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Monday 23 February 2008

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

BY E-MAIL: electoralreformsecretariat@pmc.gov.au

RE: Submission to the Electoral Reform Green Paper: Donations, Funding and Expenditure

Dear Secretariat,

The 2011 Residents' Association Inc. (2011RA) is pleased to submit this submission to the Green Paper on Electoral Reform: Donations, Funding and Expenditure.

The members of the 2011 Residents Association (2011RA) include former local government Councillors, candidates for state and local government elections, and persons involved in federal, state and local election campaigns (including fund-raising). This submission has been informed by their experiences.

We attach the details of our submission in Appendix A, which we have structured by firstly giving an Executive Summary, then focussing on two key elements of the Green Paper – the public funding regime and the disclosure of political donations, and then by responding to the questions posed at the conclusion of the Green Paper.

Please do not hesitate to contact me should you wish to discuss any matter in this discussion.

Kind regards

Dr Sacha Blumen

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Appendix A

Executive Summary

Key elements underpinning a reporting regime of donations at all levels of government (including federal) must:

- seek to ensure that the community is able to ascertain whether donations to political parties, candidates and governments have influenced or led to distortions of government or political party policy; and
- make publically available information

Individual donations to political parties and candidates above \$250 should be publically reported. Donations should be regularly reported, as should political expenditure.

We consider that there is a perception in the community that (the potential for) large donations distorts political party and government decision-making, both at a general level and for specific instances. Given this, we support a cap being introduced on donations from individuals and businesses to political parties and candidates. An appropriate level for a cap may be a total of \$5000-\$10 000 per year in total across all federal political parties and candidates.

Public funding should be no greater than election expenses, and there should be no threshold for political parties and candidates to be eligible to receive public funding. Public funding should be capped per election so that no party receives more public funding than they would be eligible for if they received 10 per cent of the formal primary vote across Australia.

High-level observations on the regime for disclosing political donations

Many people are concerned that donations to political parties and candidates distort political and government decision-making in democracies, including Australia. There are at least two dimensions to this – firstly, that political parties and candidates will tend to act in a way that benefits their own (re-)election, which may include acting in a way beneficial to persons the party or candidate hopes will vote in their favour. This may also include acting in a way beneficial to persons the party or candidate hopes will financially support that party or candidate. This type of behaviour may be an integral part of a mass-franchise democratic system of government, and may overlap appropriate actions taken by political parties to promote the interests of groups or ideas. It may be difficult to determine the extent to which this first type of systemic distortion of policy decisions occurs as it is difficult to determine a “baseline” of policy decisions (if one exists) against which actual policy decisions are made.

A second dimension is that (potential) donations from particular individuals, groups of people or businesses may lead to government decisions favourable to those individuals, groups of people or businesses that would not occur in the absence of those (potential) donations. It is arguable that many people are more concerned about this second type of distortion than the first type, although the first type may have had a much greater impact on Australia than the second. Concern in Australia has often focussed on whether donations to major political parties from developers, the alcohol and gambling industries to local, state and federal political parties and candidates has distorted individual government decisions or government decisions affecting the regulatory regimes for these industries.

Instances of this second type of distortion are much more easily established than of the first type, as the baseline of decision-making is more readily known.

There are two concerning aspects to the second type: whether government decisions do benefit political donors to the detriment of the interests of the whole community (suboptimal decision-making), and the perception that this could be true or potentially being true corrodes trust in the political process and government decision-making.

There are numerous examples in Australian history of political donations leading to favourable or suspicions of favourable decision-making by local and state governments. In recognition of this, various jurisdictions have established institutions (such as the Independent Commission against Corruption (ICAC) in NSW) and regulatory regimes to attempt to reduce the likelihood of this occurring.

One such regulatory regime is the Model Code of Conduct for NSW local government.¹ This Code of Conduct requires, in part, Councillors to meet certain standards of conduct, including with respect to conflicts of interests. However, the media has alleged that the existence of the Code has not prevented Councillors from breaching it. The Sydney Morning Herald records one City of Sydney Councillor as apparently breaching a requirement in 2008 that they absent themselves from a discussion and vote in relation to the purchase by the City of Sydney of property from a person who made donations in excess of \$1000 to the election campaigns of that Councillor.² The Councillor was reported as saying they sought advice and acted in accordance with that advice and that they believed their actions to be appropriate.

Another regulatory regime is a strict regime for reporting political donations to and expenditure by candidates for NSW local and state government. This regime attempts to publicise these donations and expenditures. This regime does not work perfectly – the media has reported that incomplete returns have been submitted on behalf of some candidates (who have stated that their electoral returns were prepared by other people who were responsible for the incompleteness). These incomplete returns failed to record totals of more than one hundred thousand dollars until amended.³ Submitting an incomplete return reflects either disorganisation, incompetence, being wilfully misleading or an inefficient reporting regime.

The incompleteness of NSW electoral returns indicates that the proper functioning of the reporting regime depends on whether the individuals with responsibilities in it fulfil their obligations – it cannot be assumed that a perfectly designed regime will properly function – and there need to be appropriate incentives on participants to ensure that it does properly function. This may include penalties for incomplete returns.

Political donations may also lead to perceptions of influence on decision-making. It appears that many members of the community may consider that there may be unhealthy relationships between donors to NSW political parties and the NSW state

¹ NSW Department of Local Government, *The Model Code of Conduct for Local Councils in NSW*, June 2008, available from http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model_Code_of_Conduct_June_2008.pdf

² Sydney Morning Herald, *Moore's donor vote broke council code*, 1 December 2008, can be downloaded from <http://www.smh.com.au/news/national/moores-donor-vote-broke-council-code/2008/11/30/1227979844980.html>.

³ Sydney Morning Herald, *Labor MP files to mention \$50,000*, 14 April 2008, available from <http://www.smh.com.au/news/national/labor-mp-fails-to-mention-50000/2008/04/13/1208024990562.html>, Illawarra Mercury, *Hay may face action over \$110,000 'error'*, 13 May 2008, available from <http://www.illawarramercury.com.au/news/local/news/general/hay-may-face-action-over-110000-error/768791.aspx>; Sydney Morning Herald, *Labor election funds tangled in development*, 25 August 2008, available from <http://www.smh.com.au/news/national/labor-election-funds-tangled-in-development/2008/08/24/1219516262700.html?page=fullpage#contentSwap1>.

government leading to suboptimal government decision-making. An example of this is a perception that the Australian Hotels Association (AHA) and its members may benefit from NSW government decisions while the AHA donates money to NSW political parties.

Many residents of Kings Cross and the nearby neighbourhood of Potts Point, Elizabeth Bay, Rushcutters Bay, Woolloomooloo and Darlinghurst consider that 24 hour trading of licensed premises have had a dramatic and negative impact on the residential amenity of the area. The impacts on residential amenity have been detailed by local residents in numerous and ongoing letters to the NSW government and the City of Sydney in lobbying and Development Application processes.

2011 understands that the NSW government introduced 24 hour trading of licensed premises in the late 1980s. Many locals consider that the NSW government is failing to address the problems in the Kings Cross area caused by the introduction of 24 hour trading of licensed premises and their concentration in Kings Cross. Some locals have suggested that the failure of the NSW government to properly address the impacts of 24 hour trading of licensed premises in Kings Cross may be related to any relationship between the AHA and NSW political parties.

In addition, some local residents consider that the AHA seeks, on an ongoing basis, to influence NSW government alcohol policy to reduce restrictions on the sale of alcohol, including reducing a trial of restrictions the NSW government recently imposed in a trial on the 48 licensed premises in NSW with the greatest number of alcohol-related violence incidents. These local residents consider that the AHA influences NSW government policy to an extent far greater than it should, and that this may be related to the donations it has made to NSW political parties.

It should be noted that the details of the relationship between the AHA and the NSW government are publically unclear. However, the perception that there may be a relationship distorting government policy is of itself concerning.

It should be noted that making donations to political parties and obtaining access to key members of political parties and governments, e.g. at dinners with Ministers, may also influence policy. This may happen as a result of particular views being expressed to policy-makers more than would otherwise occur. This type of policy distortion would reflect a proper decision-making process within a distorted environment. In these cases, the environment is the matter that should be examined.

These examples reveal the importance of a number of matters relating to reporting of political donations. We consider that key elements underpinning any such reporting regime at all levels of government (including federal) must:

- seek to ensure that the community is able to ascertain whether donations to political parties, candidates and governments have influenced or led to distortions of government or political party policy; and
- make publically available information about political donations.

It is likely that other submissions to the Green Paper will detail many ways in which political donations can presently be made opaquely to candidates and political parties. We make a few observations about this below.

Donations can be made to central offices of political parties and then to the candidates for individual campaigns. At least one major political party did this in the

2007 NSW state election, and apparently even donors may have thought they were donating to individual campaigns rather than to the central office campaign fund.⁴

It is known that candidates for major political parties may raise funds for their local campaign or for a central office fund. Central office funds may then be used to fund local campaigns. The reporting on these expenditures may then record that the local campaign expended very little while in fact a great deal of money was spent on the local campaign. 2011RA understands that this may have happened in the 2007 federal election.

High-level observations on the public funding regime

2011RA has focussed more on the donation disclosure regime than on the public funding regime. However, we have some comments on the latter.

Public funding has not stopped political parties seeking private donations. Public funding for political parties and candidates has assisted small parties and independent candidates, and has essentially inflated the amounts that major parties can spend on political advertising.

We support minor parties and independent candidates being able to participate in the political process and consider that reducing the amount of public funding for major parties is likely to essentially only reduce the amount of funds they have available for campaigning.

We consider that public funding could be used to support the administrative operation of a political party but that its primary purpose should be to assist with payments of election-related costs by political parties and candidates.

On this basis, public funding should be no greater than election expenses, and there should be no threshold for political parties and candidates to be eligible to receive public funding (there is currently a 4 per cent threshold of the formal primary vote). Public funding should be capped per election so that no party receives more public funding than they would be eligible for if they received 10 per cent of the formal primary vote across Australia.

Responses to questions in the Green Paper

In responding to the questions in the Green Paper we use “parties” to refer to “political parties and candidates”.

1. Public funding and support:

Are the original principles which underpin the current public funding regime still relevant and appropriate?

The values referred to in section 2.1 of the Green Paper are generally appropriate. It is, however, unclear what the values “fairness” and “viability” mean. Firstly, the meaning of “fairness” is unclear unless it is referring to the legal access of parties and candidates to resources. The current public funding regime for parties is that

⁴ Sydney Morning Herald, *Coming clean on donations can be a ‘dirty’ business*, 26 August 2008, available from <http://www.smh.com.au/news/opinion/coming-clean-on-donations-can-be-a-dirty-business/2008/08/25/1219516363439.html?page=fullpage#contentSwap1>

parties are essentially funded proportional to the number of votes cast for that party in the previous election. It is unclear whether this is a valid proxy for “fairness”.

Secondly, election campaigns generally cost a great deal of money for parties and candidates. While sufficient financial support is a necessary condition for parties to be able to contribute to the political process, this does not mean that a public funding regime should ensure all that parties should receive sufficient financial support in order to contribute to the political process. A value of “viability” may imply that all parties should receive sufficient public funding unless the state is to choose which political parties and candidates to support. Such choices require a decision-making framework to decide which parties to support (and one in which particular parties are not specifically named). The current decision-making framework is that parties receiving more than a set percentage of formal first preference votes receive public funding. It is unclear whether this is an appropriate framework.

There needs to be further reflection on the meaning of these two values and their appropriateness. Having said this, 2011RA considers that it would be valuable for parties contributing to the political process to have sufficient financial resources to contribute. How this is to be achieved is a different question.

Is the current public funding regime meeting its aims and objectives effectively and efficiently? Is it effectively facilitating fair elections, ensuring adequate transparency and assisting political parties to contribute to the political process?

The major political parties are somewhat benefitted by the current funding regime, however, it appears that they would be capable of functioning and contributing to the political process in the absence of public funding. Small political parties and candidates may benefit more so from public funding than major political parties, especially if public funding forms a larger proportion of their funding than it does for major political parties.

Has public funding of political parties fuelled the increase in the costs of campaign expenditure? Would the withdrawal of public funding reduce campaign spending pressures?

It is difficult to determine whether public funding has fuelled the increase in the costs of campaign expenditure. At face value, it is clear that public funding results in political parties having access to more funding than they would otherwise which they can use to fund campaigns.

It is unclear whether a withdrawal of public funding would reduce campaign spending pressures, however, it also appears that withdrawing public funding would reduce the quantum of potential campaign funding. That is, reducing funding on the supply side is likely to reduce the total pool of funds available for campaigning, everything else being equal.

Should political parties and/or candidates receive public funding and support for elections?

2011RA considers that this question could be answered by looking at the incentives on parties resulting from removing public funding and the practical impacts of doing this.

Removing public funding is likely to lead to greater incentives on all political parties to fundraise. The incentives would be greater for parties for whom public funding is a larger part of their income.

It is likely that removing public funding would have more of a detrimental impact on minor parties and independents than on major parties. 2011RA supports minor parties and independents being able to participate in the political process, and considers that public funding can be useful to help defray the costs of campaigning. We support public funding for parties and candidates.

We also observe that it can cost a good deal of money to run a political party and that the “viability” value may support public funding to assist the administration of a party.

At what level should such support be set? Why?

This is a difficult question to answer. Firstly, 2011RA considers that no party should receive more public funding with respect to a campaign than they spent on the campaign. Without this upper limit, their public funding is a payment for “success” in an election, where success is linked to the number of votes cast for that party. Parties could make a “profit” out of an election by receiving more public funding than they spent on their campaign. It has been reported one candidate in the 2004 Qld Senate election received approximately \$200 000 in public funding in relation to that election while her campaign cost \$35 000.⁵

Secondly, public funding appears to have essentially inflated the funds that major parties can use in campaigning, while it has assisted minor parties and independent candidates participating in the political process. As mentioned previously, we support minor parties and independent candidates being able to participate in the political process and reducing the level of public funding would be detrimental for the political process.

On this basis we support retaining at least the current amount of support for minor parties and independent candidates. However, as detailed in this submission, reducing the amount of public funding for major parties is likely to at most reduce the funds they can use for campaigning. The concern about the spiral of campaign spending suggests that one way to reduce campaign spending is to cap the amount of public funding to individual parties. This could be achieved by capping the public funding to any one political party to the amount they would be entitled to if they won 10 per cent of the formal first preference vote across Australia.

What should public funding comprise (financial assistance, material assistance, subsidised advertising etc)?

All public funding should be in the form of financial assistance as this provides much more flexibility in the use of the assistance than other types of public funding.

Should public funding be limited to specific expenses by political parties and candidates? If so, what should those expenses be?

If public funding is used to assist the administration of a party, there should be few limits on this other than that it is used for that purpose. Public funding used to help cover campaign expenditure should also be used for that purpose, but specifying the types of expenses reduces the flexibility of the funding for an uncertain benefit.

At which point or points in the electoral cycle should public funding be provided? Should the formula for the entitlement to public funding (a threshold of 4 per cent of the formal first vote) be changed? If so, why and what are the alternatives?

⁵ ABC news online, *Hanson’s electoral windfall sparks concern*, 8 August 2005, <http://www.abc.net.au/news/newsitems/200508/s1432813.htm>.

Any payments to cover campaign expenditure should be made as soon as possible after an election in order to better align it with the expenditure. However, as the public funding should be no more than a party's expenditure, the timing of public funding would depend on the party submitting appropriate expenditure returns, unless there is an initial payment soon after an election with balancing payments to or from the party when the expenditure is finalised.

It is unclear whether there was a good policy reason for introducing a 4 per cent threshold of the formal primary vote for a party to receive public funding. We consider that there should be no threshold for public funding. This is because a substantial purpose of public funding is to facilitate the participation of participants in the political process by providing some payments to cover the campaign expenditure. A threshold applies an ex-post test to this as it only allows payments if a party or candidate receives enough votes. There does not appear to be any reason that a party or candidate receiving a small number of votes should be excluded from these payments.

In addition, candidates can be elected without meeting the 4 per cent threshold (although this is uncommon). It is unclear why these candidates should be excluded from potentially receiving public funding even though they can be elected.

Does the current formula for calculating public funding achieve an equitable outcome between major parties, minor parties and candidates? If not, what are the options for resolving the situation?

This is an unclear question as a key word in the first question is "equitable" which has different meanings for different people.

Does the current public funding formula provide recipients with an adequate and equitable amount of public funding? What is the case for increasing or decreasing the amount of public funding?

The first question is unclear as "adequate" and "equitable" have a range of meanings. We have addressed the second question previously.

Are the current eligibility requirements for public funding adequate to facilitate political equality of access, including for new participants in the political process? Are there alternative approaches which provide fairer access?

New participants in the political process are provided with public funding on an ex-post basis. This is different to the effective combination of ex-ante and ex-post arrangements for current participants in the political process.

The current arrangements for public funding are such that new parties and candidates are unable to obtain funding on the basis of their predicted public funding until after an election. They are unable to use the public funding from the first election they contest to fund their first election campaign. This effectively benefits existing participants relative to new parties and candidates, although the extent to which this excludes the participation of new potential parties and candidates is unclear.

In addition, the 4 per cent threshold creates some uncertainty about whether new participants will receive post-election payments they may be able to use to reimburse their expenses. Removing this threshold would give greater certainty to new participants that they will receive some payments that they can use to cover their expenses.

Designing schemes to facilitate the participation of new parties and candidates is problematic as they may involve the state making decisions about the extent to which

they should be supported. However, it may be possible to create schemes that involve the state making no such decisions. This could include pre-election financial support for all new parties contesting an election to a pre-determined level on the basis that such support would be repaid after the election. However, schemes such as these may create incentives leading to unexpected and gaming behaviours with uncertain financial outcomes for the state, and could simply replicate potential non-state schemes that would provide the same support.

2. Private funding:

Should political parties and/or candidates or other participants in the political process be able to receive private funding and support?

Yes. Individuals and organisation should be able to support and make donations to candidates or groups if they wish to. Banning private donations and support would result in public funding being the only source of funding and support, which has a number of negative potential impacts: it may prevent the emergence of new candidates and parties as they would be unable to source funds needed for elections, it would be difficult to create an appropriate and defensible system of public funding,⁶ and it could make political parties and candidates dependent on and effectively responsible to the state.

In addition, ensuring compliance and enforcement of banning private donations and support would be impossible. Even if all private financial and support-in-kind for political parties and candidates was prevented, ensuring the same applied to other participants in the political process would rely on defining their activities and “political” in nature or otherwise, which is subjective.

Furthermore, preventing private donations and support to political parties and candidates would be likely to lead to other organisations or individuals (not political parties and candidates) using their private funds to indirectly support political parties and candidates.

In a liberal society and political system, individuals and organisations should have the ability to allocate their financial and other resources to support political parties, candidates and other participants in the political system as they see fit, with only minimal necessary restrictions from the state. These restrictions may include those designed to limit distorted decision-making by governments and political parties.

If so, what restrictions, if any, should be placed on the kind of funding or support they can receive?

This is a question about whether any classes and/or amounts of private funding or support are inappropriate. It is difficult to determine which, if any, classes of private funding/support are “inappropriate” and thus should be prohibited. It should be noted that banning particular classes of funding/support is different to determining whether any particular donation is inappropriate in light of the activities of a government or political party (e.g. developer donations in local government) and the latter should not be the focus of any legislative ban.

It should be noted that introducing restrictions on classes of funding/support may lead to individuals seeking to subvert these restrictions, and that the restrictions may have limited effectiveness.

⁶ For example, having public funding dependent on the result of the previous election may dampen the likelihood of new political parties and independent candidates contesting the next election.

We consider there should be minimal bans on the classes of donations/support provided there is adequate disclosure of donations. It is reasonable, however, that there be prohibitions on funding/support from the proceeds of crime.

On the question of whether donations/support from overseas organisations and individuals should be restricted, we note that it may be easy to work around any such restrictions using Australian contacts. Donations from overseas should be treated the same as donations from Australian individuals and businesses.

Should electoral laws ban private funding from specified categories of persons and organisations? If so, which categories of persons or organisations?

We do not see a reason that there should be bans on private funding from specified categories of person and organisations.

Should corporations or organisations be treated differently from individuals?

Corporations and organisations should be treated the same as individuals in relation to support/donations.

Is the introduction of specific provisions relating to a requirement for shareholders' or members' approval for all political expenditure by companies and unions necessary or desirable?

Firstly, any such provision should apply to all organisations not just companies and unions. Secondly, such a provision may be warranted if political expenditure (however this is defined) is considered to be of a different nature to that organisation's usual expenditure and if it is of such import that shareholders and members need to approve it.

However, some organisations may exist in order to undertake political activity and it makes little sense for these organisations to have to seek members' or shareholders' approval for political expenditure.

It is difficult and problematic for the state to determine whether political activity is a usual activity of an organisation. Some trade unions would contend that donations to political parties are one of their intrinsic activities. On the other hand, it may be desirable that there is greater members' and shareholders' input into whether organisations undertake political expenditure.

Political expenditure is a special class of expenditure in that it seeks to affect public policy and the distribution of political power in Australia. This is different to the private focus of most organisations. Given this, all organisations should have to seek their members' or shareholders' prior approval for the organisation to undertake political expenditure. This, for example, could take the form of a resolution at an AGM approving any political expenditure for the forthcoming year.

"Political expenditure" needs to be carefully defined for this purpose. It would include donations and support for political parties and candidates.

Should Australia cap donations or private funding? If so, at what level?

Caps limit the amount that individual persons and businesses can donate to parties but not the total amount that can be donated to parties. Caps may be appropriate if it is considered that individual large donations can or do distort the political process to too great a degree.

It should be noted that caps are likely to work imperfectly in practise, as it would be relatively simple for an individual or business to organise other entities to make donations on their behalf. However, the total amount donated depends on the number of individuals and businesses so organised, and in this respect caps can be considered as introducing transaction costs for highly motivated individuals and businesses to make larger donations than permitted under the cap. It is likely that the transaction costs would be too large for many individuals and businesses and that this, together with the existence of the cap itself, would effectively limit the amount donated by many individuals and businesses to the level of the cap.

It is likely, however, that the cap will not work in practise for highly motivated individuals and businesses that seek to donate a greater amount than the cap. For these individuals' and businesses' donations, a cap may effectively hide the true source of the donations.

There have been suggestions that there should be caps on private donations, e.g. at \$1000 per individual or business per year. We consider that a well-functioning cap such as this may have merit in seeking to limit distortions in the political process engendered by large potential or real donations by individuals. A cap may have particular value in local and state government, and that any restrictions on donations at one level of government may not be effective unless similar restrictions apply at other levels due to the ability for parties to transfer money internally.

It should be noted that the existence of a cap is inconsistent with the value of individuals being free to financially support whichever party they wish to the extent they wish. A cap would be introduced if it is considered that it would result in greater benefits through fewer (potential) distortions in the political process than the detriment to individual liberty. There is also a question about whether introducing a cap would solve the problems posed to motivate its introduction. These are substantial questions. We consider that there is a perception in the community that large donations, and the potential for large donations, does distort political party and government decision-making, both at a general level and for specific instances.

Given this, we support a cap being introduced on donations from individuals and businesses to political parties and candidates. Notwithstanding this, we note that caps may not be needed to deal with the actuality or perception of distorted decision-making. Instead, all donations above the level of a "cap" could, for example, be made anonymously to a political party through the Australian Electoral Commission. It would not however be possible to completely ensure that the source of these donations would remain anonymous (the donor could tell the party they made a donation). In addition, transparency of donations would probably require such donations to be publically notified.

If a cap is to be introduced, its level should be such that political parties and governments do not distort decision-making on the basis of whether a donation is made or not, nor should there be a perception that there could be a potential for distorted decision-making. We consider that \$1000 may be too low a level for a cap, and that \$5000-\$10 000 may be more appropriate.⁷

Other aspects of caps include the timeframe over which the cap applies, whether it applies to only federal political participants, and whether it applies with respect to total political donations, or with respect to donations to each individual party. For example, a cap could be expressed as *\$N per year*, or *\$N per year per party*, or *\$N per party per term of parliament*. Any cap should be simple to facilitate its efficacy;

⁷ The level of the cap should be periodically reviewed to ensure that it reflects the purpose for which it was set.

we suggest that a cap would be of the form *\$N per year for all donations to all federal political parties and candidates.*

There may be practical issues associated with introducing a cap. For example, some businesses may exist in order to fundraise for a political party or candidate and it makes no sense to put a cap on the donations these businesses can make to the party they are fundraising for. One way to practically deal with this may be to exempt those businesses from the cap and for the cap to apply to donations made to that business to be given to the political party.

A further practical matter is whether candidates should be prevented from funding their own campaigns up to the level of the cap. At one level, it makes no sense to prevent a candidate from supporting their own campaigning. Given that the reason for any cap is to prevent distorted decision-making with respect to (potential) donations from other entities, there does not appear to be a reason to prevent candidates supporting their own campaign to whatever extent they wish. Therefore, any cap on donations should not apply to candidates supporting their own campaign. It may be challenging to create a compliance regime for this.

There is also a matter of whether caps would apply to donations to non-party participants in the political process. While introducing a cap would increase the incentives on non-party participants to participate more than they do presently (and perhaps displace some of the existing party participation, e.g. campaigning), it is less likely that donations to non-party participants may distort government decision-making than donations to parties. This, together with the difficulty of enforcement and ensuring compliance, suggests that caps should not be introduced for donations to non-party participants in the political process.

Introducing caps on donations to parties would require an efficacious and efficient compliance and enforcement regime.

Should Australia ban, cap or restrict loans made to political parties and other participants in the electoral process? If so, at what level?

Loans to parties and other participants should not be banned, capped or restricted. There does not appear to be a reason to restrict them, and doing this would restrict the ability of parties and participants to participate in the political process.

Loans that are effectively donations in disguise should be treated as donations.

Should certain transactions be exempt from a ban or cap on private funding? If so, which ones?

Self-funding of campaigns by candidates should be exempt from any cap on donations.

Is the current Electoral Act definition of 'gifts' wide enough to include all forms of financial and in kind support for political parties and candidates that should be regulated?

We offer no comment.

If not, what other kinds of contributions should the definition be expanded to apply to?

The definition should include donations of labour-in-kind. 2011RA is aware that there are substantial amounts of labour-in-kind donated by organisations to local, state and

federal election campaigns. It is not clear that this labour-in-kind is necessarily declared in full in electoral returns.

Should Australia make public funding of political parties and candidates contingent on compliance with bans or caps on private funding?

Introducing this system would effectively lead to parties and candidates making an educated guess at some point in time as to whether they would be financially benefitted from taking public funding and being subject to bans/caps on private funding or not. There does not appear to be a good policy reason for introducing this regime.

If private funding is limited, how should this be reflected in public funding?

There may need to be additional public funding if private funding is insufficient to fund the usual activities and campaigns of parties. However, it appears unlikely that this would be true for the major parties, although it may be true for minor parties and independent candidates.

Are there other matters that need to be considered on the issues of capping or banning private financial contributions?

We offer no comment.

3. Donation disclosure:

2011RA makes a general comment that transparency of donations is very important and that the form of the donation disclosure regime needs to be carefully designed to be efficient and to not require disproportionate effort.

What kinds of private contributions should be covered by disclosure requirements?

Transparency in disclosing funding requires that all private contributions are publically notified. However, they need not necessarily be disclosed individually.

What level of private contribution ought to trigger disclosure obligations?

Small contributions need not be individually disclosed. However, we consider that donations of at least \$250 should trigger disclosure obligations. The recipient should disclose these contributions and there is an argument that the donor should as well, although any obligation on donors to disclose their contributions should involve a simple process.

Should payment at political party fundraisers be deemed to be gifts and donations? Who should bear responsibility for such disclosure – the contributor or the recipient? Or both?

Payments at political party fundraisers should be deemed to be donations. The recipient should be responsible for disclosing them. The contributor should only be responsible for disclosing them if their donation is above an appropriate threshold. The regime for disclosing these donations should be as simple as possible.

Does the present disclosure scheme place too much reliance on self-declaration? Can this be addressed by a better definition of 'gift' in the Electoral Act?

The first question can be answered by examining whether the existing disclosure scheme works. If it works, then there may be little need to change it. If it does not work, then it may need to be changed.

If the existing disclosure scheme does not work, it may be appropriate for all donations above a threshold (e.g. \$1000) be made to political parties and candidates through the AEC. However, it may not be appropriate or workable to involve the AEC in this way.

What kind of penalties would be appropriate for breaching the disclosure requirements, and who should be liable?

Financial penalties, including withdrawals of public funding, are appropriate for breaching disclosure requirements. However, individuals must have the opportunity to amend electoral returns before they are taken to breach the disclosure requirements.

It may be appropriate for the person responsible for submitting the return to be personally liable for breaches of the disclosure requirements. The party that person is associated with should also bear financial penalties.

Are the current disclosure requirements extensive enough to ensure transparency? Should the disclosure requirements that apply to donations made to political parties and candidates, be extended to donations made to associated entities, Senate groups and third parties? Would extending the disclosure requirements enhance the transparency of the system? What would be the practical effect of such requirements?

We offer no comment.

Should disclosure take place more often than the current post-financial year and post-election cycles? If so, how often?

Disclosure should ideally occur as soon as possible after a donation is made. However, for practical reasons, it may be appropriate for disclosures to be made on a quarterly basis up until the writs are issued to call an election. After the writs are issued, it is appropriate that weekly disclosures are made unless this is not possible to do in practise.

Should a different disclosure requirement apply to donations over a certain amount? If so, what should the amount be, when should the donation be disclosed and when should the disclosure return be published?

We consider that small donations (individually under \$250) made at a particular event should be disclosed in an aggregated form. For practical reasons, these donations need not disclose each individual making a donation although it could disclose the number of people making donations. Details about the people making donations should be available to the AEC on a confidential basis.

Donations of at least \$250 should be individually disclosed.

In addition, should different reporting timeframes be applied to different participants in the political process and should those timeframes be varied during election periods?

While all participants should be subject to the same timeframes, political parties and elected candidates should be subject to the most frequent reporting timeframes if there are different timeframes.

Should electronic lodgement of returns be facilitated and made mandatory to enable returns to be published more quickly?

Returns should be disclosed in a way to facilitate the community's knowledge about donations to political parties. Electronic lodgement may assist with this, however electronic lodgement should not be mandatory as this imposes additional costs on participants. It may be possible instead for participants to lodge returns at an AEC office.

What should the timing be for the publication and release of the disclosure returns to the public?

Disclosure returns should be released to the public as soon as possible after they are received.

4. Expenditure:

Should Australia cap election expenditure? By what means?

There should be a cap on election expenditure only if there is some harm in not having a cap. It appears to 2011RA that the only harm from not capping expenditure is that parties have incentives to raise ever-increasing levels of funds for campaigning (disregarding the plethora of advertising the community is subject to). It is plausible that supply-side measure (e.g. transparency of donations and a cap on donations) may better deal with any problems from this than demand-side measures (such as capping election expenditure).

Introducing expenditure caps may have unintended consequences. They may lead to incentives for parties to not report expenditure or to classify election expenditure as other expenditure. They may lead to incentives for election expenditure to be done by non-party actors.

Should expenditure caps apply to all participants in the political process?

Any expenditure caps should apply to all participants in the political process. However, it may be difficult to define a "participant in the political process".

If so, what level of expenditure cap would be appropriate? Should different caps apply to different types of participants?

It appears that any level of expenditure cap is arbitrary and the basis on which its level would be decided is unclear.

What types of campaign expenditure should be included in the cap?

All types of campaign expenditure. It may be useful to specify particular types of expenditure, e.g. printing leaflets, creating coreflutes, advertising and hiring venues.

Over what time period should the caps apply (for example, during the formal election period, 12 months preceding an election, or over the entire election cycle)?

Any expenditure cap should be on a term of parliament basis (from the start of one parliament to the start of the next parliament).

Should expenditure by political parties and candidates be subject to disclosure requirements? If so, how much detail should be disclosed?

To assist with openness in the political process, party and candidate expenditure should be subject to disclosure.

When should expenditure disclosure be required to be made?

Expenditure disclosures should be made regularly and after elections.

What level of expenditure should be caught by such requirements?

All expenditure should be disclosed.

Should Australia make public funding of political parties and candidates contingent on compliance with caps on campaign expenditure?

The policy reason for such a decision is unclear.

Are there other matters that need to be considered on the issues of capping political expenditure?

The compliance and enforcement regime is important. What sanction would a party or candidate be subject to if it breached an expenditure cap? Would an elected candidate who breached the expenditure cap be removed from parliament? It is not clear that a compliance and enforcement regime would work.

5. Third parties:

Should non-party, non-candidate participants in the political process be subject to donation, disclosure and expenditure regulation?

They should if they seek to influence an election.

How might such third-party participants be appropriately defined?

These third-party participants could include entities seeking to influence the election, e.g. campaigning for or against any candidate or party or campaigning for or against any policy of any political party or candidate. It should not include entities only commenting on an election.

Should there be a registration system for third parties engaging in election related expenditure over a set limit?

We offer no comment.

If third parties are subject to regulation, should they be subject to the same requirements, similar requirements, or quite different requirements to political parties and candidates? What level of detail should be disclosed?

They should be subject to similar obligations.

If disclosure obligations are to continue to apply to expenditure by third parties, does the current definition of 'political expenditure' require clarification?

We do not make a comment on this.

6. Political parties:

Should the laws and regulations covering political parties and the way they administer and organise themselves be changed? If so, in what way?

The state should not be regulating the internal affairs of political parties except to the minimum extent necessary. We consider that the necessary minimum extent includes provisions ensuring that members of a registered political party are enfranchised to directly vote in elections for national and state office-holders of the party, including national and state Presidents and executive committees of the party.

Should registered political parties be required to disclose their associated entities?

Yes, to aid transparency in the political process.

Should political parties be required to disclose their balance sheets?

Yes, to aid transparency in the political process.

Should individual party units, such as local branches of political parties and campaign committees, be required to lodge returns separate from the central party accounts? Would the benefit of making that information available to the public outweigh the cost to political parties of complying with the requirement?

Individual party units should not be required to lodge returns, as this would involve a substantial effort disproportionate to the benefits to the community. In addition, parties transfer funds between local and central offices and it may be difficult to obtain sensible returns from individual party units.

Should disclosure requirements be extended to unregistered political parties?

Yes, to aid transparency in the political process.

7. Associated entities:

Is the definition of 'associated entities' wide enough to include all organisations through which donations are made to political parties and candidates? If not, how should the definition be expanded?

It appears to be sufficiently wide, but we do not have a considered view.

Does the definition of 'associated entities' apply to entities without a sufficient association with a political party to justify regulation?

We do not have a view on this.

Should associated entities provide detailed disclosures of their expenditure? Should they be required to disclose their balance sheets?

We do not have a view on this.

8. Creating an overall regulatory regime:

What kind of overall regulatory regime should we establish for Australia?

General considerations include one that has efficacy and is efficient, and ensures as much transparency of political donations and expenditure as possible. It must assist the community to have confidence that policy making is not distorted by donations.

What regulatory elements (such as disclosure rules, donor rules, donation caps or expenditure caps) should be part of our system? How should the elements of a scheme be combined?

We consider that transparency requires regular disclosure of donations and expenditure. There should be caps on individual donations but not on expenditure and there should be capped public funding.

How do we create an electoral system which meets our objectives?

This question is unclear as it presupposes a common understanding of “our objectives”. We do not offer a view on it.

What flow-through effects might it have on other aspects of Australia’s electoral system?

This is a question the Green Paper process will have to carefully consider.