SUBMISSION TO THE ELECTORAL MATTERS COMMITTEE

INQUIRY INTO CONDUCT OF THE 2006 VICTORIAN STATE ELECTION AND MATTERS RELATED THERETO

BY KEN COGHILL AND JOO-CHEONG THAM

TABLE OF CONTENTS

List of tables 2
Biographies 3
I Introduction 5
II Key principles of political finance laws 5
III Disclosure Laws 11
   A Disclosure of funding
      1 Deficiencies of the federal funding disclosure scheme
      2 The need for a comprehensive Victorian funding disclosure scheme
      3 Inherent limitations of funding disclosure schemes
   B Disclosure of expenditure
IV Election funding 29
   A Inflating campaign expenditure?
   B Exacerbating political inequality
   C Failure to be properly linked to the legitimate functions of parties
   D Recommendations
V Ban on contributions from entities having contracts or tendering for contracts with the Victorian government 33
VI Campaign expenditure limits 45
VII Government advertising 53
VIII Lobbying 59
IX List of recommendations 74
LIST OF TABLES

Table 1: Disclosure figures for major parties, 1998–9 to 2004–05

Table 2: Expenditure disclosure schemes of various countries

Table 3: Approximating dependence of Victorian major parties on private funds

Table 4. Contributions in 1998-9 to the governing party and a related entity by major contributors providing services used or likely to be used by government &/or reliant on exclusive licences or development approvals granted by government

Table 5. Significant contracts and contributions in 2002-2006 to the governing party and a related entity by major donors providing services used or likely to be used by government &/or reliant on exclusive licences or development approvals granted by government

Table 6: Total payments of ALP (Victorian Branch) and Liberal Party (Victorian Division)

Table 7. Expenditure limits of selected countries

* This submission draws on the joint submission by Joo-Cheong Tham and Graeme Orr to the federal Joint Standing Committee on Electoral Matters’ inquiry into funding and disclosure (April 2004).
BIOGRAPHIES

KEN COGHILL
Associate Professor the Hon Dr Ken Coghill was born at Mansfield in 1944, qualified as a veterinary surgeon, worked as a Victorian public servant, and served as a Wodonga Councillor, a Member of the Victorian Parliament (1979-96), Cabinet Secretary (1982-88) and Parliamentary Speaker (1988-92).
He joined Monash University in 1996, where he has taught Governance and Business & Government in Masters Programs and supervises PhD research students studying diverse aspects of governance.
He is also a world leader of research into induction and professional development programs for parliamentarians.
Dr Coghill is a Co-Director, Monash Governance Research Unit, where he directs and undertakes research on Integrated Governance, that is, the dynamic, evolving inter-relationships of the public, corporate and civil society sectors as they affect the governance of nation-states.
He has written extensively on Australian Commonwealth, State and Territory government accountability and parliamentary reform and given evidence to a number of Commonwealth and State parliamentary committee and other inquiries.

JOO-CHEONG THAM
Dr Joo-Cheong Tham is a senior lecturer with the Law Faculty, University of Melbourne. He has written extensively on Australian political finance with his publications in this area including:


• Graeme Orr and Joo-Cheong Tham, ‘Caught in a spin cycle’, *Courier-Mail*, Brisbane, 23 May 2007, 25

• Graeme Orr and Joo-Cheong Tham, ‘Turning taxes into spin’, *The Age*, Melbourne, 17 May 2007, 14

• Joo-Cheong Tham, ‘Democracy encourages corruption and undue influence’, *The Age*, Melbourne, 2 February 2007, 15

• Joo-Cheong Tham, ‘Party funds threaten democracy’, *The Age*, Melbourne, 26 May 2006, 15

• Joo-Cheong Tham, ‘Paying a price for patronage’, *The Age*, Melbourne, 3 February 2006, 13


• Joo-Cheong Tham, ‘Donor threshold plan over the top’, *Sydney Morning Herald*, Sydney, Sydney, 30 May 2005, 21


He has also given evidence to key parliamentary inquiries into this topic including

• the Senate Finance and Public Administration’s Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth); and

• the Joint Standing Committee on Electoral Matters’ Inquiry into the Conduct of the 2004 Election.

I  INTRODUCTION
We refer to the Electoral Matters Committee’s (‘the Committee’) inquiry into the
custom of the 2006 Victorian State Election and matters related thereto. Our
submission is devoted to a discussion of political finance regulation, that is, laws that
regulate the funding and expenditure of political parties, candidates and other political
actors. Such regulation has a crucial bearing on the conduct of elections in shaping
what money is available to electoral participants and what expenditure they can
engage in and, as such, falls squarely within the scope of the Committee’s inquiry.
Indeed, the report of the Commonwealth Joint Standing Committee on Electoral
Matters into the conduct of last federal election contains detailed discussion of such
laws.¹

Our submission is structured in the following manner. The first section outlines the
key principles underlying political finance laws. The next two sections examine issues
relating to the disclosure laws and the election funding system This is followed by a
consideration of two other regulatory methods that might better achieve the aims of
political finance laws, namely, caps and bans on contributions and expenditure limits.
We then turn to the topics of government advertising and lobbying. Lastly, we
compile a list of our recommendations.

II  KEY PRINCIPLES OF POLITICAL FINANCE LAWS
In Victoria, and Australia generally, political finance laws seek to:
• facilitate fair elections, including promoting political equality;
• provide transparency to promote informed voting decisions;
• provide transparency to discourage the actuality and perception of corruption or
  undue influence of political actors; and
• assist political parties in performing their legitimate functions.

¹ Joint Standing Committee on Electoral Matters, Report of the Inquiry into the Conduct of the 2004
A Facilitating fair elections

The principle of political equality lies at the heart of democracy. Victoria has a proud history of leadership in applying the principle. It has been applied since the earliest days of Victorian parliamentary democracy. It was reflected in the pioneering development and introduction of the secret ballot in the colony – the first jurisdiction in the world to do so. It was again reflected in the introduction of an independent electoral commission and electoral redistribution processes insulated from partisan manipulation, through legislation developed by the Opposition and adopted by the Cain Government in the early 1980s.²

This core principle of political equality now infuses Australian Commonwealth, State and Territory constitutional and electoral institutions generally. The ‘great underlying principle’ of the Commonwealth Constitution, it has been said, is that citizens have ‘each a share, and an equal share, in political power’.³ Similarly, the key objective advanced by the original Commonwealth Electoral Act was that of ‘equality of representation throughout the Commonwealth’.⁴ More recently, the Victorian Attorney-General, Rob Hulls, when introducing the Electoral Bill 2002 (Vic), stated that the aim of election funding is ‘to put parties on a more even footing’.⁵

Political finance laws ought to contribute to the realisation of this political ideal in various ways. For one, it must facilitate fair elections through ensuring that ‘different parties offering themselves for election have an equal opportunity to present their policies to the electorate’.⁶ Such equal opportunity or ‘fair rivalry’⁷ between the parties is meant to be promoted by election funding, in that it aims to ensure that the electoral contest is open: ‘worthy parties and candidates might not (otherwise) be

³ Harrison Moore, The Constitution of the Commonwealth of Australia (1902, 1st ed) 329. This statement was cited with approval in Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106 (ACTV) at 139-40 per Mason CJ.
⁴ Commonwealth, Parliamentary Debates, Senate, 30 January 1902, 9529 (Senator O’Connor, 2nd Reading Speech introducing Commonwealth Electoral Bill 1902).
⁵ Victoria, Parliamentary Debates, Legislative Assembly, 21 March 2002, 422 (Hon Rob Hulls, 2nd Reading Speech introducing Electoral Bill 2002).
able to afford the considerable sums necessary to make their policies known’. 8 Note that the aim is not equality of parliamentary outcomes, but of electoral opportunity, including competitiveness between a variety of political positions and entities representing the diversity of views and interests found in the electorate.

Nor does the regime aim for a flat equality of air-time or opportunity. Rather it seeks to calibrate the campaign funding of political parties and candidates to their electoral support. In doing so, the regime attempts to tailor the opportunity political parties and candidates have in presenting their messages to roughly reflect their level of popular support.

Secondly, fair elections and political equality are promoted by attempting to reduce candidates’ and parties’ reliance on private funding through the subsidies provided by public funding and the publicity resulting from the disclosure scheme. Reducing such reliance, it is hoped, should prevent ‘serious imbalance in campaign funding’ 9 of the political parties. 10

Thirdly, fair elections and political equality are not just about a measure of equality of competition between parties and candidates. Elections and representative democracy are ultimately about citizen equality and not just party interests. A funding and disclosure regime ought to ensure that no citizen, let alone, corporation, has an undue voice in the electoral and political process because of their wealth.

B Transparency for the purpose of informed voting decisions
A funding disclosure regime clearly aims to promote transparency. Hon. Kim Beazley, in introducing the amendments proposing the federal funding and disclosure regime, emphasised that:

8 Beazley, above n 6, 2215. This specific aim is long-standing. When introducing the original Commonwealth Electoral Act, Senator O’Connor justified the need for the limits on electoral expenditure in this fashion: ‘(i)if we wish to secure a true reflex of the opinions of the electors, we must have . . . a system which will not allow the choice of the electors to be handicapped for no other reason than the inability of a candidate to find the enormous amount of money required to enable him (sic) to compete with other candidates’: Commonwealth, Parliamentary Debates, Senate, 30 January 1902, 9542 (Senator O’Connor, 2nd Reading Speech to Commonwealth Electoral Bill 1902).
9 Beazley, above n 6, 2213.
(t)he whole process of political funding needs to be out in the open . . . Australians
deserve to know who is giving money to political parties and how much.11

In the same vein, the federal Joint Standing Committee on Electoral Matters has stated
that:
(t)he purpose of the disclosure provision is to serve the public interest by providing
details of the funding sources of political parties.12

This statement naturally raises the question: ‘what public interest is served by
disclosing the funding details of candidates and political parties?’ Given that this
information is being supplied publicly, via the Australian Electoral Commission
(‘AEC’) – the government agency responsible for elections - it is strongly arguable
that such transparency is primarily to inform the electorate, amongst other things, to
aid informed electoral opinions (the ‘informed voter rationale’).

C Transparency for the purpose of preventing corruption and undue influence

A key concern of political finance laws is the prevention of corruption and undue
influence (the ‘anti-corruption rationale’). The introduction of annual returns at the
federal level, for one, was justified on the basis that:

(t)he public is entitled to be assured that parties and candidates which make up the
government or opposition of the day are free of undue influence or improper
outside influence.11

Echoing these sentiments, the Victorian Attorney-General, Rob Hulls, when
introducing the Electoral Bill 2002 (Vic) which originally provided for a
Victorian funding disclosure scheme, stated that ‘(t)he aim of financial
disclosure is to achieve a transparent political process; if the public is aware
of the sources of a party’s finances, the party should be less likely to alter its
policies in the interests of large donors’14

---

10 Ewing has also noted that equality of electoral opportunity requires that ‘no candidate or party should
be permitted to spend more than its rivals by a disproportionate amount’: Keith Ewing, Money Politics
11 Beazley, above n 6, 2215. For similar sentiments, see Electoral and Administrative Review
Commission, Report on Public Registration of Political Donations, Public Funding of Election
Campaigns and Related Issues (1992) para 2.5.
12 Joint Standing Committee on Electoral Matters, Interim Report on the Inquiry into the Conduct of the
13 Commonwealth, Parliamentary Debates, House of Representatives, 9 May 1991, 3482 (Hon Kim
Beazley, 2nd Reading Speech to Political Broadcasts and Political Disclosures Bill 1991). For similar
sentiments, see Beazley, above n 6, 2213.
14 Victoria, Parliamentary Debates, Legislative Assembly, 21 March 2002, 422 (Hon Rob Hulls, 2nd
Reading Speech introducing Electoral Bill 2002).
This concern directly stems from a key aspect of the principle of political equality, equality of political representation (which encompasses not only equality of voting power but also equal ability to influence political representatives). This was a point well recognised by the Hon. Kim Beazley in his Second Reading Speech to the Political Broadcasts and Political Disclosures Bill 1991. According to him:

There is no greater duty upon the representatives of the people in a democratic society than the duty to ensure that they serve all members of that society equally. This duty requires government which is free of corruption and undue influence.

This statement also confirms that the funding and disclosure regime’s concern is broadly drawn to encompass corruption as well as undue influence. The former, also known as graft, can be understood to embrace instances when money is exchanged for specific policy or executive decisions in the donor’s favour, for instance, the granting of government contracts to the donor.

On the other hand, the notion of undue influence, in this context, encompasses instances where the giving of money does not directly purchase a particular action, but is given to buy influence and access. Undue influence is thus a more subtle form of corruption of the policy and governmental processes, encompassing, for instance, cases where a contributor to a political party gains influence over or access to the policy process of a party by virtue of the money it has paid to the party.

Among other mechanisms, Australian political finance laws aimed to combat corruption and undue influence via election funding which, it was hoped, ought reduce reliance on private funding. The primary means, however, is the disclosure

---

15 See Ewing, above n 7, 22 and K D Ewing, ‘The Legal Regulation of Electoral Campaign Financing in Australia: A Preliminary Study’ (1992) 22 Western Australian Law Review 239, 241-4. Carmen Lawrence has noted that ‘(d)espite the otherwise general equality in voting power, many are suspicious that not all citizens are equally able to influence their representatives’: Carmen Lawrence, ‘Renewing Democracy: Can Women Make a Difference?’ (2000) The Sydney Papers 58.

16 Beazley, above n 13, 3477.


18 Distinctions similar to corruption/graft and undue influence have been previously made: Denny Meadows, ‘Open election funding or hide and seek?’ (1988) 13(2) Legal Service Bulletin 65, 68 and Rolf Gerritsen, Election Funding Disclosure and Australian Politics: Debunking Some Myths
scheme which is supposed to make transparent the funding of political parties and candidates or, put differently, ‘to let the sunshine in’.\textsuperscript{19} So much is obvious from a recent statement by the federal Joint Standing Committee on Electoral Matters that ‘transparency helps maintain public confidence and is a barrier to corruption of our political processes’.\textsuperscript{20} In sum, transparency is viewed as a method of deterring corruption and undue influence directly or, indirectly, by discouraging large amounts of private funding.\textsuperscript{21}

D \textit{Assisting political parties to perform their legitimate functions}

While much less prominent than the equality and transparency aims, an objective of political finance laws or, for that matter, political party regulation generally, must be to assist them to perform their legitimate functions. In this, the central place political parties occupy in Australia’s representative democracy rests upon four key functions.

Foremost, they play a \textit{representative} function. A healthy party-system should represent the diverse strands of opinion existing in Australia. Such a system would offer genuine electoral choice in the sense that the party platforms cater to the different preferences of Australian voters. Second, parties perform an \textit{agenda-setting} function in stimulating and generating ideas for Australian politics. The richness of ideas informing Australian politics will depend heavily on how vigorous the parties are in promoting new ideas and, in particular, the priority they place on policy development and research. Third, parties perform a \textit{participation} function as they offer a vehicle for political participation through membership, meetings and promoting public discourse. Fourth, parties perform a \textit{governance} function. This function largely relates to parties who succeed in having elected representatives. The party elected to government clearly performs a governance function but other
parliamentary parties also participate in governance through the legislative process, scrutiny of the executive government and general public debate.  

Political finance laws must play a part in enhancing these functions. For instance, election funding is designed in part to resource parties after the spending exhaustion of election campaigns so they can focus on policy development between elections instead of being preoccupied with fundraising.

Election funding is not intended, however, to completely supplant private and membership activity. Thus ‘grass roots’ fund-raising – a key form of participation - should not be marginalised by either public funding or reliance on large donations especially those by non-members. Indeed, excessive reliance on large donations is bound to distort all four functions of parties, as they risk coming to rely on and pander to a limited number of wealthy sources, rather than the views and interests of their individual supporters, the wider electorate, and a broader conception of the ‘public’ or ‘national’ interest.

III DISCLOSURE LAWS

A Disclosure of funding

At present, Victorian political finance laws do not impose independent obligations upon parties, candidates and other political actors to disclose details of their funding. The observation made by Victorian Attorney-General, Rob Hulls in 2002 that ‘(u)nder Victorian law . . . there is no effective disclosure of election finances’ still remains true five years later.  

Such obligations generally stem from the provisions of the Commonwealth Electoral Act 1918 (Cth) (‘CEA’). The federal funding disclosure scheme, however, is a leaky sieve that permits evasion of adequate disclosure. In the following discussion, we detail the main deficiencies of this scheme. We then argue that this demonstrates the

---

22 For similar functions ascribed to political parties, see Karl-Heinz Nassmacher, ‘Introduction’ in Reginald Austin, and Maja Tjenstrom (eds), 2003, Funding of Parties and Election Campaigns, Stockholm, IDEA, p. 2.
23 Victoria, Parliamentary Debates, Legislative Assembly, 21 March 2002, 422 (Hon Rob Hulls, 2nd Reading Speech introducing Electoral Bill 2002).
24 Section 222 of the Electoral Act 2002 (Vic) picks up upon the obligation of parties to lodge annual returns under section 314AC of the CEA.
need to enact a comprehensive funding disclosure scheme at the State level. Lastly, and most importantly, we stress that a funding disclosure scheme is inherently limited in its ability to prevent corruption and undue influence and plays no real role by itself in promoting equality.

1 Deficiencies of the federal disclosure scheme
The integrity of funding disclosure schemes turns on whether it results in timely and accurate disclosure of the sources and categories of party income. In more concrete terms, the adequacy of the any funding scheme can be examined by considering:

- what is required to be disclosed?
- when should disclosure be made?; and
- the degree of compliance.

(a) What is required to be disclosed?
(i) Transactions to be disclosed and the problem of excessively high disclosure thresholds
What is perhaps the most serious limitation of the current federal scheme is the astonishing level of non-disclosure permitted by high disclosure thresholds. With the enactment of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) in the middle of 2006, parties and their associated entities are required only to itemise sums exceeding $10,000 instead of disclosing details of receipts of $1,500 or more. The threshold is also indexed and now stands at $10,300.25

When these changes were being debated, proponents argued that increases in the disclosure thresholds would still result in adequate transparency. Citing evidence by Liberal Party federal director, Brian Loughnane, a majority of the Joint Standing Committee on Electoral Matters argued that 88 per cent of all monies received as donations to the ALP and Liberal Party will remain disclosed if $10,000 thresholds were introduced.26

---

25 CEA s 321A.
The problem with this argument is that it relies upon the category of ‘donations’ which is a creature of the voluntary system of classification. As noted below, this system is highly problematic and does not include contributions that are reasonably considered political donations, for instance, the purchase of political access.\textsuperscript{27} A far more accurate indicator of disclosure is the percentage of declared total receipts that are itemised under the $10000 thresholds.

Table 1 summarises recent research by Sarah Miskin and Greg Barber of the Commonwealth Parliamentary Library. This research concluded that, under the previous disclosure threshold of $1500 or more, nearly three-quarters, i.e. 74.7\%, of declared total receipts were itemised over the period spanning from 1998/99 financial year to 2004/05 financial year. If the threshold of more than $10000 were applied to the same data, this average figure, however, drops to 64.1\%. Not only is this figure a far cry from Loughnane’s estimate but it also points to an unacceptable level of non-disclosure.

Table 1: Disclosure figures for major parties, 1998–9 to 2004–05

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of declared total receipts itemised under disclosure threshold of $1,500 and over</th>
<th>Percentage of declared total receipts itemised under disclosure threshold more than $10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998–99</td>
<td>77.2</td>
<td>70.6</td>
</tr>
<tr>
<td>1999–00</td>
<td>67.7</td>
<td>55.9</td>
</tr>
<tr>
<td>2000–01</td>
<td>63.0</td>
<td>51.5</td>
</tr>
<tr>
<td>2001–02</td>
<td>77.8</td>
<td>69.8</td>
</tr>
<tr>
<td>2002–03</td>
<td>69.2</td>
<td>55.8</td>
</tr>
<tr>
<td>2003–04</td>
<td>72.8</td>
<td>58.6</td>
</tr>
<tr>
<td>2004–05</td>
<td>81.9</td>
<td>70.0</td>
</tr>
<tr>
<td>Annual average</td>
<td>74.7</td>
<td>64.1</td>
</tr>
</tbody>
</table>


Moreover, it is possible that the level of non-disclosure for State branches may be even higher with an increase in the disclosure thresholds. For instance, the Greens have estimated that if the threshold were increased to $5000, 56 per cent of the money received by the NSW branch of the Liberal Party—nearly $5 million dollars—would remain undisclosed.\textsuperscript{28}

\textsuperscript{27} See text below accompanying nn 32-4.

Further, while the above table gives some indication of the level of non-disclosure if the thresholds were increased, it may under-estimate the proportion of funds that will be undisclosed. As non-disclosure is increasingly legitimised, it is likely that parties will take greater advantage of the regulatory gaps that are opened up by the changes. One gap stems from disclosure thresholds applying separately to each registered political party. In the context where the national, State and Territory branches of the major political parties are each treated as a registered political party, this means that a major party constituted by the nine branches has the cumulative benefit of nine thresholds. So it is, for example, that a company can presently donate $10 300 to each State and Territory branch of the Labor Party as well as its national branch—a total of $92 700—without the Labor Party having to reveal the identity of the donor. Having such a high threshold in practice can only mean more secret donations.

The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth) also increased the threshold at which the prohibition against anonymous donations and loans applies from amounts greater than $1 000 to sums exceeding $10 300. It is this increase that will perhaps most seriously compromise transparency. This change is less about public disclosure of donations and loans and rather about records kept by parties. It will mean that parties can legally accept larger sums without knowing details of the donor. This potentially renders the whole notion of disclosure thresholds meaningless.

Take, for instance, a situation where the Liberal Party, through its various branches accepts anonymous donations from a single company to the amount of $92 700. The company then gives an additional $9000 that is publicly disclosed. Under the proposed changes, details of the entire $101 700 should be disclosed. The ability to legally accept $92 700 in anonymous circumstances, however, potentially destroys the paper trail required to enforce such an obligation. At best, this change is an invitation to poor record keeping; at worse, it is a recipe for wholesale circumvention of the disclosure scheme.
(ii) Transactions to be disclosed and the sale of political access

The federal scheme requires parties to provide information concerning their receipts and debts in their annual returns. Questions have been raised as to whether these obligations ensure that the sale of access to politicians is sufficiently transparent. At the base of these concerns is the rather compelling view that the selling of political access, even when involving substantial fees, may not involve ‘gifts’, because access to and influence on political power is consideration for the fees.29

In addressing these concerns, it is important to understand that a party can sell political access in two ways. It might sell such access directly or it might sell it through an intermediary. Examples of the former include the Victorian ALP’s Progressive Business, which provides access to government ministers and federal ALP backbenchers in exchange for prescribed fees.30 The New South Wales Liberal Party’s Millennium Forum does the same, albeit at much higher rates.31

In such situations, each transaction involving the sale of political access should be recorded in the party’s annual statement, with the identity of the contributor as well the amount of the contribution disclosed. The only effect of the view that such contributions are not considered ‘gifts’ is that parties will probably describe these contributions not as ‘Donation’ but as ‘Other Receipt’,32 and that the payer may be confused as to whether it has to make disclosure, and may even be emboldened to claim such expenditure as a business tax deduction.33

The problem with such payments then is not so much with the adequacy of the disclosure of the identity of the contributor, it is with the description and understanding of the nature of the contribution. But this is not a problem confined to

29 For a similar analysis, see Australian Electoral Commission, Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure (2000) para. 8.4.
31 E Mychasuk and P Clark, ‘Howard and his team rented by the hour’, Sydney Morning Herald, 13 June 2001, 1.
32 For a very clear exposition of the meaning of these various categories, see Sarah Mishkin, Political finance disclosure: party and donor annual returns 2002-03 (Parliamentary Library Research Note No 49 of 2003-4).
33 This would be clearly against public policy, since outright donations to parties by companies are not deductible – only individuals can claim such income tax deductions, and then, in the interests of equality between citizens, only to a maximum of $100pa: see Income Tax Assessment Act 1997 (Cth) s
the sale of political access. As will be discussed below, it is a more general weakness of the present scheme; a weakness that needs to be addressed by broader changes.34

The second scenario involves the sale of political access through an intermediary. For instance, the ALP has on several occasions engaged Markson Sparks, a professional fund-raising firm, to organise fund-raising dinners. In such situations, contributors make their payments to the intermediary who, in turn, hands over profits of the fund-raising as a whole to the party, which is declared as a single amount from the fund-raising firm. Information as to the specific amounts of the individual transactions and the identities of the contributors is not, then, disclosed in the annual return.

Moreover, the present scheme fails to require the disclosure of such information through its other provisions. A professional fund-raiser will not be considered an ‘associated entity’ of the party concerned as it is a commercial entity transacting with the party at arms-length. That the test is whether the party controls the intermediary – i.e. it focuses on the intermediary’s formal ‘independence’. This misses the core issue, namely that disclosure law is meant to disclose equally all individual contributions to party coffers. Disclosure law is not at heart about political restrictions, and is a light form of regulation, so a test based on ‘independence’ from a party is neither here nor there.35

Further, the obligations on donors to disclose ‘gifts’ are unlikely to apply where the purchase of political access (e.g. a table at a fund-raising dinner, however extravagantly priced) is not a ‘gift’, because something unique or priceless is bought (the access, the privileged position at the event or meeting).36 The effect of this lacuna is that selling political access through professional fund-raisers becomes a method ‘to

---

30-15 (Table, item 3). Such deductions by companies would also, in effect, generate a public subsidy towards the payment.
34 See text below n 38.
35 The Commonwealth Parliament’s power to regulate federal elections includes the power to register parties set up to contest elections, and hence to regulate their finances. (The analogy is probably even closer than with the strict legislative controls on registration and accountability of industrial organisations, the constitutional authority for which flows indirectly from the conciliation and arbitration power).
36 CEA s 287. More generally, the notion of ‘inadequate consideration’ found in the statutory definition of a ‘gift’ is only intelligible when what is ‘bought’ can be meaningfully and objectively be valued. Purchase of political access, however, is resistant to such valuation.
launder a donation to a political party’. Paradoxically this occurs precisely with payments whose disclosure is vital because they raise concerns about undue influence. Further, the loopholes afforded to indirect sales of political access are likely to benefit more well off parties; parties that are in a stronger financial position to ‘outsource’ their fundraising activities or to provide donors with reassuring legal advice.

(iii) Details to be disclosed

The present scheme fails to provide adequate information relating to political contributions. Parties are not legally required to accurately categorise a receipt as a ‘donation’ or otherwise. As a consequence, the voluntary system of self-declaration is a recipe for errors and under-reporting. Moreover, a breakdown of donations received from particular types of donors, for instance, companies and trade unions, can only be extricated with a great deal of effort. This fact has learnt the hard way by academics, political researchers and activists seeking to distil such information. Further, as noted above, certain transactions that would commonly be presumed to be donations fail to be declared as such because they are not ‘gifts’. Payments at fundraisers are a key instance of such transactions.

(b) When should disclosure be made?

This question concerns the timeliness of disclosure. Such timeliness is key to the effectiveness of a funding disclosure scheme preventing corruption and undue influence. Moreover, there needs to be timely disclosure so that citizens are equipped with the relevant information prior to casting their vote.

The federal scheme does not, however, provide for timely disclosure. The AEC, in particular, has argued that ‘(t)his form of . . . reporting and release can result in delays that can discount the relevance of making the information public.’ Similarly, the dated nature of the returns means that voters do not have access to the relevant information when determining their voting choices. A vivid example is the $1 million dollar contribution made by UK Lord Michael Ashcroft to the federal Liberal Party on

37 AEC, above n 29, para 8.5.
38 Similar criticisms have been made by Ramsay et al, Political Donations by Australian Companies (2001, Melbourne University Research Report); ‘Political Donations by Australian Companies’ (2001) 29 Federal Law Review 177.
39 AEC, above n 29, para 2.10.
23 September 2004\(^{40}\) barely a fortnight before the 2004 federal election which was held on 9 October that year. Citizens casting their vote in that election were completely unaware of this contribution and only found out months later on 1 February 2005 when the AEC released the disclosure returns.

\((c)\) Lack of compliance

The legislative provisions purporting to regulate the parties’ finances will mean very little if there is inadequate compliance by the parties. Poor compliance by the parties probably represents one of the most serious challenges for Australia’s political finance laws.

There is good evidence that the parties are not treating their disclosure obligations seriously. In its funding and disclosure report following upon the 1996 federal election, the AEC stated that:

\[
\text{many parties were unprepared for detailed disclosure. . . This lack of preparation was generally a result of one or more of the following factors: a lack of appropriate administrative skills; inadequate resources being devoted to the task; and a lack of control over party units (e.g. local branches, fundraising committees, campaign committees).}\(^{41}\)
\]

More recently, the AEC’s funding and disclosure report following upon the 1998 federal election stated that:

\[
\text{a major concern remains in that political parties in particular are not always according sufficient priority to the task of disclosure.}\(^{42}\)
\]

This lack of priority, according to the AEC, produces fairly serious consequences. For instance:

\[
\text{individual party units may have receipts of tens of thousands of dollars which means that material disclosures are sometimes not being included in the returns lodged by the parties. The lack of priority can also sometimes mean that the party’s own central accounts are not always accurately reflected in the disclosure return.}\(^{43}\)
\]

---


\(^{43}\) Ibid para 6.8.
If true, these comments identify an extraordinary situation: two decades years after the disclosure scheme was introduced and nearly ten years after annual returns were introduced, some Australian political parties are flouting their disclosure obligations.

This situation cannot be excused by a lack of resources. As has been noted by the AEC, the political parties, in particular the major parties, receive substantial public funding and, hence, the public is, at the very least, entitled to expect that they comply in complete good faith with their disclosure obligations.  

2 The need for a Victorian disclosure scheme
The deficiencies of the federal funding disclosure scheme amount to a compelling case for enacting a comprehensive funding disclosure scheme at the State level. We outline below the key elements of such a disclosure scheme with many of these elements directed at addressing the gaps in the federal funding disclosure scheme including excessively high disclosure thresholds, problems relating to the sale of political access, lack of timeliness and lack of compliance.

(a) Entities and persons required to lodge disclosure returns

- Retain scope of Division 4, Part XX of CEA with disclosure obligations on:  
- candidates and groups of candidates;  
- donors to: i) candidates and groups of candidates; and ii) registered political parties;  
- registered political parties;  
- associated entities of registered political parties;  
- third parties.

- Elaborate upon definition of ‘associated entity’ by specifying that:  
- the term ‘controlled’ be defined to include the right of the party to appoint a majority of directors or trustees;

---

44 Ibid para 6.11.  
45 CEA s 304.  
46 Ibid s 305A.  
47 Ibid s 305B.  
48 Ibid s 314AB.  
49 Ibid s 314AEA.  
50 Ibid ss 314AEC-AEC.
- ‘to a significant extent’ to include the receipt by a political party of more than 50% of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and
- the term, ‘benefit’, to include the in/direct receipt by the party of favourable non-commercial terms.\(^{51}\)

(b) Details and frequency of disclosure

- Candidates and groups of candidates to lodge post-election returns detailing
  - gifts received with obligation to itemise for gifts amounting to $200 or more in the case of candidates and $1 000 or more in the case of groups of candidates;\(^{52}\)
  - electoral expenditure by candidates.\(^{53}\)

- Donors to candidates and groups of candidates to lodge post-election returns detailing gifts made with obligation to itemise for gifts amounting to $200 or more in the case of candidates and $1 000 or more in the case of groups of candidates.\(^{54}\)

- Registered political parties and associated entities to lodge quarterly returns quarterly and weekly returns during election periods that:
  - disclose details of receipts with sums to be itemised when $1500 or more contributed by a person for the benefit of a party as a whole, whether to national, State or Territory branches of that party,\(^{56}\)
  - include ‘gift’ reports that deal separately with gifts and disclose the amount and date of such gifts and also identify the status of the donor as individual, trade union, company or other entity.\(^{57}\)

---


\(^{52}\) This can draw on clauses 3-4, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).

\(^{53}\) This can be modelled upon section 309 of *CEA*.

\(^{54}\) This can draw on clause 9, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).

\(^{55}\) This can be modelled upon the *Political Parties, Elections and Referendums Act 2000* (UK) (‘PPERA’) ss 62-3.

\(^{56}\) This can draw on clause 17, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).

\(^{57}\) This can be modelled upon Schedule 6 of PPERA.
• Either all returns by registered political parties and their associated entities or those with receipts exceeding a certain amount should be accompanied by certificates from auditors\textsuperscript{58}

• Third parties to lodge annual returns if incurred political expenditure exceeding $10,000 with returns to detail:
  - political expenditure to be itemised according to broad categories;\textsuperscript{59}
  - contributions received for the purpose of such expenditure.\textsuperscript{60}

• A person/entity who is making a contribution to a registered political party, an associated entity or candidate on behalf of others be required to disclose to the political party or candidate the identities of the actual contributors and the amounts contributed.\textsuperscript{61}

• A registered political party, associated entity or candidate that reasonably suspects that a person/entity is making a contribution on behalf of others to ascertain and verify the identities of the actual contributors and the amounts contributed.\textsuperscript{62}

• Maintain broader definition of ‘gift’ as found in the section 206 of Electoral Act 2002 (Vic) which includes payments at fund-raisers.

(c) Restriction on anonymous contributions
Ban on receiving anonymous contributions $200 or more by candidates, registered political parties and associated entities.

(d) Penalties for breaches of disclosure obligations
• Include offences modelled upon section 315(1)-(2) of CEA but with:
  - higher criminal penalties;
  - administrative penalties.

\textsuperscript{58} This can be modelled upon section 209 of the Electoral Act 2002 (Vic).
\textsuperscript{59} This can be modelled upon s 314AEB CEA with obligation to itemise expenditure according to categories stipulated under the definition of ‘electoral expenditure’ in section 206 of the Electoral Act 2002 (Vic).
\textsuperscript{60} This can be modelled upon sections 314AEB-AEC of CEA.
\textsuperscript{61} This can be modelled upon section 54 of the PPERA.
• Include offences modelled upon section 315(3) and (4) of CEA but:
  - make strict liability offences, subject to a defence that the agent of the political party or person took all reasonable steps to accurately perform the party’s disclosure obligations;
  - higher criminal penalties;
  - administrative penalties.

• Persons and parties who fail to make or maintain such records as to enable them to comply with the disclosure provisions be subject to the same penalty provisions as apply to those who fail to retain such records.63

• An arrangement entered into which has the effect of reducing or negating a disclosure obligation be deemed as if it had not been entered into.64

• Failure to properly disclose a particular receipt or indebtedness should lead to forfeiture of that amount to Consolidated Revenue.65

• Party to be de-registered under Part 4 of the Electoral Act 2002 (Vic) in the event of significant non-compliance with disclosure obligations.

(e) Powers and duties of Victorian Electoral Commission in relation to the disclosure obligations

• Include powers modelled upon section 316 of CEA

• Victorian Electoral Commission (‘VEC’) to have power to require audits either by party or by referral to other statutory agencies.66

62 This can be modelled upon section 56 of the PPERA.
63 This has been recommended by the AEC: AEC, Funding and Disclosure Report - Election 1998 (2000) para 4.4.
64 This has been recommended by the AEC: AEC, Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure (2001), para 2.1.15.
65 This has been recommended by the AEC: AEC, Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure (2001) recommendations 4 and 5.
• VEC to make all returns public including publishing on internet.\textsuperscript{67}

• VEC to review operation of funding disclosure provisions annually and report to Parliament on whether provisions ensuring adequate transparency.

• VEC to be properly resourced to undertake the above functions.

3 \textit{Inherent limitations of funding disclosure schemes}

While we are in favour of improving the effectiveness of the present funding disclosure scheme in ensuring transparency of the parties’ finances, we stress that such schemes are inherently limited in their ability to prevent corruption and undue influence.

While such schemes expose details of the funding received by the parties, they do not cast light on the effect of such funding. It then becomes a matter of conjecture as to whether, in the case of graft or corruption, favourable treatment by a political party or its representative resulted from a donation. Similarly, in cases of undue influence, a bystander can only speculate as to whether political access or influence secured by a donor resulted from a donation. In other words, the effectiveness of funding disclosure schemes in preventing corruption and undue influence founders upon the problem of proving a causal link between preferential treatment and donations, which is always of course denied.\textsuperscript{68}

Moreover, in Australia, disclosure schemes have been abysmally ineffectual in preventing the entrenchment of what, arguably, is a form of undue influence: corporate political donations. The problematic nature of corporate political donations stems from the ambiguous status of commercial corporations in a capitalist

\textsuperscript{66}This can draw on clauses 39, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).

\textsuperscript{67}This can be modelled upon sections 320 of \textit{CEA}.

\textsuperscript{68}This problem of proof was, in fact, highlighted by the recent report by the Senate Select Committee on Ministerial Discretion on Migration Matters which investigated, among others, the ‘cash for visa’ allegations. After referring to its attempt to ‘explore any connection between Mr Karim Kiswani’s political donations and the minister’s exercise of his discretion’, the Committee concluded that it ‘was unable to determine the extent of community or political bias in the exercise of the powers because there was no way it could check who or what influenced the minister’s decision to intervene’. Senate Select Committee on Ministerial Discretion in Migration Matters, \textit{Report} (2004) xv-xvi.
democracy like Australia. On the one hand, the reality is that such corporations wield enormous economic power with their decisions affecting the livelihoods of most Australians. In such circumstances, they rightly have the ear of politicians. On the other hand, such corporations, from the democratic perspective, do not have a legitimate claim to representation. They do not have a direct claim to democratic representation, as they are not citizens, the ultimate bearers of political power in a representative democracy. As stated by Chief Justice Mason:

> the concept of representative government and representative democracy signifies government by the people through their representatives. ⁶⁹

More than this, such corporations, unlike democratically structured entities (i.e. most parties, community organisations and trade unions)⁷⁰ do not even have a derivative claim to political representation. This is because they are inherently undemocratic in their decision-making structure. Shareholder control must necessarily mean that power in a business is parcellled out according to the criterion of wealth. In sum, democratic principles would seem to dictate that commercial corporations should not be able to directly translate their economic power into political power through the medium of political contributions. Of note is the fact that the largest and most robust capitalist democracy, the United States, has for more than a century restricted donations by corporations to parties and candidates, precisely on the grounds of undue influence and concerns with graft and corruption.

Political contributions by commercial corporations might be prevented or discouraged by disclosure laws but only if there were a strong current of opinion that such contributions were illegitimate. In Australia, however, the reverse situation pertains with the normalisation of corporate political donations.

While such normalisation is partly attitudinal in that it is constituted by a sanguine acceptance of corporate donations, such acceptance is rooted in the funding patterns of the parties. Political donations are dominated by corporate donations. For the

---

⁶⁹ *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 137 (emphasis added).
⁷⁰ Federally registered trade unions, for one, are legally required to have democratic structures: *Workplace Relations Act 1996* (Cth) Registration and Accountability of Organisations Schedule.
financial years 1999/2000 to 2001/2002, such donations were the key source of
donations for all parties except for the Greens.71

Further, the sharply increasing amount of corporate donations flowing to the parties
means that such normalisation will become increasingly entrenched as time goes by.
In 1992/1993 financial year, the amount of corporate donations going to the ALP, the
Coalition and the Democrats stood at $6.6 million.72 For the financial years 1995/96-
1997/98, the amount of corporate donations made to these parties as well as the
Greens had increased to $29 million with an average of $9.7 million per year.73 For
the financial years 1999/2000-2001/2002, this amount had increased by more than
70% to $50.8 million with an average of $16.9 million per year.74

Apart from the problem of proof faced by the funding disclosure scheme and its
failure to prevent the normalisation of corporate political donations, the scheme is
also ineffectual in two other respects. It fails to effectively prevent the selling of
political access because parties, which engage in such sale, clearly accept that such
fund-raising practices are acceptable. This is despite the fact that such sales clearly
involve the undue and unequal influence of politicians because access to and
influence on political power is secured through the payment of money.

The funding disclosure scheme also does not discourage large donations – the very
sort of donations that carry a heightened risk of corruption and undue influence. It
could only discourage such donations if large donors and political parties fear, or are,
at the very least, anxious to avoid disclosure, because such publicity would reflect
adversely on them. All this is a pious hope given evidence that there is a
normalisation of large donations. Such normalisation is, of course, intertwined with
the normalisation of contribution from commercial corporations, who typically make
such donations without reference to their shareholders. It is also fuelled by the
practice of large corporate donors hedging their bets by donating to several parties.
For example, for the financial years 1995/96-1997/98, nine of the ten top corporate

71 These figures have been calculated from the annual returns for the financial years, 1999/2000-
2001/2002
72 Gerritsen, above n 18, 21.
73 Ramsay et al, above n 38, 23.
donors gave to both the federal branches of ALP and the Liberal Party with seven of
them donating to both these branches and the federal branch of the National Party.75

Donors do this for two reasons: (1) to have some ‘deniability’ if accused of outright
favouritism; and (2) to have ‘two bob each-way’, including not unduly upsetting
either major party grouping. But far from dulling the perception of corruption, this
reasoning merely illustrates the endemic nature of the purchase of access and
favourable treatment. Ordinary electors rightly understand that corporate donations
are not a form of political philanthropy. Ultimately it reinforces the perception, which
has corroded faith in the political system for several decades, of an oligopoly between
the parties of government and elite corporations, ‘shutting out’ alternative or new
political ideas and entities.

These inherent limitations of the funding disclosure scheme must be taken seriously.
These limitations are one of the key reasons for us considering other regulatory
methods. They do not, however, mean that the funding disclosure scheme has no role
in achieving the sort of transparency that can deter some corruption and undue
influence. Rather, such schemes should not be invested with elixir-like qualities and
expected, even if ‘loophole free’, to banish corruption and undue influence simply by
virtue of making transparent the funding of parties.

A much more modest role should be reserved for funding disclosure schemes in the
fight against corruption and undue influence.76 Such a role, while attenuated, will still
be significant. For example, funding disclosure schemes still serve to put the public,
assuming a virile media, on notice of the risk of corruption and undue influence. If
armed with such information, independent journalists (and indeed in a truly
competitive electoral system, rival parties) will vigorously ‘shine a bright light and
poke around with a long stick’,77 then there will be a useful antidote against
corruption and undue influence. In the context of lazy journalism and lax political
morality, however, the information disclosed by the disclosure scheme will by and

75 Ramsay et al, above n 38, 26.
76 Such schemes clearly have a role beyond preventing corruption and undue influence. For one, they
provide invaluable information relating to the funding of parties.
77 Keith Ewing, Trade Unions, the Labour Party and Political Funding: The next step: reform with
large be meaningless. Worse, as we have argued, the disclosure of the frequency and the amount of donations received by the parties may simply contribute to the perception that political parties are regularly trading away the public interest to monied interests. In such a situation, a funding disclosure scheme, far from shoring up the integrity of the electoral system, is corrosive of public trust in democracy.

Note that a funding disclosure scheme is still relevant in preventing corruption and undue influence because other regulatory devices will not work without it. For instance, caps on donations and expenditure limits will help prevent corruption and undue influence. Neither, however, could work without a funding disclosure scheme that ensures that party finances are sufficiently transparent.

B Disclosure of expenditure

The expenditure of Victorian political parties and candidates is largely unregulated. The *Electoral Act 2002* (Vic) merely requires a party eligible for election funding to provide a statement with an auditor’s certificate to the VEC stating that the party has spent not less that its entitlement to election funding or if less than such an entitlement, the amount specified in the statement. If a party has spent more than its entitlement to election funding, there is no obligation to specify the amount actually spent. Moreover, the VEC is under no obligation to make these statements public.

Under the *CEA*, parties are only required to disclose the total amount of their expenditure in their annual returns. There is no obligation to specify any of the transactions that make up this amount in the annual returns. Neither is there a separate obligation on parties to disclose the amounts of their campaign expenditure. While such disclosure was required as part of the original funding and disclosure scheme, this requirement was repealed in 1998. Hence, parties did not have to disclose details of their campaign expenditure for the 1998 and 2001 federal elections.

---

78 *Electoral Act 2002* (Vic) ss 208-209.
79 *CEA* s 314AB(2)(b).
80 *Electoral and Referendum Amendment Act 1998* (Cth). This requirement was also removed for the 1993 election but reinstated for 1996 election, see respectively *Commonwealth Electoral Amendment Act 1992* (Cth) and *Commonwealth Electoral Amendment Act 1995* (Cth).
The repeal of the requirement on parties to disclose their campaign expenditure stemmed from a recommendation made by the Joint Standing Committee on Electoral Matters’ in its report on the 1996 election. This recommendation was made on the basis that annual returns and returns disclosing electoral expenditure involved ‘unnecessary duplication’. 81

Whatever the merit of the argument when made, it does not hold now because only the total amount of expenditure needs to be stated in annual returns with the requirement to disclose specific transactions repealed in 1998. 82 In other words, there is no way one could determine the amount a party has spent on campaign expenditure through perusing the disclosure returns.

The argument for the disclosure of such expenditure is not simply academic. One of the founding principles of the reforms of the 1980s was a shared concern with inflation in electoral expenditure, and its tendency to corrode both electoral equality and to increase reliance on big donors. Further, as stated by the Harders inquiry into the disclosure of electoral expenditure, it is:

in the public interest that electoral expenditure should be publicly disclosed . . . (because of) the interest of the people in being informed of the cost of elections. 83

This public interest rests on various grounds. Party administration and campaign costs are being partly defrayed by the public purse through electoral funding and parliamentary entitlements. It is in the public’s interest to know how such state assistance is being used. Also, if expenditure limits – which are central to comparable common law democracies (the UK, Canada and New Zealand) – are to be reinstated as we recommend below, 84 it is necessary to reinstate disclosure of campaign expenditure for the purpose of designing and then, of course, enforcing sensible expenditure limits. Indeed, the public interest in disclosing campaign expenditure is clearly recognised in these various countries (see Table 2).

82 Electoral and Referendum Amendment Act 1998 (Cth).
84 See text below nn 104-126.
Table 2: Expenditure disclosure schemes of various countries

<table>
<thead>
<tr>
<th></th>
<th>US</th>
<th>Canada</th>
<th>New Zealand</th>
<th>UK</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditure disclosure scheme for parties</td>
<td>Annual returns</td>
<td>Post-election returns</td>
<td>Post-election returns</td>
<td>Post-election returns</td>
<td>None except for NSW, Qld and WA</td>
</tr>
</tbody>
</table>

We, therefore, recommend that political parties and associated entities be required to lodge post-election returns disclosing details of political expenditure to be itemised according to broad categories.\(^85\)

IV ELECTION FUNDING

Victorian political parties are funded by the State through a system of electoral funding. Under this system, parties and candidates polling at least 4% of the first preference votes cast in a constituency are entitled to a certain sum for each first preference vote cast in their favour.\(^86\) Parties entitled to such funding are required to submit a statement with an auditor’s certificate to the VEC stating that the party has spent not less that its entitlement to election funding or if less than such an entitlement, the amount specified in the statement.\(^87\) Apart from this requirement, this entitlement is unconditional.

Victorian Attorney-General, Rob Hulls, when introducing the Electoral Bill 2002 (Vic) which put in place the current system of election funding, said that such funding ‘reduces parties’ reliance on private funding which may come with strings attached’.\(^88\)

Table 3 attempts to test this claim. It details the total receipts of the Victorian branches of the ALP and Liberal Party for the financial years, 1999/2000-2001/2002, the last State electoral cycle where there was no election funding. This sum, while not completely composed of private funding,\(^89\) is a very good proxy for the amount of

---

\(^85\) This can be modelled upon s 314AEB CEA with obligation to itemise expenditure according to categories stipulated under the definition of ‘electoral expenditure’ in section 206 of the Electoral Act 2002 (Vic).
\(^86\) Electoral Act 2002 (Vic) s 211.
\(^87\) Electoral Act 2002 (Vic) ss 208-209.
\(^88\) Victoria, Parliamentary Debates, Legislative Assembly, 21 March 2002, 422 (Hon Rob Hulls, 2nd Reading Speech introducing Electoral Bill 2002).
\(^89\) These receipts would include election funding payments under the CEA and payments from the Australian Taxation Office.
private funds received by these parties. The table also details the total receipts of these parties for the financial years, 2002/2003-2005/2006, the first State electoral cycle where election funding was paid and subtracts from this sums the amount of State election funding. The resulting amounts also are a very good proxy for the amount of private funds received by these parties. With such an analysis, it can be said that the dependence of the ALP (Victorian Branch) declined to a limited extent and the decline was in the order of one to two million dollars. With the Liberal Party (Victorian Division), on the other hand, its dependence on private funds decreased to a larger extent to the amount of around seven million dollars.

<table>
<thead>
<tr>
<th></th>
<th>ALP (Victorian Branch)</th>
<th>Liberal Party (Victorian Division)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Election funding for 2002 State Election</td>
<td>$3,423,844.80</td>
<td>$2,507,563.30</td>
</tr>
</tbody>
</table>

The extent to which such decline can be attributed to the introduction of election funding is, of course, unclear. Other factors may have contributed to such a development, for instance, a lesser willingness of donors to contribute. Nevertheless, there is some evidence to suggest that the introduction of election funding for Victorian elections has reduced the reliance of the major parties on private funds.

That being said, this system of election funding suffers from several vices. It:

- potentially inflates campaign expenditure;
- exacerbates political inequality; and
- is not properly linked to the legitimate functions of parties.

A **Inflating campaign expenditure?**

There is good reason to suspect that election funding of political parties will campaign expenditure. In the absence of expenditure limits, and with open slather television
advertising, there is no necessary limit to campaign expenditure or, more generally, to the parties’ expenditure. The only real limit is the size of the parties’ budgets. Even their perception of campaign saturation is no longer a natural limitation, with the contemporary advent of ‘permanent campaigning’ included increased use of internal polling, direct mail, and computerised tracking of elector’s views, particularly by the major parties. Thus, if the parties’ budgets expand because of election funding, we should expect increases in campaign expenditure in the absence of other constraints like expenditure limits. As has been cogently argued, electoral funding acts as ‘an add-on that allows the competing political parties to spend more on advertising and other electoral purposes than they would otherwise choose to do’.

Furthermore, there is anecdotal evidence that broadcasters charge the parties an additional premium for political advertising. If this were true, election funding without expenditure limits merely encourages the privately owned media to indirectly seek ‘rent’ from the public purse.

There are good grounds then for suspecting that election funding without other limitations inflates campaign expenditure. At the same time, it should be conceded that the above comments remain speculative. The first State election for which election funding was paid was the 2002 election. Until details of party spending are known for the 2006 State election, it is too early to tell what impact the introduction of election funding has had on the spending of Victorian parties.

---

91 Even with robust regulation of campaign expenditure, public funding is still likely to fuel the parties’ expenditure in other areas, for example, through the employment of increased numbers of party staff members and more expensive party events like conferences.
B  *Exacerbating political inequality*

Election funding does advance political equality by boosting the finances of serious minor parties such as the Democrats, the Greens and One Nation. It also gives parties some guaranteed income, enabling stable party secretariats to be established, which is, in general, a good thing for the agenda-setting and participatory functions of parties, as it allows some focus on policy development and membership development.

But at the same time, it is clear that the present election funding rules exacerbate political inequality in several respects. Contrary to its rationale of facilitating open electoral contests, electoral funding through the 4% threshold applied at the individual candidate level clearly discriminates against parties that enjoy significant electoral support but fail to cross the threshold in every seat. This threshold explains, in part, why the Greens receive $2.73 of electoral funding per first preference vote secured in the 2001 federal election whereas all the other major parties receive more than three dollars per vote.\(^95\) In place of the 4% threshold, there should be either a lower threshold – e.g. 2% - \(^96\) and/or a threshold based on the nationwide support secured by a party.

Moreover, election funding is calculated on the basis of past electoral support. While this is probably the most equitable basis for calculating such funding, it does inevitably mean that established parties – particularly those with supportive bankers willing to extend credit on the expectation of public funding - enjoy a financial advantage over newer parties.

D  *Failure to be properly linked to the legitimate functions of parties*

What is obvious with electoral funding is that it is not explicitly linked to the legitimate functions of the parties. Much more needs to be done to ensure that the public funding of political parties is tied to their legitimate functions. Two key functions, in particular, are poorly served by public funding, their agenda-setting and participation functions. To help parties re-focus on participation, for example, some

\(^95\) See Joo-Cheong Tham and David Grove, ‘Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections’ (2004) 32 *Federal Law Review* 397, 404., Federal electoral funding is provided for votes gained in the House of Representatives and Senate so this discrepancy would also be due to the fact that the Greens do not contest many House of Representative seats.
public electoral funding could be shifted to a ‘matching dollar’ scheme, whereby donations from individual citizens up to a certain level could be matched by a public subsidy.\(^97\)

**F Recommendations**

Two recommendations follow from the immediate discussion. **We recommend that:**

- in place of the 4% threshold for electoral funding, there should be a lower threshold and/or a threshold based on the nationwide electoral support secured by a party;
- a review of election funding be conducted with the aim of ensuring that such funding assists parties in performing their legitimate functions.

**V BAN ON CONTRIBUTIONS FROM ENTITIES HAVING CONTRACTS OR TENDERING FOR CONTRACTS WITH THE VICTORIAN GOVERNMENT**

The potential for political donations to become linked to Government decisions benefiting donors was most starkly illustrated in Australia by the Queensland “Fitzgerald” Royal Commission. The Bjelke-Petersen National Party Government awarded lucrative contracts to donors to the Party’s Bjelke-Petersen Foundation.\(^98\)

There is no evidence that such corrupt processes occur under the current Victorian Government. However, the huge sums involved in government contracts for goods and services provide massive incentives for prospective suppliers to attempt to influence decisions on awarding those contracts. Single contracts can amount to many times the total donations received by a political party over the four-year life of a Parliament.

\(^96\) For instance, a 2% threshold used to apply in relation to the ACT funding and disclosure regime. This threshold, however, has been increased to 4%: *Electoral Act 1992 (ACT)* s 208.

\(^97\) The level should be low – on equality grounds well off donors should not skew the subsidy. An alternative would be to try to revivify the tax deduction regime (how many citizens know a party donation of up to $100pa is deductible?) The problem with tax deduction regimes are that they are disproportionately attractive to high-income earners who benefit most from deductibility and least of an incentive to pensioners etc.

Similarly, government decisions can lead to huge profits on matters such as land use conditions for major projects and enormous income streams arising from the awarding of exclusive or limited licences such as for the operation of gambling facilities and services. An examination of donations reported on the AEC website and contracts listed in the Victorian Government Contracts Publishing System illustrates the immensity of the risk to the integrity of the system of government.

AEC records show that many corporations providing services used or likely to be used by government and/or reliant on exclusive licences or development approvals granted by government were major contributors to the governing Liberal Party and its associated entity, the Cormack Foundation Pty Ltd, in 1998-9 (see Table 4). In so far as can be determined from published records, there appears to be a remarkable coincidence of contractors and contributors to the party of government prior to 1999.

Following the change of government, the AEC records also disclose that a significant number of corporations awarded government contracts were also important contributors to the governing Victorian ALP and its associated entity, Progressive Business Association Inc, in the period 2002-2006 (see Table 5). Such data starkly illustrates the severe risks associated with political party access to corporate money.
Table 4. Contributions in 1998-9 to the governing party and a related entity by major contributors providing services used or likely to be used by government &/or reliant on exclusive licences or development approvals granted by government

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AAPT Ltd</td>
<td>$16,000</td>
<td></td>
<td></td>
<td>$16,000</td>
</tr>
<tr>
<td>Amcor Ltd</td>
<td>$20,000</td>
<td>Amcor Ltd</td>
<td>$48,495</td>
<td>$68,495</td>
</tr>
<tr>
<td>ANZ Banking Group Ltd + ANZ Funds Management</td>
<td>$58,000</td>
<td></td>
<td></td>
<td>$58,000</td>
</tr>
<tr>
<td>Australand Holdings Ltd</td>
<td>$10,000</td>
<td></td>
<td></td>
<td>$10,000</td>
</tr>
<tr>
<td>Baulderstone Hornibrook Pty Ltd (VIC) (The) Becton Corporation</td>
<td>$15,000</td>
<td></td>
<td></td>
<td>$15,000</td>
</tr>
<tr>
<td>(The) Bongiorno Group</td>
<td>$2,500</td>
<td></td>
<td></td>
<td>$2,500</td>
</tr>
<tr>
<td>Central Equity Limited</td>
<td>$9,000</td>
<td></td>
<td></td>
<td>$9,000</td>
</tr>
<tr>
<td>Coles Myer</td>
<td>$20,460</td>
<td>Coles Myer Ltd</td>
<td>$21,183</td>
<td>$41,643</td>
</tr>
<tr>
<td>Deutsche Group Services Pty Ltd</td>
<td>$12,245</td>
<td></td>
<td></td>
<td>$12,245</td>
</tr>
<tr>
<td>Freehill Holingdale and Page (VIC)</td>
<td>$11,495</td>
<td></td>
<td></td>
<td>$11,495</td>
</tr>
<tr>
<td>Gandel Group Pty Ltd</td>
<td>$10,500</td>
<td></td>
<td></td>
<td>$10,500</td>
</tr>
<tr>
<td>Grenda Group</td>
<td>$2,000</td>
<td></td>
<td></td>
<td>$2,000</td>
</tr>
<tr>
<td>Grocon Pty Ltd</td>
<td>$10,000</td>
<td></td>
<td></td>
<td>$10,000</td>
</tr>
<tr>
<td>J B Were and Son + J B Were Capital Markets</td>
<td></td>
<td>J B Were and Son + J B Were Capital Markets</td>
<td>$1,903,461</td>
<td>$1,903,461</td>
</tr>
<tr>
<td>Were Holdings</td>
<td>$11,050</td>
<td></td>
<td></td>
<td>$11,050</td>
</tr>
<tr>
<td>John Wertheimer</td>
<td>$4,000</td>
<td></td>
<td></td>
<td>$4,000</td>
</tr>
<tr>
<td>KPMG (VIC)</td>
<td>$10,000</td>
<td></td>
<td></td>
<td>$10,000</td>
</tr>
<tr>
<td>Leighton Contractors Pty Ltd (VIC)</td>
<td>$2,000</td>
<td></td>
<td></td>
<td>$2,000</td>
</tr>
<tr>
<td>Leighton Holdings Ltd</td>
<td>$1,000</td>
<td></td>
<td></td>
<td>$1,000</td>
</tr>
<tr>
<td>-------------------------------------------------------------</td>
<td>---------------------------</td>
<td>----------------------------------</td>
<td>---------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Linfox Property Group Pty Ltd</td>
<td>$11,000</td>
<td></td>
<td>$11,000</td>
<td></td>
</tr>
<tr>
<td>Mirvac Victoria</td>
<td>$26,000</td>
<td></td>
<td>$26,000</td>
<td></td>
</tr>
<tr>
<td>Multiplex Constructions Pty Ltd</td>
<td>$10,500</td>
<td></td>
<td>$10,500</td>
<td></td>
</tr>
<tr>
<td>National Australia Bank Ltd</td>
<td></td>
<td>National Australia Bank Ltd</td>
<td>$285,141</td>
<td>$285,141</td>
</tr>
<tr>
<td>Pacific Shopping Centres Australia Pty Ltd</td>
<td>$2000</td>
<td></td>
<td>$2,000</td>
<td></td>
</tr>
<tr>
<td>Philip Morris Corporate Services Inc</td>
<td>$40,750</td>
<td></td>
<td>$40,750</td>
<td></td>
</tr>
<tr>
<td>Pratt Holdings Pty Ltd</td>
<td>$12,000</td>
<td></td>
<td>$12,000</td>
<td></td>
</tr>
<tr>
<td>Tabcorp Holdings Ltd</td>
<td>$45,000</td>
<td></td>
<td>$45,000</td>
<td></td>
</tr>
<tr>
<td>Tattersalls Holdings Pty Ltd / Estate of the Late</td>
<td>$100,000</td>
<td></td>
<td>$100,000</td>
<td></td>
</tr>
<tr>
<td>Telstra</td>
<td></td>
<td>Telstra</td>
<td>$2,380</td>
<td>$2,380</td>
</tr>
<tr>
<td>Thiess Contractors Pty Ltd (QLD)</td>
<td>$2,000</td>
<td></td>
<td>$2,000</td>
<td></td>
</tr>
<tr>
<td>Victorian Taxi Association</td>
<td>$2,000</td>
<td></td>
<td>$2,000</td>
<td></td>
</tr>
<tr>
<td>Village Roadshow Ltd</td>
<td>$2,600</td>
<td></td>
<td>$2,600</td>
<td></td>
</tr>
<tr>
<td>Westfield Capital Corporation Ltd</td>
<td>$10,000</td>
<td></td>
<td>$10,000</td>
<td></td>
</tr>
<tr>
<td>Westpac Banking Corporation</td>
<td>$23,000</td>
<td></td>
<td>$23,000</td>
<td></td>
</tr>
</tbody>
</table>

Table 5. Significant contracts and contributions in 2002-2006 to the governing party and a related entity by major donors providing services used or likely to be used by government &/or reliant on exclusive licences or development approvals granted by government

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AAPT</td>
<td>$105,735,900</td>
<td>AAPT Ltd</td>
<td>$5,000</td>
<td>AAPT</td>
<td>$20,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>Abigroup</td>
<td>$37,494,050</td>
<td>Abigroup (Southern Region) Pty Ltd</td>
<td>$4,200</td>
<td>Abigroup Contractors Pty Ltd</td>
<td>$36,470</td>
<td>$40,670</td>
</tr>
<tr>
<td>ABN Amro</td>
<td>$629,000,000</td>
<td>ABN Amro</td>
<td>$57,200</td>
<td>ABN Amro</td>
<td>$13,400</td>
<td>$70,600</td>
</tr>
<tr>
<td>Allens Arthur Robinson</td>
<td>$1,599,920,700</td>
<td>Allens Arthur Robinson</td>
<td>$11,000</td>
<td>Allens Arthur Robinson</td>
<td>$25,200</td>
<td>$36,200</td>
</tr>
<tr>
<td>Amcor</td>
<td>$1,593,000,000</td>
<td>Amcor Limited</td>
<td>$10,000</td>
<td>AMP Services</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>AMP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australand Holdings Limited</td>
<td></td>
<td>Australand</td>
<td>$40,000</td>
<td>Australand Holdings Limited</td>
<td>$1,500</td>
<td>$41,500</td>
</tr>
<tr>
<td>Australian Hotels Association</td>
<td></td>
<td>Australian Hotels Association</td>
<td>$102,500</td>
<td>Australian Hotels Association</td>
<td>$4,330</td>
<td>$106,830</td>
</tr>
<tr>
<td>B &amp; E Project Management</td>
<td></td>
<td>B &amp; E Project Management Pty Ltd</td>
<td>$2,000</td>
<td></td>
<td></td>
<td>$2,000</td>
</tr>
<tr>
<td>Baulderstone Hornibrook Pty Ltd</td>
<td>$275,000,000</td>
<td>Baulderstone Hornibrook Pty Ltd (VIC)</td>
<td>$5,500</td>
<td></td>
<td></td>
<td>$5,500</td>
</tr>
<tr>
<td>Becton Construction</td>
<td></td>
<td>Becton Construction Group</td>
<td>$54,827</td>
<td>Becton Construction Group</td>
<td>$12,300</td>
<td>$67,127</td>
</tr>
<tr>
<td>Group (The) Becton Corporation</td>
<td>$30,000,000</td>
<td>The Becton Corporation</td>
<td>$47,600</td>
<td>Becton Corporation</td>
<td>$7,050</td>
<td>$54,650</td>
</tr>
<tr>
<td>Bensons Property Group</td>
<td></td>
<td>Bensons Property Group</td>
<td>$17,200</td>
<td>Bensons Property Group</td>
<td>$73,880</td>
<td>$91,080</td>
</tr>
</tbody>
</table>

Note: includes panels from which the contractor may be selected, for services by all panel members totalling up to the value shown.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Betfair-Tse (International) Limited</td>
<td>$30,000,000</td>
<td>Betfair-Tse (International) Limited</td>
<td>$5,000</td>
<td>Bombardier Transportation Australia Pty Ltd</td>
<td>$2,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Bombardier Transportation Australia Pty Ltd</td>
<td>$30,000,000</td>
<td>Bombardier Transportation Australia Pty Ltd</td>
<td>$2,000</td>
<td>The Bongiorno Group</td>
<td>$10,500</td>
<td>$12,500</td>
</tr>
<tr>
<td>Bongiorno</td>
<td></td>
<td>Bongiorno</td>
<td>$20,000</td>
<td>Central Equity Limited</td>
<td>$96,850</td>
<td>$116,850</td>
</tr>
<tr>
<td>Central Equity Limited</td>
<td></td>
<td>Central Equity Limited</td>
<td>$52,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CityLink</td>
<td></td>
<td>Citylink Melbourne Limited</td>
<td>$36,700</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clayton Utz</td>
<td>$6,574,000</td>
<td>Clayton Utz</td>
<td>$1,500</td>
<td>Clayton Utz</td>
<td>$1,500</td>
<td>$3,000</td>
</tr>
<tr>
<td>Coca-Cola Amatil Limited</td>
<td></td>
<td>Coca-Cola Amatil Limited</td>
<td>$25,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coles Myer Finance Limited</td>
<td></td>
<td>Coles Myer Finance Limited</td>
<td>$24,585</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connex Melbourne</td>
<td>$1,593,176,000</td>
<td>Connex Melbourne</td>
<td>$30,000</td>
<td>Connex Trains</td>
<td>$3,400</td>
<td>$33,400</td>
</tr>
<tr>
<td>Corrs Chambers Westgarth</td>
<td>$2,256,000</td>
<td>Corrs Chambers Westgarth</td>
<td>$13,000</td>
<td>Corrs Chambers Westgarth</td>
<td>$34,250</td>
<td>$47,250</td>
</tr>
<tr>
<td>Credit Suisse First Boston</td>
<td></td>
<td>Credit Suisse First Boston</td>
<td>$25,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deloitte Touche Tohmatsu (NSW)</td>
<td>$19,726,634</td>
<td>Deloitte Touche Tohmatsu (NSW)</td>
<td>$42,000</td>
<td>Deloitte Touche Tohmatsu (VIC)</td>
<td>$43,650</td>
<td>$86,650</td>
</tr>
<tr>
<td>Deutsche Group Services Pty Ltd</td>
<td></td>
<td>Deutsche Group Services Pty Ltd</td>
<td>$21,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edelman Public Relations</td>
<td></td>
<td>Edelman Public Relations</td>
<td>$24,400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equiset Pty Ltd</td>
<td>$20,592,286</td>
<td>Equiset Pty Ltd</td>
<td>$100,000</td>
<td>Equiset Services</td>
<td>$5,000</td>
<td>$105,000</td>
</tr>
<tr>
<td>Escor Pty Ltd</td>
<td>$5,029,750</td>
<td>Escor Pty Ltd</td>
<td>$20,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ernst and Young (VIC)</td>
<td></td>
<td>Ernst and Young (VIC)</td>
<td>$63,700</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expert Information</td>
<td></td>
<td>Expert Information Services</td>
<td>$22,700</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-------------------------------</td>
<td>--------------------------------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Services Pty Ltd</td>
<td></td>
<td>Evans &amp; Peck Services Pty Ltd</td>
<td>$2,200</td>
<td></td>
<td>$2,200</td>
<td></td>
</tr>
<tr>
<td>Evans &amp; Peck Services Pty Ltd</td>
<td>$69,760,400</td>
<td>Gandel Group Pty Ltd</td>
<td>$67,500</td>
<td></td>
<td>$67,500</td>
<td></td>
</tr>
<tr>
<td>Gandel Group Pty Ltd</td>
<td></td>
<td>Gavin Anderson</td>
<td>$7,200</td>
<td>Gavin Anderson &amp; Company</td>
<td>$20,800</td>
<td>$28,000</td>
</tr>
<tr>
<td>Gavin Anderson &amp; Company</td>
<td>$150,000,000</td>
<td>Grenda Corporation Pty Ltd</td>
<td>$4,500</td>
<td></td>
<td>$4,500</td>
<td></td>
</tr>
<tr>
<td>Grenda Corporation Pty Ltd</td>
<td>$713,645</td>
<td>Grocon Pty Ltd</td>
<td>$15,000</td>
<td></td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>Grocon Pty Ltd</td>
<td></td>
<td>Grollo Australia Pty Ltd</td>
<td>$40,000</td>
<td>Grollo Australia Pty Ltd</td>
<td>$65,775</td>
<td>$105,775</td>
</tr>
<tr>
<td>Grollo Australia Pty Ltd</td>
<td></td>
<td>Hawker Britton</td>
<td>$11,550</td>
<td></td>
<td>$11,550</td>
<td></td>
</tr>
<tr>
<td>Hawker Britton</td>
<td></td>
<td>Holding Redlich Lawyers and Consultants</td>
<td>$35,500</td>
<td>Holding Redlich</td>
<td>$8,550</td>
<td>$44,050</td>
</tr>
<tr>
<td>Holding Redlich Lawyers and Consultants</td>
<td>$580,000</td>
<td>J B Were and Son</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J B Were and Son</td>
<td></td>
<td>John Connolly and Partners Pty Ltd</td>
<td>$12,835</td>
<td></td>
<td>$12,835</td>
<td></td>
</tr>
<tr>
<td>John Connolly and Partners Pty Ltd</td>
<td></td>
<td>John Holland Group Pty Ltd</td>
<td>$60,000</td>
<td></td>
<td>$60,000</td>
<td></td>
</tr>
<tr>
<td>John Holland Group Pty Ltd</td>
<td>$110,130,395</td>
<td>John Wertheimer</td>
<td>$0</td>
<td></td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>John Wertheimer</td>
<td>$67,000,000</td>
<td>Kellogg Brown &amp; Root Pty Ltd</td>
<td>$15,000</td>
<td></td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>Kellogg Brown &amp; Root Pty Ltd</td>
<td>$7,485,555</td>
<td>Keysborough Developments Pty Ltd</td>
<td>$7,000</td>
<td></td>
<td>$7,000</td>
<td></td>
</tr>
<tr>
<td>Keysborough Developments Pty Ltd</td>
<td></td>
<td>KPMG (VIC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KPMG (VIC)</td>
<td>$101,982,882</td>
<td>KPMG (VIC)</td>
<td></td>
<td></td>
<td></td>
<td>$3,750</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------------</td>
<td>--------------------------------------------------------</td>
<td>------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Leighton Contractors</td>
<td>$99</td>
<td>Leighton Holdings Ltd + Leighton Contractors Pty Ltd (VIC)</td>
<td>$19,000</td>
<td></td>
<td>$19,000</td>
<td></td>
</tr>
<tr>
<td>Leighton Holdings</td>
<td></td>
<td>Linfox Property Group + Linfox Australia Pty Ltd</td>
<td>$33,000</td>
<td></td>
<td>$33,000</td>
<td></td>
</tr>
<tr>
<td>MAB Corporation Pty Ltd</td>
<td></td>
<td>MAB Corporation Pty Ltd</td>
<td>$30,000</td>
<td>Linfox Australia</td>
<td>$15,000</td>
<td>$22,300</td>
</tr>
<tr>
<td>Macquarie Bank Ltd</td>
<td>$5,569,758</td>
<td>Macquarie Bank Ltd</td>
<td>$53,100</td>
<td>Macquarie Bank Limited</td>
<td>$23,750</td>
<td>$76,850</td>
</tr>
<tr>
<td>Macquarie Corporate Telecommunications</td>
<td></td>
<td>Macquarie Corporate Telecommunications</td>
<td>$15,000</td>
<td>Macquarie Corporate</td>
<td>$1,500</td>
<td>$16,500</td>
</tr>
<tr>
<td>Minter Ellison</td>
<td>$119,725,650</td>
<td>Minter Ellison</td>
<td>$12,500</td>
<td>Minter Ellison</td>
<td>$21,500</td>
<td>$34,000</td>
</tr>
<tr>
<td>Mirvac Projects Pty Ltd</td>
<td></td>
<td>Mirvac Projects Pty Ltd</td>
<td>$45,000</td>
<td></td>
<td></td>
<td>$45,000</td>
</tr>
<tr>
<td>Multiplex Constructions Pty Ltd</td>
<td></td>
<td>Multiplex Constructions Pty Ltd</td>
<td>$111,000</td>
<td></td>
<td>$31,500</td>
<td>$142,500</td>
</tr>
<tr>
<td>Optus</td>
<td>$45,700,790</td>
<td>Optus Administration</td>
<td>$4,800</td>
<td></td>
<td>$4,800</td>
<td></td>
</tr>
<tr>
<td>Pacific Shopping Centres</td>
<td></td>
<td>Pacific Shopping Centres</td>
<td>$2,500</td>
<td></td>
<td>$2,500</td>
<td></td>
</tr>
<tr>
<td>Philip Morris Limited</td>
<td></td>
<td>Philip Morris Limited</td>
<td>$10,000</td>
<td></td>
<td>3750</td>
<td>$13,750</td>
</tr>
<tr>
<td>Pratt Holdings Pty Ltd + Visy Board Pty Ltd</td>
<td></td>
<td>Pratt Holdings Pty Ltd + Visy Board Pty Ltd</td>
<td>$71,733</td>
<td>Pratt Holdings Pty Ltd + Visy Board Pty Ltd</td>
<td>$30,880</td>
<td>$102,613</td>
</tr>
<tr>
<td>PricewaterhouseCoopers</td>
<td>$17,621,361</td>
<td>Primelife Corporation Limited</td>
<td>$0</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Primelife Corporation Limited</td>
<td></td>
<td>Ramsay Health Care</td>
<td>$10,000</td>
<td></td>
<td>$0</td>
<td>$10,000</td>
</tr>
<tr>
<td>Ramsay Health Care</td>
<td>$9,024,044</td>
<td>Schiavello Manufacturing</td>
<td>$16,400</td>
<td></td>
<td></td>
<td>$16,400</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>--------------------------</td>
<td>--------------------------------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Shannon's Way</td>
<td>$155,333,769</td>
<td>$1,600</td>
<td>Shannon's Way</td>
<td>$26,180</td>
<td>$27,780</td>
<td></td>
</tr>
<tr>
<td>Stockland Constructions</td>
<td></td>
<td>$11,000</td>
<td>Stockland Constructions</td>
<td>$3,000</td>
<td>$14,500</td>
<td></td>
</tr>
<tr>
<td>Tabcorp Holdings Ltd</td>
<td></td>
<td></td>
<td>Tabcorp Holdings Ltd</td>
<td>$27,500</td>
<td>$38,500</td>
<td></td>
</tr>
<tr>
<td>Tattersall's Holdings Pty Ltd</td>
<td>$2,280,559,295</td>
<td></td>
<td>Tattersall's Holdings Pty Ltd</td>
<td>$62,750</td>
<td>$152,750</td>
<td></td>
</tr>
<tr>
<td>Telstra</td>
<td></td>
<td></td>
<td>Telstra Corporation Limited</td>
<td>$2,000</td>
<td>$3,500</td>
<td></td>
</tr>
<tr>
<td>The Pharmacy Guild of Australia (Victorian Branch)</td>
<td></td>
<td></td>
<td>The Pharmacy Guild of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thieß (includes related entities)</td>
<td>$208,314,096</td>
<td>$1,500</td>
<td>Australia</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transdev</td>
<td>$537,000,000</td>
<td>$21,500</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfield</td>
<td>$537,000,000</td>
<td>$37,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transurban Limited</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victorian Taxi Association</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Village Roadshow Limited + Village Roadshow Treasury Pty Ltd</td>
<td>$82,000</td>
<td></td>
<td>Village Roadshow Ltd</td>
<td>$6,000</td>
<td>$88,000</td>
<td></td>
</tr>
<tr>
<td>Watsons Pty Ltd</td>
<td>$14,000</td>
<td></td>
<td>Watsons Pty Ltd</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westfield Ltd</td>
<td>$20,000</td>
<td></td>
<td>Westfield Ltd</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westpac Banking Corporation</td>
<td>$73,800,000</td>
<td>$40,000</td>
<td>Westpac Banking Corporation</td>
<td>$15,770</td>
<td>$55,770</td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------</td>
<td>--------------------------------------------------------</td>
<td>------------------------------</td>
<td>--------------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Winslow Construction Pty Ltd</td>
<td>$99</td>
<td></td>
<td>$7,500</td>
<td>Winslow Construction Pty Ltd</td>
<td>$7,500</td>
<td>$7,500</td>
</tr>
</tbody>
</table>

In light of such risks, it is appropriate to briefly outline some of the reforms recently enacted by the Canadian Parliament in response to a number of scandalous abuses by Canadian political figures. The *Federal Accountability Act 2006* (Canada) makes a wide range of reforms affecting accountability of public servants, members of the Executive and political parties; its long title is “An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability”.

These reforms include strict limits on donations by individuals and a total ban on donations by corporations and trade unions. The contributions limits have been set at:

- CAD1,000 in total in any calendar year to a registered party;
- CAD1,000 in total in any calendar year to the constituency associations, nomination contestants and candidates of a registered party;
- CAD1,000 to the contestants in a leadership contest; and
- CAD1,000 in total to a candidate in an election, where that candidate is not a candidate of a registered party.

More recent legislation now before the Canadian Parliament (*Canada Elections Act (Accountability with Respect to Loans bill]*) is intended to prevent lending to political parties being used to circumvent limits on contributions.

More importantly in relation to companies with government contracts, Canadian law imposes a ban on contributions from Crown corporations and corporations that receive more than 50 per cent of their income from the federal government. In the United States, a broader ban applies with contributions from persons or companies with contracts with the federal government made completely illegal. Such regulation reflects the notion that contributions from donors that have a particularly strong interest in governmental action carries a serious danger of graft and, therefore, should be limited. We, therefore, recommend that a ban on contributions from persons or companies with government contracts be instituted based either on Canadian or United States law.

---

A separate submission addressing these issues will be made by Associate Professor Coghill.
VI CAMPAIGN EXPENDITURE LIMITS

There is evidence that campaign expenditure is increasing giving rise to an ‘arms race’ between the major parties. Table 6 details the total payments made by the Victorian branches of the ALP and the Liberal Party for the financial years 1998/1999 to 2005/2006. What it shows is that ALP spending in State election year of 2002/2003 was more than three million dollars above its spending in the previous State election year while Liberal Party spending increased during this time by more than two million dollars. While annual returns for the last State election year have yet to be released, it is likely to show an escalation in spending by the major parties.

Table 6: Total payments of ALP (Victorian Branch) and Liberal Party (Victorian Division)

<table>
<thead>
<tr>
<th>Financial year</th>
<th>ALP (Victorian Branch)</th>
<th>Liberal Party (Victorian Division)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998/1999</td>
<td>$7,271,190.00</td>
<td>$8,752,480.00</td>
</tr>
<tr>
<td>1999/2000 (State election year)</td>
<td>$6,745,974.00</td>
<td>$10,101,732.00</td>
</tr>
<tr>
<td>2000/2001</td>
<td>$3,787,929.00</td>
<td>$4,178,441.00</td>
</tr>
<tr>
<td>2001/2002</td>
<td>$6,882,110.00</td>
<td>$11,304,471.00</td>
</tr>
<tr>
<td>2002/2003 (State election year)</td>
<td>$9,862,006.00</td>
<td>$12,697,762.00</td>
</tr>
<tr>
<td>2003/2004</td>
<td>$3,131,715.00</td>
<td>$3,598,969.00</td>
</tr>
<tr>
<td>2004/2005</td>
<td>$5,166,446.00</td>
<td>$7,233,941.00</td>
</tr>
<tr>
<td>2005/2006</td>
<td>$2,681,119.34</td>
<td>$6,273,125.00</td>
</tr>
<tr>
<td>2006/2007 (election year)</td>
<td>Not yet publicly disclosed</td>
<td></td>
</tr>
</tbody>
</table>


In light of this, we believe that there is a strong case for putting in place campaign expenditure limits for two reasons: the anti-corruption rationale and the equality/level-playing field rationale.

The anti-corruption rationale103 argues that expenditure limits can perform a prophylactic function by containing increases in campaign expenditure and, therefore,

---

the need for parties to seek larger donations; donations which carry the risk of corruption and undue influence.\textsuperscript{104}

Of particular concern is that the extraordinarily high cost of political advertising in Australia generally and Victorian in particular creates a high demand for donations and sponsorship to political parties and thus in turn to corruption of democratic principles and the strength of the Victorian Parliamentary system. While these costs are not limited to television and radio advertising – indeed other forms of advertising such as direct mail now compete in cost, broadcast advertising nevertheless continues to be a major cost imposition on the electoral process.

In such a context, the prophylactic function of expenditure regulation can be performed by limits set at present levels of campaign expenditure. Such limits will clearly ensure that campaign expenditure does not increase beyond this point. Otherwise, a future increase in real campaign expenditure would lead parties, in the absence of more generous public funding, to seek more and/or larger donations to meet such burgeoning costs. This pressure will increase the risk of corruption and undue influence that comes with such donations.

Besides a prophylactic function, expenditure limits can also perform a remedial function. For instance, if present spending levels were judged to be excessive and to carry an inordinate risk of corruption and undue influence, expenditure limits could be aimed at decreasing the amount of real spending and, in turn, the risk of corruption and undue influence.

The equality/level-playing field rationale\textsuperscript{105} contends that fair electoral contests demands the imposition of constraints on campaigning costs through campaign expenditure limits.\textsuperscript{106} In its more assertive forms, this rationale states that ‘campaign expenditure buys votes’.\textsuperscript{107} Such a straightforward relationship between expenditure and votes is, however, untenable. Citizens’ voting decisions might be formed before


\textsuperscript{105} Ewing, above n 104, 499, 507.

\textsuperscript{106} Neill Committee Report, above n 105, 116-7.

\textsuperscript{107} Ibid 117.
the campaigns and remain impervious to campaign tactics. Moreover, demographic and class factors will also shape a voter’s decision. Not surprisingly then there is a complex relationship between campaign expenditure and voter support\textsuperscript{108} or, put differently, between ‘spending and electoral payoffs’.\textsuperscript{109} In Australia, for instance, the biggest spender on political broadcasting for the federal elections running from 1974 to 1996 only won half of these contests.\textsuperscript{110}

The complex relationship between campaign expenditure and voting decisions has given rise to the argument that campaign expenditure limits are unnecessary because money does not buy elections.\textsuperscript{111} At first blush, this argument is appealing in that money does not buy elections in the sense that campaign expenditure is clearly not decisive in determining electoral outcomes. But it is a very different thing to say that campaign expenditure has no or little positive impact. So long as campaign expenditure has positive, albeit limited, electoral impact (something parties implicitly recognise – if campaign expenditure didn’t work, why would they engage in it!) there is still a case for instituting such limits on the basis they promote a level playing field.\textsuperscript{112} This case is all the stronger in light of the funding inequalities among the Australian political parties.\textsuperscript{113}

There is a second, perhaps stronger, argument. Campaign expenditure may not definitively buy votes. But it does help to shape political agendas. One side or other of politics can use money to inordinately shape the landscape of political and electoral discourse. Whilst ideas need some airtime and hence money to breathe, it is unhealthy for representative democracy to allow open-slather electoral expenditure, because this can skew public policy debates.

\textsuperscript{108} See Sally Young, ‘Spot On: The Role of Political Advertising in Australia’ (2002) 37 \textit{Australian Journal of Political Science} 81, 89
\textsuperscript{110} Young, above n 109, 91.
\textsuperscript{111} Neill Committee Report, above n 105, 118.
\textsuperscript{112} Note Ewing’s comment that fairness in elections goes beyond the question of resources and embraces the content of messages: Ewing, above n 104, 499.
\textsuperscript{113} See Tham and Grove, above n 95, 403-4.
It remains to consider various arguments against expenditure limits. There is the argument that expenditure limits are ‘unenforceable’ or ‘unworkable’; arguments usually taken to be proven by Australia’s experience with expenditure limits.

Arguments based on ‘unenforceability’ or ‘unworkability’, however, typically suffer from vagueness. In Australia, such arguments as they relate to campaign expenditure limits appear to be proxy for two specific arguments. It is said that ‘(a)ny limits set would quickly become obsolete.’ Moreover, these limits are seen to overly susceptible to non-compliance.

The first argument can be quickly dispensed with. Any problem with obsolescence can be dealt with automatic indexation of limits together with periodic reviews. As to the question of non-compliance, it is useful at the outset to make some general observations concerning the challenges faced by the enforcement of party finance regulation.

All laws are vulnerable to non-compliance. Party finance regulation is no exception and the degree of compliance will depend on various factors. It will depend on the willingness of the parties to comply. This, in turn, will be shaped by their views of the legitimacy of the regulation and their self-interest in compliance. The latter cuts both ways. For example, breaching expenditure limits might secure the culpable party a competitive advantage through increased expenditure but this needs to be balanced against the risk of being found out and the resulting opprobrium. Weak laws without adequate enforcement or penalties, invite weak compliance.

The extent of compliance will also depend on methods available to the parties to evade their obligations. The effectiveness of political finance laws invariably rubs up

---

114 Neill Committee Report, above n 105, 172.
116 Neill Committee Report, above n 105, 172.
117 Before they were repealed, the Australian expenditure limits were, in fact, subject to widespread non-compliance. For example, 433 out of 656 candidates for 1977 federal elections did not file returns disclosing their expenditure: Harders Report, above n 83, 18. But this is largely because the laws were left to decay: indeed as early as 1911 the Electoral Office and the Attorney-General’s Department signalled lax compliance in a policy of not prosecuting unsuccessful candidates for failure to make a return: Patrick Brazil (ed), *Opinions of the Attorneys-General of the Commonwealth of Australia: Vol I 1901-14* (1981) 499-500.
against the ‘front organisation’ problem. This problem arises when a party sets up entities that are legally separate from the party but can still be controlled by the party. Political finance laws will be undermined if parties channel their funds and expenditure to these entities and these entities fall outside the regulatory net or are subject to less demanding obligations.

The answer to this problem is to adopt the fairly robust approach towards such ‘front organisations’ found under the CEA. The definition of ‘associated entity’ is potentially broad and the scheme treats ‘associated entities’ as if they were registered political parties by subjecting both to identical obligations.\(^{118}\)

A separate issue faced by political finance laws lies with third parties, that is, political actors which are not parties or sufficiently related to the political parties. The challenge posed by third parties is not that it provides a vehicle for parties to evade their obligations simply because third parties are, by definition, not appendages of the parties. Political finance laws that do not deal adequately with the ‘third party’ problem risk not evasion but irrelevance. For instance, if there were substantial third-party electoral activity, a regulatory framework centred upon parties and their associated entities would, in many ways, miss the mark by failing to regulate key political actors.

The above circumstances demonstrate that political finance regulation will always face an enforcement gap. But to treat these circumstances as being fatal to any proposal to regulate party finance would be to give up on such regulation. By parity of reasoning, it should not be fatal to the proposal to impose expenditure limits that it is unenforceable to some extent because of these circumstances.

The key issue is whether there is something peculiar to such limits that make it particularly vulnerable to non-compliance. It is this that is hard to make out. On its face, the regulation of political expenditure would be easier to enforce than regulation of political funding because a large proportion of such expenditure is spent on visible

\(^{118}\) The principle of subjecting ‘front organisations’ to the same obligations which apply to political parties dates back to the Joint Select Committee on Electoral Reform, above n 20, 166.
activity like political advertising and broadcasting. Further, the parties themselves, in a competitive system, have incentives to monitor each others’ spending.

Lastly, it is said that expenditure limits constitute an unjustified interference with freedom of speech. This argument must taken seriously not only because it poses a question of principle but also because, in Australia, a statute which unjustifiably infringes freedom of political communication will be unconstitutional.

As the discussion below will demonstrate, the question of principle can, in fact, be usefully approached by applying the test for constitutionality. In short, the question of principle and that of constitutional validity can be approached in the same breath.

The High Court has held that a legislative provision will be invalid if:
- it effectively burdens freedom of communication about government or political matters either in its terms, operation or effect; and
- it is not reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with representative and responsible government.

With respect to the first criterion of invalidity, expenditure limits do not, on their face, burden freedom of political communication because their immediate impact is on the spending of money. Indirectly, however, these limits do impose a tangible burden on such a freedom. This is because the lion share’s of such expenditure is spent on communicating political matters whether it be promoting a policy or criticising parties. This is especially the case with political broadcasting which has been found by the High Court to come within the scope of the protected communication.

It is important to note, however, that the weight of this burden will depend on the design of limits. The level at which the limit is pitched will be significant with the lower the level, the heavier its burden on the freedom of political communication.

---

119 Neill Committee Report, above n 105, 118.
120 The vulnerability of expenditure limits to arguments based on political freedoms also exist in the UK, see discussion of Bowman v United Kingdom (1998) 26 EHRR 1 in Ewing, above n104, 505-7.
122 See Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106.
Clearly, following the *ACTV* case, such limits would have to be high enough to allow for a reasonable amount of broadcast advertising by the party or group concerned. (It might be noted that quite low expenditure limits apply across the board in Tasmanian Upper House elections.)

Similarly, the burden will depend on whether the limit is instituted through a simple prohibition like in the UK or as a condition on public funding. If the latter is adopted, the burden on freedom of political communication will be much less as parties can still choose not to receive public funding and hence, be exempt from campaign expenditure limits.

Given that campaign expenditure limits invariably impose, to some degree, a burden on the freedom of political communication, the critical question then is whether the instituted limit is reasonably appropriate and adapted to a legitimate aim.

At the outset, it can be categorically said that expenditure limits do not necessarily fail this test of proportionality. There are clearly legitimate aims that can be invoked, namely, the anti-corruption and the equality/level-playing field rationales. Whether an expenditure limit is an unjustifiable interference with freedom of political speech and/or unconstitutional cannot be answered in advance. The answers to these questions will depend on the design of the limits.

Of note is the fact that electoral expenditure limitations apply in our chief common law comparators: the UK, Canada and New Zealand (see Table 7). Each of those countries has not only strong traditions of liberal democracy, but constitutional and court jurisprudence based on rights including liberty rights (Canada in particular with its *Charter of Rights* and the UK as part of the European system of rights.) There is no reason to presume that similarly crafted expenditure limits for Australia elections would infringe our nascent ‘implied freedom’ doctrine.

---

123 Approximately $9000 per Legislative Council candidature – this includes parties and supporters.
124 If this method were adopted, other measures would have to be implemented to bring third parties, which do not receive public funding, within regulatory regime.
125 This rationale was accepted in *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.
Table 7. Expenditure limits of selected countries

<table>
<thead>
<tr>
<th></th>
<th>Canada</th>
<th>New Zealand</th>
<th>UK</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Spending limits</strong></td>
<td>Yes and calculated according to the number of listed electors in the contested electoral district</td>
<td>Yes If contests party vote, limit of NZ$1 million plus NZ$20 000 for each electorate candidate nominated by the party</td>
<td>Yes and calculated according to seats contested</td>
<td>Only for Tasmanian Legislative Council elections</td>
</tr>
<tr>
<td></td>
<td>If does not contest the party vote, limit NZ$20 000 per nominated candidate</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Actually there is a third argument for expenditure limits, which every Australian who follows sport will understand. By analogy with the ‘salary cap’, expenditure limits on campaigns will, as we argue above in relation to the equality/level playing field rationale, help avoid unhealthy monopolisation of campaign advertising/marketing (helping ensure that ideas and policies – assuming a responsible media – are not drowned out). But also by dampening down inflation in campaigning, expenditure limits will help ensure the long-term stability of the parties and their branches themselves.

**We, therefore, recommend that:**

- campaign expenditure limits be supported in principle; and
- the design of such limits be further investigated, particularly with reference to recent reforms in the UK, Canada and New Zealand.
VII GOVERNMENT ADVERTISING

Advertising by Government departments and agencies continues to raise critical comment in a number of Australian jurisdictions. During the period preceding the 2006 election campaign there was comment on some advertising and at the Commonwealth level there has been severe criticisms of a number of campaigns, most especially over advertising of new polices before the necessary legislation had been introduced into the Parliament. The latter practice is clearly offensive to parliamentary democracy as it presumptive of the deliberations of the Parliament.

The Victorian Auditor General has investigated and reported on government advertising in 1996 (Marketing Government Services Are you being served?) and 2006 (Government advertising). The 2006 Report commented on the 2002 Government Guidelines. The more recent 2006 guidelines provide:

Guidelines for Victorian Government Advertising and Communications

Basic Principles
These Guidelines operate from the understanding that advertising and communications have a clear role to assist in the efficient and effective pursuit of public policy goals.

Government generally has the obligation to inform Victorians about their rights, duties, responsibilities and entitlements.

Government also has the responsibility of ensuring equity, fairness, appropriateness and accountability in all of its communications with Victorians.

These guidelines represent basic principles that should be observed by all Government agencies in the planning, development and ongoing management of Government communications.

Objectives of Government communications
Public funds may be used for Government communications in the pursuit of any of the following objectives:

- To maximise compliance with the law
- To achieve awareness of a new or amended law
- To raise awareness of a planned or impending initiative
- To ensure public safety, personal security or encourage responsible behaviour
- To assist in the preservation of order in the event of a crisis or emergency
- To promote awareness of rights, responsibilities, duties or entitlements
- To encourage usage of or familiarity with Government products or services
- To report on performance in relation to Government undertakings
• To encourage social cohesion, civic pride, community spirit, tolerance or assist in the achievement of a widely supported public policy outcome

**Avoiding misuse of public funds**
Public funds should not be used for Government communications where:

• The party in Government is mentioned by name
• A reasonable person could misinterpret the message as being on behalf of a political party or other grouping
• A political party or other grouping is being disparaged or held up to ridicule
• Members of the Government are named, depicted or otherwise promoted in a manner that a reasonable person would regard as excessive or gratuitous
• The method or medium of communication is manifestly excessive or extravagant in relation to the objective being pursued
• There is no clear line of accountability, appropriate audit procedures or suitable purchasing process for the communication process
• The Government is in caretaker mode, unless the purpose of communication is related purely to achieving compliance with the law, ensuring public safety, personal security, encouraging responsible behaviour or the preservation of order in a crisis or emergency

**Maintenance of high standards**
Government communications should comply with the highest standards of fairness, equity, probity and public responsibility, taking particular care to ensure:

• Compliance with all relevant state and federal privacy, electoral, broadcasting and media laws throughout every stage of the development, production and dissemination of the message
• Victorian Government advertisements in any electronic medium are clearly distinguishable from party-political messages by the addition of the following tag at the end of all commercials: "Authorised by the Victorian Government, Melbourne". The name of every person who speaks in the commercial must also be included;
• Accuracy and objectivity in the presentation of all facts, statistics, comparisons and other arguments, ensuring that the source of all data is indicated or that a means for identifying the data source is provided within the communication
• Compliance with all relevant Government purchasing policies
• Sensitivity to cultural needs and issues when communicating with people from diverse ethnic or religious backgrounds
• Awareness of the communication requirements of groups of people who possess a disability
• The maintenance of the highest standards of decency and good taste in the portrayal of gender and sexuality
• Respect for all people, regardless of social standing, employment status, educational attainment, age, gender or any other attribute
• Access by groups who might otherwise be disadvantaged or disenfranchised by means of location, language or economic factors
• Communications are produced and disseminated by the most appropriate and environmentally responsible means taking into account the characteristics, location and size of the intended target audience
• All statements, claims and arguments included in the communication are able to be substantiated
• The target audience has a convenient means of contacting the originating Government agency so that complaints, questions, comments or requests for further information may be dealt with promptly
• Compliance with all quotas, targets and policies which may be set by Government in respect of communications with groups such as culturally and linguistically diverse, rural and regional and other communities of interest or special need.

The Auditor-General’s report proposed:

BETTER PRACTICE: CRITERIA FOR GOVERNMENT-FUNDED PUBLICITY ACTIVITIES


Purpose

These criteria comprise basic principles for the planning, development and ongoing management of all forms of government-funded publicity activities.

Fundamental principles covering government-funded publicity activities

The fundamental principles governing the use of public funds for government publicity are that:

• all members of the public have equal rights to access comprehensive information about government policies, programs and services which affect their rights and entitlements, except where access to this information would represent a breach of government responsibilities
• governments may legitimately use public funds for information programs or education campaigns to explain government policies, programs or services, and to inform members of the public of their obligations, rights and entitlements
• fulfilling its publicity and communications role may give an incumbent government a political advantage. However, government-funded publicity should never have the purpose or effect of providing party-political advantage.

The following matters should be considered in determining whether government-funded publicity activities are party-political and, therefore, unacceptable:

• the appropriateness of the content being communicated or publicised
• the overall presentation of the material, including the tone, style and emphasis
• the nature and style of any accompanying material
• the context surrounding the communications or publicity activity.

Subject to the principles, the objective of government-funded publicity activities can be to:

• inform the public of new, existing or proposed government policies or policy revisions
• provide information on government programs or services or revisions to programs or services to which the public are entitled to access
• inform the public of their rights, entitlements or obligations under the law
• inform the public that the state is a good place to live, study, work or invest
• influence social behaviour, in the public interest.

Consistent with the principles, it is not appropriate for government-funded publicity activities to:

• foster a positive impression of the political party in government

• foster a negative impression of someone or something critical of the government

• “put the record straight”, or “provide balance to an argument”

• influence public opinion on a matter that at the time is known to be controversial in the state.

Government-funded publicity activities should be:

Relevant to government policies

• The subject matter should be directly related to the government’s responsibilities.

• Material produced should be in response to an identified information need.

• The identified need should be sufficiently defined to enable effective targeting of publicity activities, and to mitigate the risk of developing messages that influence opinion about the political party in government, rather than informing the community.

Explanatory and objective, fair and factual

• Information should be based on accurate, verifiable facts.

• Facts presented must be relevant to the identified need for the communications or publicity.

• The information and its presentation should be unbiased.

• When making a comparison, the material should clearly represent to the recipient the situation within which the comparison is made and it should state explicitly the nature of the comparison.

• The recipient of the material should always be able to distinguish clearly and easily between facts on the one hand, and comment, opinion and analysis on the other.

• When dealing with matters on which a decision has not yet been made, for example a policy proposal, the material given should include both the benefits and the impacts.

• Material should not form a rebuttal to the arguments of others.

• Pre-existing policies, products, services and activities should not be presented as new ones.

• Information or material should be representative and inclusive and accommodate persons from other cultures and religions, or with special needs.

Not liable to interpretation as party-political

• Material should not intentionally promote, or be perceived as promoting, programs or initiatives of the government in a politically partisan or biased manner, which places party advantage above the public interest.

• Material should not be designed to influence public support for a political party, a candidate for election or a member of parliament. For example, material should not be personalised or directed toward self or party-political image building, whether explicit or implied.

• Material should not attack or scorn, for its own sake, the views, policies or actions of others, such as the policies and opinions of opposition parties or groups. It should avoid political slogans and be presented in unbiased and objective language.
Distribution of unsolicited material should be carefully controlled. As a general rule, publicity touching on politically controversial issues should not reach members of the public unsolicited, except where the information communicated clearly and directly affects their interests.

Official pronouncements and explanations of government policy should not refer to the name of a political party or to the government using the Premier’s name.

Other publicity material about government activities should not include reference to the political party and should minimise reference to the government using the Premier’s name.

Government websites/advertising should not link to the websites of political parties.

In any agreed quarantine period leading up to an election (e.g. in the period after the writs for an election have been issued):

- the ministers/members of the government of the day should not be directly associated with a product or service provided by an agency of government
- any material issued by agencies must have a clear commercial or essential community information purpose and be necessary at that particular time
- agencies should avoid active distribution of material if it promotes the government’s policies or emphasises the achievements of the government or a minister
- no agency should publish or distribute pamphlets, brochures, leaflets or reports that advocate or criticise the election policies of any political party. Publications should not promote any politician or political candidate, including ministers.
- All material must comply with relevant broadcasting, media and electoral laws.

Produced and distributed in an efficient, effective and economic way

- The cost of the publicity activities should be justifiable in terms of achieving the identified objective(s) for the least practicable expense (i.e. efficient and effective).
- The method, medium or volume of the publicity activities should not be excessive in relation to the objective being pursued.
- There should be a clear audit trail regarding decision-making, costs and campaign strategy and outcomes.
- Existing purchasing/procurement policies and procedures for the tendering and commissioning of services and the employment of consultants must be followed.
- Material should not be used or reproduced by members of political parties in support of party-political activities without appropriate approval.

Funded from an appropriate source with adequate accountability

- To improve accountability, agencies should:
  - set a budget for publicity activities
  - identify in their annual report the original budget, revisions to the budget and actual expenditure for government-funded publicity activities. Variations should be explained.
- Secretaries of departments and chief executive officers should be held accountable for publicity activities of their agency, including ensuring that guidelines are followed.
- Publicity activities relating to members of parliament, their electorate offices or election campaigns must not be funded from agency resources.
It will be noted that there are some significant differences between the Government’s Guidelines and the Auditor-General’s Better Practice. Whether or not these differences were significant in relation to the extent and nature of government advertising in the period prior to the formal commencement of the 2006 General Elections is unknown to the authors. However, as a matter of principle, the Better Practice identified by the Auditor-General, as an Independent Officer of the Parliament, should prevail.

**We, therefore, recommend that** the *Better Practice: Criteria for Government-Funded Publicity Activities*, proposed by the Auditor General, should apply to all government advertising.
VIII  LOBBYING\textsuperscript{126}

Major issues of accountability are associated with lobbying activity. Lobbying has frequently involved unethical or illegal activity which corrupts democratic principles. The dramatic revelations in Western Australia in early 2007 and the prosecution of US Congressional lobbyist Jack Abramoff for corrupt activities are merely the most recent expressions of a long-standing problem. Premier John Cain banned contact with lobbyists, but such an absolute ban also has its problems and denies some opportunities for ethical activities. A major effort to reduce the corrupting potential of lobbying is long overdue in Victoria.

A  \textit{Categorization of approaches}

In the context of the lobbying of government ministers, regulation may be regarded as ‘the control, direction or adjustment of a private or quasi-private activity for the purpose of some public benefit.’\textsuperscript{127}

Greenwood and Thomas suggest that schemes to ‘regulate interest representation or the interaction between private interests and government’ focus on the activities of legislators and/or lobbyists. Attempts to regulate lobbying may be composed of such elements as:

- measures directly aimed at the regulation of lobbying;
- indirect regulations and unwritten rules that resemble regulations;
- schemes aimed at governing the relationship between legislators and outside interests;
- measures based around the regulation of interest groups or their role within governmental structures; and
- co-existing self-regulatory arrangements.\textsuperscript{128}

B  \textit{Advantages and disadvantages of regulating lobbying}

The Sixth Report of the House of Commons Committee on Standards in Public Life provides the following useful summary of selected arguments in favour and against the regulation of lobbying activities:\textsuperscript{129}

\textsuperscript{126} Acknowledgement: Genevieve Grant LL.B. BA assisted with research for this section.
\textsuperscript{128}
1  **Advantages**

- The lobbying registration schemes currently in existence in the United States and Canada provide a great deal of information to the public about the contacts between governments and those trying to gain access to and influence with them. This makes it more difficult for unfair privileged access to be granted, and reduces the opportunity for secret deals between Government and outside interests.

- Compulsory regulation could force lobbyists who do not take part in voluntary schemes to comply with good practice. At present, it is not known how many people and organisations undertake lobbying; if they were required to register and adhere to a code, their activities would be opened to scrutiny, and they could be made to account for them.

- Formality could bring consistency in regulation, which might be preferable to the present wide range of voluntary registers and codes. It could be said to be unfair on lobbyists, and a distortion of the market for these services, that those who abide by the rules of their professional bodies are disadvantaged by the lack of controls on others who undertake the same sort of work.

2  **Disadvantages**

- International experience suggests that the credibility of compulsory regulation schemes is often diminished by amendments to the rules. An elaborate, frequently-changing system could produce unfairness, evasion and bureaucratic complexity. Perhaps partly as a result, such schemes have little impact on the general public - in many countries few people, apart from journalists and lobbyists themselves in search of market information, consult the registers.

- Defining lobbying, and distinguishing it from the simple provision of information, can be difficult. Regulations on lobbyists would have to be framed in such a way as to avoid the unnecessary recording of hundreds of harmless and informal conversations and contacts.

---

128 Ibid.
• Defining a 'lobbyist' would also be difficult, given the number of professions now engaged in such work: lawyers, accountants, management consultants and others are employed by companies, charities and other bodies, both 'in-house' and on a fee basis, to undertake lobbying work, or work that could be described as lobbying. There is also the danger, as noted in the First Report, that the creation of a category of 'registered' or 'licensed' lobbyists would give the impression that access to government could only be gained through the employment of that kind of company.

• The self-regulation schemes operated by lobbyists' organisations are already moving towards greater convergence. An important motivation behind this consolidation of standards may be considered to be the need to increase public confidence in their services, which is likely to be at least as effective as any imposed scheme of registration.

3 Comment
The above disadvantages seem to arise from regulating lobbyists rather than the activity of lobbying. This could be overcome by regulating of lobbying activity (as opposed to lobbyists). Similarly, an emphasis on disclosure and transparency would reduce the reliance on intervention by a regulator.

C Developments in Australia
1 Federal level
The last concerted attempt to regulate lobbying in the federal sphere occurred in December 1983. The Hawke Government, regarding regulation as inappropriate, established a scheme for the registration of lobbyists and guidelines for ministerial interaction with them.

A general register for lobbyists and their clients was introduced on 1 March 1984 by executive decision rather than legislation. It defined a lobbyist as ‘a person or company who for financial, or other advantage, represents a client in dealings with
Commonwealth Government Ministers or officials.’ Warhurst suggests that ‘[t]his not only excluded the majority of lobbying and lobbyists (broadly defined), including employees of corporations and national associations, but also excluded some potential targets, such as backbench Members of Parliament, who were certainly targets in the political lobbying of the day - and still are.’

A lobbyist wishing to gain access to ministers and officials and who was engaged in a ‘registrable activity’ was obliged to provide, on a confidential basis, details of the particular client and a brief description of the activity to be undertaken.’

‘Registrable activity was listed as:
(a) to make or amend legislation;
(b) to make or change government guidelines or policies;
(c) to influence government decisions on awarding contracts or tenders, or appointments to public office; and
(d) on other significant matters determined from time to time by the Minister for Administrative Services.

The following activities were deemed to be not registrable and therefore not covered by the scheme:
• inquiries about publicly available information;
• requests for clarification of, or rulings pursuant to, current legislation, guidelines or policies;
• applications for decisions within existing legislation, guidelines or policies other than those applying to the award of contracts or tenders.

In addition the scheme did not apply to:
• appearances before boards, commissions, inquiries, tribunals or other bodies that allow representation on behalf of clients; and
• representations made directly by representative organisations, peak councils, professional associations and community interest groups.
Fitzgerald suggests that ‘[t]he last exemption made a mockery of the scheme by drawing a distinction between paid lobbyists and representative organisations, peak councils, professional associations and community interest groups, all of which are in the business of lobbying either to advance or protect their interests.’

The Hawke Government’s scheme did not establish a public register, but rather there were two confidential registers for lobbyists:

- the Special Register for lobbyists whose clients were foreign governments or their agencies; and
- the General Register for other lobbyists and their clients.

Access to the information contained in the registers was to be available only to ‘ministers and government officials who have a need to know’. Consequently, key among the failings of this system is that it allowed information about the name of the lobbyist, the client and the activity undertaken to remain confidential.

In ‘Locating the Target: Regulating Lobbying in Australia’, John Warhurst\textsuperscript{130} notes that the Lobbyists Registration Scheme was disbanded in 1996 with little opposition and promises to revise the Guide on Key Elements of Ministerial Responsibility to address relations between government and lobbyists. Warhurst suggests that ‘[t]he scheme had always been largely a public relations exercise, to meet a short-term political need. It had no teeth and had served no useful purpose… [It] is seen not so much as a failure as a non-event.’

In \textit{Lobbying in Australia},\textsuperscript{131} Julian Fitzgerald proposes the reintroduction of a registration system. His key recommendations are that the revised scheme:

- maintain the previous definition of ‘registrable activity’;
- widen the list of included groups to include the formerly excluded representative councils, professional organisations and community groups,\textsuperscript{132} as well as management consultants and law and accountancy firms;\textsuperscript{133}

be publicly accessible; and
• convey the links between the lobbyists and their clients (‘It is nonsense to suggest that some commercial-in-confidence provision should prevent the public listing of paid lobbyists and their clients, or that their lawyers’ privacy is being invaded by being listed on a public document’).

Fitzgerald resolves that ‘ultimately, the question facing each system is not limiting the access of lobbyists to the government and the legislature, but controlling their influence on policy outcomes, so that the concept of the ‘public good’ is not undermined in favour of the vested interest.’

2 New South Wales

The August 2005 Independent Commission Against Corruption Report on investigation into planning decisions relating to the Orange Grove Centre cited a number of difficulties with respect to attempts to regulate lobbying, namely:

• It can be difficult for a regulatory regime to definitively capture all lobbying activities and types of lobbyists. For example, information gathering and dissemination cannot always be clearly distinguished from lobbying activities. Furthermore, people like Mr Ryan may not be captured by a legislative definition of a lobbyist.

• Requiring organisations to register as lobbyists could create a barrier to free and open access to decision-makers. A registration requirement could disadvantage small community organisations who may find the provision of the required information a burden. This could also discourage smaller organisations from participating in an important democratic process.

132 Fitzgerald notes that in 1983 these groups were excluded on the basis that their interests are publicly known. Fitzgerald suggests that though this may be true in a general sense, when these groups are engaged in lobbying activities ‘their interests are very particular.’
The registration of professional lobbyists could create a divide between registered lobbyists, and volunteer groups and members of the public who are not registered. This could result in a perceived advantage for registered lobbyists as a result of their official status. It could also create a situation where members of the public feel obliged to engage paid lobbyists.

In this context, the Commission encouraged the revision of the NSW Ministerial Code of Conduct to provide better guidance for ministers in their dealings with lobbyists. It concluded that measures to place the onus on public officials to ensure that lobbying is undertaken in accordance with appropriate practices are more desirable than a regulatory regime.

In January 2006 the NSW Premier responded by issuing *Guidelines for Ministers, ministerial staff and public officials in dealing with lobbyists* and the *Protocol for the management of allegations made to Ministers, ministerial staff or public officials during lobbying*.134

### D International Developments

#### 1 Scotland

Recent developments in Scotland are detailed in the ICAC Orange Grove Report. In 2002 the Scottish Parliament’s Standards Committee published a report on lobbying after an 18-month inquiry. The report proposed that the existing lobbying provisions in the Code of Conduct for Members of the Scottish Parliament be enhanced. The existing provisions of the Code focused on statutory lobbying regulations. These included a prohibition on Members advocating any matter on behalf of a person by specified means or urging other members to do so in return for any remuneration. The Committee proposed that the Code be enhanced to include additional practical advice for Members in dealing with lobbyists:

- do ensure that you are aware of which organisation, company etc, if any, a lobbyist may be representing

---

• do not do or say anything that could be viewed as granting a lobbyist preferential treatment

• always consider whether meeting one group making representations on a particular issue should be balanced by offering other groups a similar opportunity to make representations

• when meeting with lobbyists consider having an assistant or researcher present who can make a note of the meeting

• do not do anything which breaches or may be interpreted as breaching the Code of Conduct and, in particular, be careful about accepting hospitality and gifts from lobbyists

• consider keeping a record of all contact with lobbyists.

Ultimately, proposals were drawn up that sought to regulate lobbying by requiring the registration of ‘commercial lobbyists’.

2 Canada

The Canadian approach has encompassed a code of conduct, a complaints procedure and the statutory registration of commercial lobbyists.

The Canadian Federal Government instigated the Canadian Lobbyists Registration Act (1988) in response to the growth of the industry and sleaze allegations against Government Ministers. Statutory regulation was considered as necessary and with this the consequent methods of enforcement and control/arbitration.

Amendments to the Act were made in 1993 to improve and clarify certain aspects. In recognition of the areas of lobbying activity in Canada, lobbyists are required to register their activities whether they be in the legislature, executive or bureaucracy. The Register initially drew a distinction between who should register; professional lobby firms were required to give more detailed information on their clients and finances than those lobbyists representing corporations and interest groups. This two-tier distinction had to be subsequently amended in 1993 as it proved too difficult to draw.
The Canadian Lobbyists Registration Act 1988 required the registration of lobbyists paid to lobby federal public officials in relation to legislative proposals, policies or programmes, and the awarding of grants. The Act covered three types of lobbyists:

- consultant lobbyists who are paid to lobby for clients;
- in-house lobbyists (corporate): These are employees who, as a significant part of their duties, lobby for an employer that carries out commercial activities for financial gain;
- in-house lobbyists (organisations): These are not-for-profit organisations in which one or more employees lobby, and the collective time devoted to lobbying amounts to the equivalent of a significant part of one employee’s duties.

The registration process requires the disclosure of certain types of information, including:

- information about the organisation on whose behalf lobbyists are lobbying;
- specific information about the lobbying subject matter;
- the name of each department or other government institution lobbied;
- the communication techniques used by the lobbyists.

The register is available to the public. Lobbyists who fail to comply with registration requirements have been investigated and fined.

Further developments occurred in the wake of the 2006 Canadian election. On December 12, 2006 the Federal Accountability Act received Royal Assent. Among the changes that this act makes to Federal statutes are several relating to the Lobbyists Registration Act (LRA). These changes include, but are not limited to, the following:

- Changing the name of the LRA to the Lobbying Act.
- Establishment of a new Commissioner of Lobbying as an independent Agent of Parliament, with expanded investigative powers to ensure compliance with the Lobbying Act as well as an education mandate.
- Introduction of the concept of a Designated Public Office Holder (DPOH). These individuals are certain senior officials, Ministers and others.
• Monthly disclosure by lobbyists of certain lobbying activity details and the obligation for DPOH to verify this information if requested by the Commissioner of Lobbying.

• A prohibition for DPOH on registering and lobbying the Government of Canada for five years after leaving office.

• A ban on any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activity. As a complementary measure, the Government will amend the Financial Administration Act to require that all government contracts and agreements contain provisions that prohibit the payment of contingency fees to a lobbyist specific to that transaction.

• Extension from 2 to 10 years of the period during which possible infractions or violations under the Lobbying Act and the Lobbyists’ Code of Conduct can be investigated and prosecution can be initiated.

• Doubling of the monetary penalties for lobbyists who are found guilty of breaching the requirements of the Lobbying Act.

The recent reforms have not proved foolproof, however. As recently as 8 March 2007 Canadian media reported on the story of ‘a well-connected Conservative lawyer who represented the prime minister and other Tory MPs while lobbying the government’.135

As at that date the reformed Act had been passed but the government was in the midst public consultations prior to drawing the regulations to provide the detail of the restrictive lobbying provisions.

3 The European Parliament
Currently all lobbyists dealing with the European Parliament must sign a Register, detailing name and address of firm; client details and subject of interest. They must also sign an accompanying Code of Conduct in order to be issued with a pass. The Register is administered by the College of Quaestors and is open to the public. Note should also be made of the attention given, in drawing up this legislation, to the registration of MEPs’ Assistants and secretarial staff.
The European Transparency Initiative was launched in November 2005. One major topic for consideration was the need for a more structured framework for the activities of interest representatives (lobbyists).

The Transparency Initiative was the subject of a Green Paper (Commission of the European Communities - Green Paper: European Transparency Initiative, May 2006). The Green Paper canvassed a voluntary system of registration, with incentives to register. It proposed that

> the Commission could develop and manage a web-based voluntary registration system for all interest groups and lobbyists who wish to be consulted on EU initiatives. Groups and lobbyists which register certain information about themselves would be given an opportunity to indicate their specific interests and, in return, would be alerted to consultations in those specific areas. Consequently, only lobbyists who have registered would be automatically alerted by the Commission. To qualify for entry in the register, applicants would need to provide information on who they represent, what their mission is and how they are funded. Applicants would also have to subscribe to a code of conduct… which would be enforced credibly and transparently. From the point of view of the general public, the register would provide a general overview, open for public scrutiny, of groups engaged in lobbying the Commission.

The Green Paper made further proposals as follows:

> the Commission considers that greater transparency in lobbying is necessary. It considers that a credible system would consist of:
> - a voluntary registration system, run by the Commission, with clear incentives for lobbyists to register. The incentives would include automatic alerts of consultations on issues of known interest to the lobbyists;
> - a common code of conduct for all lobbyists, or at least common minimum requirements. The code should be developed by the lobbying profession itself, possibly consolidating and improving the existing codes; and
> - a system of monitoring and sanctions to be applied in case of incorrect registration and/or breach of the code of conduct. The Commission does not consider that a compulsory registration system would be an appropriate option. A tighter system of self-regulation would appear more appropriate. However, after a certain period, a review should be conducted to examine whether self regulation has worked. If not, consideration could be given to a system of compulsory measures – a compulsory code of conduct plus compulsory registration.

4 **European Union**

Following consultation as part of the EU’s European Transparency Initiative, the European Commission has determined to produce a code of conduct and establish a voluntary public register for interest representatives working to influence decision

---

316 Submissions closed in August 2006 and a report is currently being prepared.
making in EU institutions. It is suggested that the initiatives for groups to register are reputational and ‘the recognition of their contributions as representative of their specific sectors and the possibility to receive alerts for consultations in their areas of interest.’

The voluntary register will be implemented from Spring 2008 until Spring 2009, after which time it will be evaluated. Criticism of this approach includes the weakness of the incentives and the effect that trialling a voluntary system will simply delay for some years the achievement of effective EU lobbying transparency.

5 United Kingdom

The First Report of the House of Commons Committee on Standards in Public Life considered the need to introduce a statutory scheme of regulation for lobbyists. This avenue was ultimately rejected however, on the grounds that to do so ‘would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access.’

A ban on paid advocacy was introduced, along with new rules on registration of Members’ interests. These developments occurred against a purported background of increasing self-regulation by lobbying firms.

The issue of lobbying was further considered in the Sixth Report of the House of Commons Committee on Standards in Public Life, published in January 2000. The Sixth Report recommended that Ministers and members of the civil service ‘should be required to keep a record of contacts with outside interests. A code to improve the transparency of government consultation exercises is also recommended.’ The issue of the public availability of the records kept was deferred to the outcome of the progress of the Freedom of Information Bill then before Parliament. Consideration

137 EU’s European Transparency Initiative: see http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm
138 First Report, p36.
139 Note that the ‘Lobbygate’ affair of 1998 had occurred in the intervening period.
was also given to the role of All Party Groups,\textsuperscript{140} and it was recommended that a public register of these groups be established.

Ultimately however the Sixth Report maintained the previous stance that ‘there should be no statutory or compulsory system for the regulation of lobbyists’, commenting that ‘the current strengthening of self-regulation by lobbyists is to be welcomed.’\textsuperscript{141} The Report elaborated that:

In the opinion of the Committee, the weight of evidence is against regulation by means of a compulsory register and code of conduct. Lobbyist regulation schemes can help make government more open and accountable, providing useful information about influences on decision-making. But we believe that the amount of information that could be made available through a register would not be proportionate to the extra burden on all concerned of establishing and administering the system. There is also still force in this Committee’s original objection, that such a system could give the erroneous impression that only ‘registered lobbyists’ offer an effective and proper route to MPs and Ministers.

Following is the outline of a suggested scheme which attempts to build on the experience of other jurisdictions and taking advantage of contemporary information technology. It is centred upon each activity of lobbying, rather than upon issue/s. Registration would be through a publicly accessible website. NB All organisations that engage in lobbying could be expected to have access to the internet.

Whilst we acknowledge that there are also concerns about direct lobbying by entities, our current proposals are limited to paid lobbying on behalf of clients.

**We, therefore, recommend that** legislation be enacted comprising the following elements:

- The Act provide for on online registration of each instance of lobbying activity (‘registrable activity’, as prescribed – see below) via a website of every agency/minister being lobbied. (The use of an online registration system would avoid cumbersome, voluminous and inefficient paperwork);

\textsuperscript{140} All-Party Groups are ‘composed of backbench members of the House of Commons, or of both Houses of Parliament, some of which receive financial support from outside organisations. More common is indirect support in the form of administrative and secretarial assistance. There are also a small number of arrangements whereby Parliamentary groups are staffed by a lobbyist or public relations consultant, apparently funded by a commercial or other supporter.’ These groups were further considered in the Ninth Report of House of Commons Committee on Standards and Privileges, May 2006.

\textsuperscript{141} Sixth Report, p89 (see http://www.archive.official-documents.co.uk/document/cm45/4557/chap7.pdf).
• Registrable activity (i.e., lobbying) be defined as representing the interests of a third party to the Government including to any Minister, Parliamentary Secretary, private office staff, departmental staff or other staff within a portfolio, for reward in payment or kind.

• The website be public and accessible “live” i.e. registrations appear when submitted.

• Ministers (& all private office, departmental and agency staff under their authority) be required to refuse to receive lobbying that has not been registered, but that, having regard to informal opportunities that arise for lobbying, the scheme allow retrospective registration in such cases (excluding appointments e.g. informal lobbying) within a period of grace of 7 days.

• Ministers be responsible for monitoring the register to assure that all lobbying activities related to the portfolio are registered and that any person failing to register lobbying is refused further access for lobbying for one year, except with the approval of the Premier.

• Ministers be responsible for ensuring that a record of the content of lobbying activities is kept for each instance of lobbying related to the portfolio.

• It be an offence for an individual or an organisation to issue a charge (tax invoice or cash in hand!) for any unregistered lobbying activity.

• It be an offence for the client (or related party) of a lobbyist to make a payment to any person who conducts unregistered lobbying on behalf of that client.

• Each registration of lobbying activity require:
  1. The lobbyist’s business name and Australian Business Number (ABN).
  2. The names of the owners, partners or major shareholders of any corporation/partnerships/etc of lobbyists, as applicable.
  3. Dates and details of positions held within any political party or as an elected representative.
4. Contracts with any government department or other entity previously awarded to the client or related entity on whose behalf the lobbying is intended or has occurred.

5. Any payments made to the governing political party or coalition, whether by way of donation or other fund raising.

6. The contact details: name, phone number, email address. These contact details would be used for communication with the lobbyist.

7. Website address (if any).

8. The names and positions of all persons employed, contracted or otherwise engaged by the lobbyist to carry out the lobbying activities.

9. The names of client/s for whom the lobbying activity is to be (or was) conducted, whether providing paid or unpaid services as a lobbyist.

10. The name of the Minister or other person/s lobbied and the subject matter/s of the lobbying activity.

- Persons conducting lobbying activities have the right to voluntary registration to facilitate automated entry of details, especially 1-6 above.

- This scheme be subject to annual audit and report by the Auditor-General.
Disclosure of funding

We recommend that a comprehensive funding disclosure scheme be enacted at the State level comprising the following elements:

(a) Entities and persons required to lodge disclosure returns

- Retain scope of Division 4, Part XX of CEA with disclosure obligations on:
  - candidates and groups of candidates;  
  - donors to: i) candidates and groups of candidates; and ii) registered political parties;  
  - registered political parties;  
  - associated entities of registered political parties;  
  - third parties.

- Elaborate upon definition of ‘associated entity’ by specifying that:
  - the term ‘controlled’ be defined to include the right of the party to appoint a majority of directors or trustees;  
  - ‘to a significant extent’ to include the receipt by a political party of more than 50% of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and  
  - the term, ‘benefit’, to include the in/direct receipt by the party of favourable non-commercial terms.

(b) Details and frequency of disclosure

- Candidates and groups of candidates to lodge post-election returns detailing:
  - gifts received with obligation to itemise for gifts amounting to $200 or more in the case of candidates and $1 000 or more in the case of groups of candidates;
- electoral expenditure by candidates.\textsuperscript{150}

\begin{itemize}
  \item Donors to candidates and groups of candidates to lodge post-election returns detailing gifts made with obligation to itemise for gifts amounting to $200 or more in the case of candidates and $1,000 or more in the case of groups of candidates.\textsuperscript{151}

  \item Registered political parties and associated entities to lodge quarterly returns quarterly and weekly returns during election periods that:\textsuperscript{152}

  - disclose details of receipts with sums to be itemised when $1,500 or more contributed by a person for the benefit of a party as a whole, whether to national, State or Territory branches of that party;\textsuperscript{153}

  - include ‘gift’ reports that deal separately with gifts and disclose the amount and date of such gifts and also identify the status of the donor as individual, trade union, company or other entity.\textsuperscript{154}

  \item Either all returns by registered political parties and their associated entities or those with receipts exceeding a certain amount should be accompanied by certificates from auditors\textsuperscript{155}

  \item Third parties to lodge annual returns if incurred political expenditure exceeding $10,000 with returns to detail:

  - political expenditure to be itemised according to broad categories;\textsuperscript{156}

  - contributions received for the purpose of such expenditure.\textsuperscript{157}
\end{itemize}

\textsuperscript{150} This can be modelled upon section 309 of \textit{CEA}.
\textsuperscript{151} This can draw on clause 9, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).
\textsuperscript{152} This can be modelled upon the \textit{Political Parties, Elections and Referendums Act 2000} (UK) (‘\textit{PPERA}’) ss 62-3.
\textsuperscript{153} This can draw on clause 17, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).
\textsuperscript{154} This can be modelled upon Schedule 6 of \textit{PPERA}.
\textsuperscript{155} This can be modelled upon section 209 of the \textit{Electoral Act 2002} (Vic).
\textsuperscript{156} This can be modelled upon s 314AEB \textit{CEA} with obligation to itemise expenditure according to categories stipulated under the definition of ‘electoral expenditure’ in section 206 of the \textit{Electoral Act 2002} (Vic).
\textsuperscript{157} This can be modelled upon sections 314AEB-AEC of \textit{CEA}. 
• A person/entity who is making a *contribution* to a registered political party, an associated entity or candidate on behalf of others be required to disclose to the political party or candidate the identities of the actual contributors and the amounts contributed.\(^{158}\)

• A registered political party, associated entity or candidate that reasonably suspects that a person/entity is making a *contribution* on behalf of others to ascertain and verify the identities of the actual contributors and the amounts contributed.\(^{159}\)

• Maintain broader definition of ‘gift’ as found in the section 206 of *Electoral Act 2002* (Vic) which includes payments at fund-raisers.

\(c\)  *Restriction on anonymous contributions*

Ban on receiving anonymous contributions $200 or more by candidates, registered political parties and associated entities.

\(d\)  *Penalties for breaches of disclosure obligations*

• Include offences modelled upon section 315(1)-(2) of *CEA* but with:
  - higher criminal penalties;
  - administrative penalties.

• Include offences modelled upon section 315(3) and (4) of *CEA* but:
  - make strict liability offences, subject to a defence that the agent of the political party or person took all reasonable steps to accurately perform the party’s disclosure obligations;
  - higher criminal penalties;
  - administrative penalties.

• Persons and parties who fail to make or maintain such records as to enable them to comply with the disclosure provisions be subject to the same penalty provisions as apply to those who fail to retain such records\(^{160}\)

\(^{158}\) This can be modelled upon section 54 of the PPERA.

\(^{159}\) This can be modelled upon section 56 of the PPERA.
An arrangement entered into which has the effect of reducing or negating a disclosure obligation be deemed as if it had not been entered into.\textsuperscript{161}

Failure to properly disclose a particular receipt or indebtedness should lead to forfeiture of that amount to Consolidated Revenue.\textsuperscript{162}

Party to be de-registered under Part 4 of the Electoral Act 2002 (Vic) in the event of significant non-compliance with disclosure obligations.

\textit{(e) Powers and duties of Victorian Electoral Commission in relation to the disclosure obligations}

- Include powers modelled upon section 316 of CEA

- Victorian Electoral Commission (‘VEC’) to have power to require audits either by party or by referral to other statutory agencies\textsuperscript{163}

- VEC to make all returns public including publishing on internet.\textsuperscript{164}

\textit{Disclosure of expenditure}

We recommend that political parties and associated entities be required to lodge post-election returns disclosing details of political expenditure to be itemised according to broad categories.\textsuperscript{165}

\textit{Public funding}

We recommend that:

\textsuperscript{160} This has been recommended by the AEC: AEC, \textit{Funding and Disclosure Report - Election 1998} (2000) para 4.4.

\textsuperscript{161} This has been recommended by the AEC: AEC, \textit{Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure} (2001), para 2.1.15.

\textsuperscript{162} This has been recommended by the AEC: AEC, \textit{Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure} (2001) recommendations 4 and 5.

\textsuperscript{163} This can draw on clauses 39, Schedule 3 of Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 (Cth).

\textsuperscript{164} This can be modelled upon sections 320 of CEA.

\textsuperscript{165} This can be modelled upon s 314AEB CEA with obligation to itemise expenditure according to categories stipulated under the definition of ‘electoral expenditure’ in section 206 of the Electoral Act 2002 (Vic).
in place of the 4% threshold for electoral funding, there should be a lower threshold and/or a threshold based on the nationwide electoral support secured by a party; and

a review of electoral funding and parliamentary entitlements be conducted with the aim of ensuring that public funding effectively promotes political equality; prevents corruption and undue influence and assists parties in performing their legitimate functions.

Ban on contributions from entities having contracts or tendering for contracts with the Victorian Government

We recommend that a ban on contributions from persons or companies with government contracts be instituted based either on Canadian or United States law.

Campaign expenditure limits

We recommend that:

- campaign expenditure limits be supported in principle; and
- the design of such limits be further investigated, particularly with reference to recent reforms in the UK, Canada and New Zealand.

Government Advertising

We recommend that The Better Practice: Criteria for Government-Funded Publicity Activities, proposed by the Auditor General, should apply to all government advertising.

Lobbying

We recommend that legislation be enacted comprising the following elements:

- The Act provide for online registration of each instance of lobbying activity (‘registrable activity’, as prescribed – see below) via a website of every agency/minister being lobbied. (The use of an online registration system would avoid cumbersome, voluminous and inefficient paperwork);

- Registrable activity (i.e., lobbying) be defined as representing the interests of a third party to the Government including to any Minister, Parliamentary Secretary,
private office staff, departmental staff or other staff within a portfolio, for reward in payment or kind.

- The website be public and accessible “live” i.e. registrations appear when submitted.

- Ministers (& all private office, departmental and agency staff under their authority) be required to refuse to receive lobbying that has not been registered, but that, having regard to informal opportunities that arise for lobbying, the scheme allow retrospective registration in such cases (excluding appointments e.g. informal lobbying) within a period of grace of 7 days.

- Ministers be responsible for monitoring the register to assure that all lobbying activities related to the portfolio are registered and that any person failing to register lobbying is refused further access for lobbying for one year, except with the approval of the Premier.

- Ministers be responsible for ensuring that a record of the content of lobbying activities is kept for each instance of lobbying related to the portfolio.

- It be an offence for an individual or an organisation to issue a charge (tax invoice or cash in hand!) for any unregistered lobbying activity.

- It be an offence for the client (or related party) of a lobbyist to make a payment to any person who conducts unregistered lobbying on behalf of that client.

- Each registration of lobbying activity require:
  
  11. The lobbyist’s business name and Australian Business Number (ABN).

  12. The names of the owners, partners or major shareholders of any corporation/partnerships/etc of lobbyists, as applicable.

  13. Dates and details of positions held within any political party or as an elected representative.

  14. Contracts with any government department or other entity previously awarded to the client or related entity on whose behalf the lobbying is intended or has occurred.
15. Any payments made to the governing political party or coalition, whether by way of donation or other fund raising.

16. The contact details: name, phone number, email address. These contact details would be used for communication with the lobbyist.

17. Website address (if any).

18. The names and positions of all persons employed, contracted or otherwise engaged by the lobbyist to carry out the lobbying activities.

19. The names of client/s for whom the lobbying activity is to be (or was) conducted, whether providing paid or unpaid services as a lobbyist.

20. The name of the Minister or other person/s lobbied and the subject matter/s of the lobbying activity.

- Persons conducting lobbying activities have the right to voluntary registration to facilitate automated entry of details, especially 1-6 above.

- This scheme be subject to annual audit and report by the Auditor-General.