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**From:** Jarrod Wirth  
**Sent:** Friday, 4 January 2013 4:19 PM  
**To:** Electoral Reform  
**Subject:** Response to Electoral Reform Discussion paper  
**Attachments:** The Honourable Jarrod Bleijie MP.docx

Dear Honourable Jarrod Bleijie MP  
Attorney-General and Minister for Justice

I've submitted my response and opinions on the Electoral Reform Discussion paper here as a MS Word document attachment.

Have a good day!

Sincerely,

Jarrod Wirth.

## **Re: Electoral Reform Discussion paper**

Here are a number of points I'd like to raise and discuss.

### **(A). Caps on political donations**

You propose - caps apply to donations intended to be used for campaign purposes during the capped expenditure period for an election.

However - Unlimited amounts can be given to registered political parties, candidates and third parties provided they are not intended to be used for campaign purposes during the capped expenditure period.

What happens if a millionaire donates an almost unlimited amount of money to a registered political party, candidate or third party, let's say 2 years before the election period. It may not be intended to be used for campaign purposes during the capped expenditure period but may inadvertently be used for this purpose. I feel the only way you could prevent this is by creating the requirement of a specialised account for campaign purposes during the capped expenditure period. Unlimited amounts of money donated prior to the capped expenditure period should then not be allowed to be transferred to the specialised account for campaign purposes during the capped expenditure period. All monies associated with the specialised account for campaign purposes during the capped expenditure period should come directly from political donations registered as being intended to be used for campaign purposes during the capped expenditure period only.

I believe caps on political donations are required to allow all donors to participate in the political process equally. I also agree that a cap and registry should be placed on political donations to all donations and not just those which are intended to be used for campaign purposes.

It is a very good idea to require industrial organisations and corporations to hold ballots/votes about how their funds are used, thereby leading to greater transparency and accountability. Please strengthen the existing disclosure requirements to promote transparency and

accountability

Please prohibit fundraising events due to concerns about 'cash for access'.

## **(B). Public funding of election campaigns**

Public funding of election campaigns, which involves subsidising parties and candidates for the cost of contesting elections, should no longer be considered an important part of the regulatory scheme for campaign financing and should be scrapped. I say this because our state is heavily in debt and scrapping public funding of election campaigns will prove an effective cost cutting exercise and save the state millions every election year. Table 3, Page 14-15 of your discussion paper shows that public funding for the 2012 State General Election cost the state public purse \$11,182,926. That is money that should be earmarked for more essential services, policing, education, hospitals, etc. There shouldn't be any debate on the issue or options of public funding of election campaigns, public funding should be discontinued. It made me very irate during the 2012 State General Election to think that a portion of my taxes funded political advertising campaigns, in cinemas, tv, radio, print, internet and mailbox drops that did little more than insult, belittle and misrepresent a political party's opponent.

## **(C). Truth in political advertising.**

Truth in political advertising is something all citizens should demand and expect. Without doubt Queensland should endeavour to lead the way in establishing a watchdog to ensure truth and fair play in political advertising. Thinking back to the 2012 State General Election I recall very few publicly funded political 'advertisements' actually informed me of that political party's plans, goals and objectives across the upcoming political period, if elected. Certainly I saw the smiling faces and power words although literally nil in the way of any comprehensive detail on what the party intended as goals & outcomes across the next period as well as how, where and when they intended to achieve. All I saw public funded advertising doing was little more than denigrating rivals. I was brought up being taught that if you don't have anything nice to say about someone, that you shouldn't say anything. Political parties have time and again proved during the election process that they seem incapable of doing much more than 'throwing mud' at their political rivals.

Legislation should be introduced to rigidly control political advertising so that parties are not able to spend public funds on campaigns that do nothing but belittle, harass and embarrass their rivals. In short legislation should be introduced that says parties must advertise themselves not their perceived shortcomings of their political rivals. In short if the advertising isn't explaining the party's goals it shouldn't be allowed. As well the legislation should clearly state that lying during the political campaign is an offence, it should also extend beyond advertisements to other inaccurate and misleading statements.

*The following is an example of why this legislation is needed: -*

We should all be familiar with an interview that occurred during the electoral period of the last federal election, found at the link below.

<http://www.youtube.com/watch?v=KMVc0IbtyAQ>

In this 'YouTube' clip you will hear two political candidates clearly define their stance on a proposed new tax. These are statements being made by candidates during the election period. Post-election, I like many people feel I was misled by these statements. If both candidates had expressed the support they now show for this tax, during the election period, I steadfastly believe the election result would have delivered a very different outcome. It appears evident, during the election period, these candidates made statements which are contrary to the goals they represent post-election. I feel I have been misled

through the use of what I perceive to be false statements.

Given, I noted the Australian Electoral Commission's Candidate's Handbook, found at this link:-

<http://www.aec.gov.au/Elections/candidates/files/candidates-handbook-e2010-v2.pdf>

notes that it is an offence, during the election period, for a candidate to 'make a false or misleading statement in any claim for enrolment, or in any declaration'. It also clearly states that to do so is an offence under Part 7.4 of the Criminal Code Act 1995. The penalty being, described at the AEC site as, 12 months imprisonment.

As I took a closer look at the Criminal Code Act 1995, found at this link:-

<http://www.comlaw.gov.au/Details/C2011C00123>

I felt the statements made by these candidates, during the election period, were in hindsight - false, misleading and an offence of the following sections of the Criminal Code Act 1995:-

7.3 Fraudulent conduct

7.4 False or misleading statements

134.1 Obtaining property by deception

134.2 Obtaining a financial advantage by deception

135.1 General dishonesty

135.2 Obtaining financial advantage

135.4 Conspiracy to defraud

137.1 False or misleading information

As I thought these candidates had engaged in activity contrary to the AEC requirements of a candidate during an election period, I contacted the member for Bonner, Mr Ross Vasta MP to express my concerns and ask for clarification on this issue. Ross Vasta MP then acted to send my concerns to the Special Minister of State, Gary Grey. The response provided came from the Australian Electoral Commission's Legal and Compliance Branch's Chief Legal Officer, which states:-

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*Dear Mr Wirth*

*The Special Minister of State formally responded to the letter dated 15 August 2011 that was received from the Member for Bonner, Mr Ross Vasta MP, in a letter dated 23 August 2011. The relevant parts of the letter from the Special Minister of State to the Member for Bonner are as follows:*

*Thank you for your letter dated 15 August 2011 on behalf of your constituent, Mr Jarrod Wirth of Mansfield, in which a concern was raised about whether media statements made by the Prime Minister prior to the 21 August 2010 general election could constitute a breach of the Commonwealth Electoral Act 1918 (Electoral Act). As the Australian Electoral Commission (AEC) is responsible for the administration of the Electoral Act and operates independently from the Executive arm of Government, I have referred your letter to the AEC to obtain their views.*

*The AEC has advised me that the short answer to Mr Wirth's concern is that there is nothing in the material provided that could attract the operation of the criminal law provisions contained in the Electoral Act. Further, the references made by Mr Wirth to the AEC Candidate Handbook are taken out of context as the references to the Criminal Code Act 1995 only apply to statements made on the candidate nomination form that is required to be lodged with the AEC under sections 166 and 167 of the Electoral Act and do not otherwise apply to conduct engaged in as part of an election campaign.*

*The reasons provided by the AEC for their view is that the offence contained in section 329 of the Electoral Act relating to misleading and deceptive publications has been limited in operation by various decisions of the Courts and could not apply to the circumstances of the statement made by the Prime Minister prior to the election. The detailed reasons are as follows.*

*First, section 329 of the Electoral Act only applies to misleading or deceptive publications. The fact that Ms Gillard made a statement about not introducing a carbon price in the days leading up to the 21 August 2010 is not sufficient. There must have been some actual publication by her of the statement. It is the act of the publication of the misleading or deceptive material that is prohibited.*

*Second, the AEC is established under the Electoral Act and has no power to go beyond the scope of what the*

Parliament has enacted for dealing with electoral advertising. Accordingly, unless the Electoral Act provides a specific power or function to deal with the content of electoral advertising, the AEC is unable to comment or take any action.

Third, when the Parliament considered the Political Broadcasts and Political Disclosures Act 1991 it was specifically determined that the Electoral Act (and therefore the functions given to the AEC) should not regulate the content of electoral advertising but rather to only ensure that electors are clearly informed of the source of that advertising. The continuing debate about truth in electoral advertising clearly indicates that the AEC presently has no power to deal with such matters.

Fourth, the AEC has been given a limited power to address "misleading and deceptive" "electoral advertising" in subsection 329(1) of the Electoral Act. The High Court of Australia in the case of *Evans v Crichton-Browne* (1981) 147 CLR 169 commented that this power is not aimed to regulate the content of political messages directed at influencing the choice of preferred candidates or parties by voters, but merely to regulate publications and broadcasts that are directed at influencing the way in which a ballot paper is actually marked. The AEC is bound by the decision of the High Court in that case.

This High Court case was specifically followed by the Federal Court in several cases last year including *Faulkner v Elliott* [2010] FCA 884 and *Peebles v Honourable Tony Burke* [2010] FCA 838. At paragraph 10 of the decision in the *Peebles* case the Court stated that:

"It is clear from reading the entire reasons for judgment of the High Court in *Crichton-Brown* that the prohibition in s 329 concerns misleading or deceptive conduct which might affect the process of casting a vote rather than the formation of the political judgment about how the vote will be cast. That is, the section concerns conduct which might, for example, lead a voter either to fail to record a valid vote or to record a valid vote but not for the candidate or candidates of the voter's choice. An obvious example would be information which told a voter how to go about completing the ballot paper which was wrong and would result in the casting of an informal vote."

The AEC has advised that the issue pointed to by Mr Wirth merely went towards the "formation of the judgment" as to who to vote for, rather than the actual act of marking the ballot paper. The AEC notes that the distinction between these two things is a question of fact and degree, but concludes that in the present circumstances the distinction appears to be very clear.

Accordingly, as this matter does not fall within the scope of section 329 of the Electoral Act and the AEC has no power to take any action in this matter. The AEC is not able to ignore the various Court decisions that have clearly and consistently limited the scope of the offence contained in section 329 of the Electoral Act. The Parliament is clearly aware of the various Court decisions and has not amended this section to take account of those decisions.

I trust that the above information explains why this is not a breach of the Electoral Act and why the AEC has no power to intervene in this matter as suggested in your email.

Yours sincerely

Paul Pirani

Chief Legal Officer

Legal and Compliance Branch

Australian Electoral Commission

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The email provided by the Chief Legal Officer of the Australian Electoral Commission's Legal and Compliance Branch clearly indicates candidates are prohibited from 'publishing' misleading or deceptive material. The AEC acts to ensure electors are informed of the source of political advertising however does not regulate the content of that advertising. Meaning the AEC has no power to deal with truth (as well as false, misleading & deceptive statements) in electoral advertising. This means a candidate can stand before the media and lie without fear as it is an offence only to 'publish' the lie.

In our technological society every day we see politicians and candidates stand before the media and make comments that they know can be designed to mislead and deceive, without any fear of wrongdoing. Politicians and candidates should be held to account for their statements, statements that mislead or deceive should be as prohibited as publications that mislead or deceive and the Queensland government should act to legislate truth and non-slander laws in political advertising.

#### **(D). How-to-vote cards**

At most polling booths, political party workers hand out how-to-vote cards and are just pests. After months of listening to political parties lie, mislead and slander, most people have decided

who to vote for. The how to vote cards represent another waste of public funds and political party workers should be banned from handing out how-to-vote cards on election day.

**(E). Compulsory voting**

Voting for Queensland State Elections should not be compulsory.

Have a good day!  
Sincerely,