Fixing the Flaws

Six critical political finance reform opportunities

1. Aggregation of donations for the purposes of both the gift cap and disclosure

The failure of the Act to aggregate donations to different party branches for the purposes of the gift cap and disclosure means that wealthy interests will be able to continue to access the political process in a way the average Australian can't. This is inequitable.

In respect of associated entities, when such an entity is controlled by, or operates solely or to a significant extent to the benefit of one or more political parties, donations to that associated entity should be aggregated with donations to the party for the purpose of the disclosure threshold and donation cap.

2. Spending caps: lower national cap, higher per seat cap and 'anti-piling in provision'

The national cap of $90 million will be able to be used by parties to flood key races and will do nothing to alleviate the arms race for funding. The setting of the per seat cap also disadvantages new entrants and independents. Our solution is three-pronged:

- lowering the national cap to $60 million;
- allowing a higher per seat spend of $1,200,000 to allow new entrants to compete; and
- an "anti-piling in" provision to require all electoral expenditure to count against seat caps, according to how that spending is distributed (see Appendix A).

3. Establish an independent, technical review process

Establish an independent, expert Commission in the style of Queensland's former Electoral and Administrative Review Commission. This Commission would report pre-implementation on the setting of relevant caps and public funding arrangements, as well as conduct statutory reviews in line with the JSCEM review process the Act establishes, and 'own-motion' investigations as required (see Appendix B).

4. Abolition of the special treatment of nominated entities

Some associated entities can receive special treatment by being named as nominated entities. This will mean that parties with substantial assets can spend vastly more than those without.

Nominated entities should be able to spend and donate just like any other associated entity, but they should not be exempt from any of the limitations applying to those entities.

5. Requirement that all cash-for-access and corporate donations be disclosed, regardless of size

The $5,000 disclosure cap means that millions of dollars will remain hidden and is too high to capture most cash-for-access payments.

All cash-for-access and corporate donations should be disclosed, regardless of size.

6. Ensure charities can continue to have a voice in election debates by having fit-for-purpose rules and regulation, instead of treating them like political parties

Charities need to be able to draw on general donations for electoral advocacy as they previously have done, whilst being subject to the new gift caps, spending caps, and disclosure requirements.

The definition of electoral expenditure should remain limited to material that has the dominant purpose of influencing how people vote, otherwise it will be too broad and capture non-electoral advocacy (see Appendix C).

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Appendices

Appendix A

The Act already has a provision for allocating electoral expenditure across multiple seats. When electoral matter is "express coverage matter" for more than one division (for example, it names two MPs in adjacent electorates), the expenditure must be allocated against each seat cap according to

> "that share of the expenditure that the liable person or financial controller for the person or entity is reasonably satisfied reflects the distribution of the electoral matter in the Division".

In other words, the Act already contemplates that financial controllers will calculate the distribution of electoral matter across seats.

A simple reform that would remove much of the unfairness in spending caps is to require *all* spending to be allocated to seat caps, according to distribution of electoral matter.

A party could allocate spending to divisions they are *not* running in, because advertising naturally spills over divisional boundaries.

An example of how this could be achieved is the revised version of s 302ALC below:

> *Revised s 302ALC:*
>
> (1) For the purposes of this Part, if a person or entity incurs electoral expenditure, the amount worked out under subsection (2) is targeted to a Division, State or Territory if:
>
> (a) the expenditure is incurred for the dominant purpose of creating or communicating electoral matter; and
>
> (b) the electoral matter is distributed in the Division, State or Territory.
>
> (2) For the purposes of subsection (1), the amount that is targeted to the Division, State or Territory is:
>
> (a) unless paragraph (b) applies—the amount of the expenditure; or
>
> (b) if the electoral matter to which the expenditure relates is distributed across more than one Division, State or Territory—that share of the expenditure that the liable person or financial controller for the person or entity is reasonably satisfied reflects the distribution of the electoral matter in the Division, State or Territory.

Appendix B

In Queensland, in the wake of the corruption and gerrymandering of the Bjelke-Petersen era, the Fitzgerald Inquiry recommended the establishment of the Electoral and Administrative Review Commission (EARC).

The Commission's purpose was 'to provide independent and comprehensive review of administrative and electoral laws and processes'. It only operated for four years (until 1993), but in that time reported on 23 matters including: the electoral system, the electoral roll, code of conduct for elected officials, electoral boundaries, the Queensland Constitution and donation transparency.

It consisted of five members appointed by the Governor on the recommendation of the minister. The advantage of a standing commission with the ability to conduct own-motion inquiries is that it can pursue issues as they arise, and report when it is most useful – for example, ahead of parliamentary deliberations on that topic.

Appendix C

A healthy electoral system caters for a diversity of participants. This includes charities, which provide a uniquely non-partisan perspective and act as a voice for the community. Indeed, some charities find it necessary to engage in electoral advocacy in order to achieve policy change in line with their charitable purposes.

This is made difficult, however, due to the complexity of electoral law. Registered charities have accounted for less than 1% of the total electoral expenditure incurred since 2007. This will be further exacerbated by the recent changes to prohibit the use of general donations and the broadening of the definition of electoral expenditure.

A simple solution would be to allow registered charities to credit general donations to their federal account (subject to the gift cap), akin to what membership organisations can do with membership and subscription fees. In addition, the prior definition of electoral expenditure that revolves around the dominant purpose test should be retained.