever is the lower amount).

The committee notes the Democratic Audit of Australia suggestion that the definition of 'electoral expenditure' is too narrow and believes that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration.

**Recommendation 2 (paragraph 2.48)**

The committee recommends that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration.

### **3 Thresholds and public disclosure**

The proposals included in the bill to lower the disclosure threshold from \$10,900 (adjusted annually for inflation) to \$1,000 (not adjusted for inflation) will lead to a significant increase in the transparency of financial support and expenditure by participants in the political process. The committee supports the proposal to end the indexing of the disclosure threshold to the consumer price index.

While the proposal to lower disclosure threshold and implement biannual reporting arrangements for some types of disclosure returns may lead to additional compliance costs for participants in the political process, the committee believes that they achieve the right balance between making transparent the sources of support for political parties and candidates and the freedom to participate in political process.

**Recommendation 3 (paragraph 3.93)**

The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that enhance transparency of political funding by:

- lowering the disclosure threshold from the current level of \$10,900 (adjusted annually for inflation) to \$1,000 and removing indexation;
- improving the timeliness of reporting by replacing annual return requirements with a bi-annual reporting framework and shortening the requirement to report from 15 to 20 weeks after the end of a financial year to 8 weeks after the end of the reporting period;

- improving the timeliness of election returns by shortening the period for reporting from 15 weeks after polling day to 8 weeks after polling day;
- closing the loophole for donation splitting by treating related parties as a single entity thereby eliminating the possibility that separate donations totalling more than \$98,000 from a single donor can be given without disclosure; and
- facilitating earlier publication of disclosures by the Australian Electoral Commission.

#### Recommendation 4 (paragraph 3.94)

The committee recommends that the Government provide the Australian Electoral Commission with adequate funding so that the Commission can publish returns in a timely fashion and undertake public awareness activities that ensure participants understand their disclosure obligations and are able to minimise their compliance costs. In addition, clear targets for the Commission's administrative functions, that are consistent with the level of resourcing and the government's goals in this area, should be specified in the performance measures included in the agency's portfolio budget statements.

## 4 Foreign and anonymous donations

The committee believes that the current high disclosure threshold (\$10,900), which enables significant donations to be made anonymously, both domestically and from overseas, requires urgent action to enhance disclosure requirements and ensure that overseas interests are not able to use foreign property to unduly influence the Australian political system.

#### Recommendation 5 (paragraph 4.40)

The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use anonymous donations or to receive or use a donation of foreign property.

#### Recommendation 6 (paragraph 4.41)

The committee recommends that clause 40 (proposed section 306AE) of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be amended to allow for anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.

### 5 Offences, penalties and compliance

The committee supports moves to modernise the level of penalties in relation to breaches of the proposed disclosure arrangements. These will see the level of financial penalties rise from \$1,000 to more than \$13,000 for some offences and the introduction of the penalty of imprisonment for some types of offences.

Taken together with a strengthening of compliance processes, the proposed penalties should provide a significant deterrent to those who might consider circumventing measures designed to bring greater transparency to the flow of money in the electoral system.

#### Recommendation 7 (paragraph 5.40)

The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that:

- modernise the level of penalties for breaches of the proposed funding and disclosure provisions; and
- strengthen the Australian Electoral Commission's capacity to undertake compliance activities.

Notwithstanding the proposed improvements in regulatory arrangements, it will be necessary for the Government to provide appropriate resources to the Australian Electoral Commission and other relevant agencies to ensure that compliance processes operate effectively.



### Recommendation 8 (paragraph 5.41)

The committee recommends that the government provide adequate resources to the Australian Electoral Commission and other Commonwealth agencies so that they are able to:

- conduct effective public education activities to promote the protections offered in section 327(2) of the *Commonwealth Electoral Act 1918* against harassment and intimidation as a result of making a political donation;
- provide for a dedicated unit within the Commission that:
  - ⇒ is responsible for promoting awareness of this section of the Act
  - ⇒ maintains a formal complaints register;
  - ⇒ is directly accessible by a separate website and an advertised telephone 'hotline' number; and
- take effective regulatory action to enforce the existing protections against these actions provided by the *Commonwealth Electoral Act 1918*.

