ELECTORAL MATTERS COMMITTEE

Inquiry into voter participation and informal voting

Inquiry into political donations and disclosure

Melbourne — 23 July 2008

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Mr D. Kerslake, electoral commissioner, Electoral Commission of Queensland.

The CHAIR — The committee welcomes David Kerslake via telephone to the public hearing of the inquiry into political donations and disclosure and the inquiry into voter participation and informal voting. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of the reciprocal legislation in other Australian states and territories. I also wish to advise that any comments you make outside the hearings may not be afforded such privilege. David, have you read the 'Guide to giving evidence at a public hearing' pamphlet?

Mr KERSLAKE — Yes, I have, and I understand those proceedings.

The CHAIR — Can you please state your full name and business address?

Mr KERSLAKE — My full name is David Arthur Kerslake. My business address is care of the Electoral Commission of Queensland, Forestry House, Mary Street, Brisbane.

The CHAIR — Can you state whether you are attending in a private capacity or representing an organisation?

Mr KERSLAKE — My views should be taken as my personal views, based on my experience having worked in the electoral field.

The CHAIR — Your evidence will be taken down and become public evidence in due course. You may now present a verbal submission, and at the end of your submission the committee will ask you questions.

Mr KERSLAKE — Thank you very much. Firstly, if I could provide some very brief personal background. I have been electoral commissioner of Queensland since 2006. Queensland of course has its own funding and disclosure scheme. During the 1990s I also spent four years as assistant commissioner at the Australian Electoral Commission, where one of my chief responsibilities was to oversee the commonwealth's funding and disclosure scheme.

If I could perhaps also make clear my purpose in making a submission. I do not see it as my role to advise the committee whether it should or should not adopt a disclosure scheme. That is obviously a policy decision for the committee and for the Victorian Parliament. I also wish to make it clear that I have not come here to advocate for the adoption of the Queensland funding and disclosure model. I recognise that there are a number of quite valid ways that such schemes can operate. But there are some essential features that I think are worth incorporating in disclosure regimes where such schemes are put in place.

Firstly, I strongly support the threshold for disclosure of donations remaining fairly low. In Queensland the current disclosure threshold is $1500. This compares with the present commonwealth threshold which is $10 000. I note that the commonwealth is considering reducing its threshold to $1000. In my view somewhere around the $1000 to $1500 level as the cut-off point for disclosure of donations appears to me to be pretty close to the right mark.

I also note that Queensland's disclosure scheme followed recommendations from an independent Electoral and Administrative Review Commission, or EARC as it is more generally known, set up following the Fitzgerald commission.

Based on my reading of EARC's report, I think it would regard a $10 000 disclosure threshold as far too high. The reason I say that is that EARC described the underlying purpose of disclosure schemes as guarding against undue influence in government decision-making. It also commented about the motives of persons or organisations who would wish to make a sizeable donation to a political party but remain anonymous. If I may quote from the report, EARC said, 'If these motives arise from a fear that attempts at political influence will…be exposed, this is in fact the main purpose of a disclosure system'.

The whole idea of a disclosure system is to ensure openness and transparency so that the public knows who is getting amounts of money and can make their own judgements as to the influences such donations might wield. Viewed in that light, $10 000 seems to me to be a reasonably large amount by Australian and certainly by state standards, especially if it is multiplied across different members of a family or group. With them all making a donation of just under $10 000, the total there could be quite substantial in Australian terms, and a threshold set as high as, for example, $10 000 seems to me to pose some risk to transparency.

The second feature I see as essential is that if the Victorian Parliament decides to reduce public funding as well as a disclosure scheme, it should guard against parties or candidates being able to make a profit from their candidacy. This is one of the features of the current Queensland system that I feel should apply in all jurisdictions. I do not think the public generally would support people being able to walk away from an election campaign with money in their pocket that might never be used for political purposes in future. I also question whether it is legitimate for a party to hoard the profits it makes in some election campaigns over a period of time and then spend up in a big way at some future electoral event — what I have referred to as the big bang approach. That seems to me to negate the level playing field principle that goes with public funding.

The Queensland scheme prevents these sorts of things from happening by operating on a reimbursement basis. It provides that the amount a party receives in public funding must not exceed the electoral expenditure that is actually incurred during the campaign.

My final point, and the main reason for my submission, is that assuming we end up with funding and disclosure schemes, or at least disclosure schemes, in every jurisdiction in Australia, consideration should be given to the establishment of a single national agency to run those schemes. This could be achieved in a couple of different ways. For example, each state and territory and the commonwealth could adopt uniform legislation and through that legislation appoint the same body to administer it, or there could be slightly different schemes but still have the one administrative body to save on resources [inaudible].

A national scheme would certainly make life much easier for political parties and donors, particularly those who participate at both state and federal political levels, in that they would only have to deal with a single administrative body. If political parties and donors also only had to comply with a single set of rules, the same disclosure return could satisfy both state and commonwealth requirements.

With a national scheme a single administrative body could be responsible for obtaining disclosure returns, putting them on public display and conducting audits as required. I appreciate this may be challenging to implement, but in the longer term it would certainly reduce the administrative burden both for government and for political parties. I have listed in my submission the areas that complementary legislation could cover, and that is all I have to say by way of introductory comment.

The CHAIR — Thank you, David. You will receive a copy of the transcript in a fortnight. Typing errors may be corrected but not matters of substance. Now there will be some questions from the committee.

Ms CAMPBELL — You have summed it up crystal clear. You have outlined your recommendations and I can understand exactly where you are coming from, so I think it is an excellent submission and it is very clear, and the way you summed up your recommendations at the conclusion leaves me with no questions. Thank you — 10 out of 10.

The CHAIR — Michael O'Brien has a genuine question for you.

Ms CAMPBELL — Mine was a genuine compliment.

Mr KERSLAKE — I appreciated the comment, thank you.

Mr O'BRIEN — We do not have a separate state disclosure system here in Victoria. We basically piggyback on the federal system. In your experience as Electoral Commissioner for Queensland, have you found there have been any incidences of candidates or parties running at state level only so they are caught by your state disclosure laws but they would not be caught by federal disclosure laws?

Mr KERSLAKE — There are some. There are some parties that have only existed at a state level. There are some other parties which pursue common interests in the community but are still separately constituted parties, not the same as, for example, the Liberal Party or the Labor Party which have different branches in each state but are registered parties in their own right. There are other parties that might pursue things like supporting fishing or other types of recreational issues, for example, and although they are pursuing the same sort of cause, they are quite different parties at commonwealth and state levels.

That raises another issue that may be worth drawing upon. Apart from the fact that there may be different parties, in the past one of the things you mentioned being able to piggyback on the commonwealth. In the past Queensland

has been able to do that to some extent as well. Even though we have our own disclosure scheme, we have been able to piggyback on the commonwealth with the auditing process because one of the weaknesses of our system is that we do not have an audit function, nor are we resourced to conduct audits.

We used to be able to rely very well on the commonwealth's audit because the legislation was very similar. In more recent times where the those two disclosure thresholds have grown apart it makes it much more difficult for us to be able to piggyback on the commonwealth when it comes to auditing.

Mr O'BRIEN — I was going to ask on the basis of your experience of the dual system, would you recommend in terms of administrative efficiency, that Victoria not seek to adopt a disclosure threshold that is different from the commonwealth one?

Mr KERSLAKE — Yes and no. If I give an example — and what has been discussed recently, I mentioned in the Queensland case, ours is $1500 and the commonwealth is considering introducing $1000 — if the thresholds were that close, I would certainly agree with you and say why would you bump it up by just a small amount and then have the inconvenience of all those different things? But I would go with a separate scheme if the commonwealth's level was very high, for example. Am I making myself clear?

Mr O'BRIEN — Yes.

Mr KERSLAKE — Because then you are going to end up with difficulties in transparency and disclosure.

Mr O'BRIEN — Thank you.

Mr SCOTT — In terms of a single disclosure system, you did not mention it, but would local government fit into that disclosure system, because there have been a number of submissions which have raised concerns about disclosure at a local government level?

Mr KERSLAKE — I see local government as being a quite different kettle of fish because local government has far more local issues. In Queensland, for example, it has the whole issue of groups at the state level, we have registered political parties or independent individual candidates. In local government there are also groups that are covered under the Local Government Act. I am not sure of the situation in Victoria. All of that raises quite different dimensions which would lead me to support a separate disclosure regime for local government.

In short I think there are sufficient arguments there to tailor a local government disclosure scheme specifically to suit those local circumstances.

The CHAIR — Thank you, David, that is all the questions, and thank you very much for your time.

Mr KERSLAKE — I appreciate the opportunity. Thank you.

Committee adjourned.