The Centre for Public Integrity

How to level the playing field:

Electoral expenditure caps, limiting the incumbency benefit and supporting new candidates

Briefing paper **April 2022**

Summary

Candidates in Australian federal elections are playing on a field that is increasingly inequitable. The levelling of the playing field (the importance of which has been recognised by the High Court) can be achieved via political finance reform, reforms designed to limit the incumbency benefit, and improvements to the way in which new parties and candidates are financially supported.

While a suite of political finance reforms is required, the focus of this briefing paper is electoral expenditure caps. Insofar as one of the most significant ways in which the integrity of elections in Australia is compromised is via the absence of caps on electoral expenditure, allowing wealth to distort election outcomes, the implementation of such caps is amongst the most pressing political finance reforms. As Lord Bingham of Cornhill warned, where the ability of political parties to access media is proportionate to their resources, elections are reduced to barely more than auctions.[1]

There is also an urgent need to limit the benefit that incumbent candidates can derive from public money. The Centre for Public Integrity proposes three key reforms to address this, including:

- a ban on claims for parliamentary printing and communications entitlements being made any time after the expiration of 2 years after the previous election;
- an independently-enforceable code of conduct for ministerial and electorate staff, prohibiting work on party political matters; and
- a ban government advertising, except in exceptional circumstances, any time after the expiration of 2 years after the previous election.

We also propose that new parties and independents be financially supported by a dedicated start-up fund administered by the Australian Electoral Commission.

[1] Lord Bingham of Cornhill in R (Animal Defenders International) v Secretary of State for Culture, Media and Sport [2008] AC 1312 at 1346 [28].

Electoral expenditure caps

Unlike their federal counterpart, nearly all Australian States and Territories – amongst them, New South Wales, Queensland, South Australia, Queensland, the ACT, the Northern Territory and Tasmania – impose some form of electoral expenditure caps.

We recognise that independent campaigns may have concerns about their ability to have an impact, especially against incumbent candidates, if their ability to reach voters via electoral matter is subject to a cap.

It is important to recognise that because electoral expenditure caps would apply equally to all candidates, in seats where the ability of independent candidates to spend is lesser than the ability of party-endorsed candidates, electoral expenditure caps would significantly benefit independents. Currently, for example, if an independent candidate can spend $250,000 in a campaign where a party-endorsed candidate can spend $500,000, the independent is able to spend half of what the party-endorsed candidate can spend. If, however, a cap of $150,000 were in place, while the independent candidate would have a decreased actual ability to spend, their ability to spend relative to the ability of the party-endorsed candidate would increase.

The Centre for Public Integrity has developed the following design principles for expenditure caps:

1. Cut spending – rein in current spending levels, and maintain the ability for parties to run campaigns and communicate with voters;

2. Promote equality of participation – set an amount that is achievable for independents and small parties to fundraise, and increase the relative impact of this spending;

3. Spending proportional to voters reached – electorate caps allow greater equality in money and time spent communicating with voters across the country.

Figure 1 (attached) sets out the expenditure caps in currently in place in Australian states and territories. We believe that the South Australian model has particular merit, and independent candidates are well-served by it, insofar as it does not permit endorsed candidates to have the benefit of two 'pots' of money.[2] This is a consequence of the fact that all jurisdictions except Tasmania and South Australia allow expenditure by both registered parties and endorsed candidates in each seat, and, with the exception of NSW Legislative Council elections, do not require aggregation of party and candidate spend.[3] The effect of this is that endorsed candidates effectively get the benefit of two pots of money, negating any benefit to be gained from the more generous caps for independents in Queensland and New South Wales (in Queensland, independent candidates are allowed to spend 33.33% more than endorsed candidates, and in New South Wales that increases to 49.85%). While in South Australia (as in the Northern Territory, the ACT, and Tasmania), endorsed and unendorsed candidates are subject to the same caps, the fact endorsed candidates only have the benefit of one 'pot' of money means that it is a more equitable model.

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[2] We have sought to confirm this interpretation of the legislation with the Electoral Commissions of New South Wales and Queensland.

[3] In Tasmania, party expenditure is banned in elections for Legislative Council seats: we have therefore endorsed the South Australian model.

To give some sense of how much the caps equate to in terms of per voter spend, Figure 2 sets out the maximum allowed spend per voter for endorsed candidates in lower house elections.

Figure 2: Maximum allowed spend per voter for endorsed candidates in lower house elections

Jurisdiction	Amount
Northern Territory	$7.29
South Australia	$4.14
Australian Capital Territory	$3.39
New South Wales	$2.29
Queensland	$1.61

Limiting the incumbency benefit

Three reforms are critical to limiting the benefit that incumbent parties and candidates can derive from public money in election campaigns. These include:

- a ban on claims for parliamentary printing and communications entitlements being made any time after the expiration of 2 years after the previous election;
- an independently-enforceable code of conduct for ministerial and electorate staff, prohibiting work on party political matters; and
- a ban on government advertising, except in exceptional circumstances, any time after the expiration of 2 years after the previous election.

1. Ban use of Parliamentary printing and communications entitlements 2 years after the previous election

Under regulation 67 of the *Parliamentary Business Resources Regulations 2017* (Cth) parliamentarians are able to claim for certain kinds of office expenses. Amongst the permissible expenses set out at regulation 66 are expenses relating to printing, production, distribution and communications activities.

The office expenses budget for 2012-22 is:

- $114,475.31 for Senators; and
- $143,475.31 for Members of the House of Representatives (plus $1.065 multiplied by the number of enrolled voters in the Member's electorate)

The Centre for Public Integrity proposes that no claim for any expenses in the nature of printing, production, distribution or communications should be able to be made any time after the expiration of 2 years after the previous election.

2. Implement and enforce a code of conduct for ministerial and electorate staff, including a ban on working on party political matters

Ministerial staff and electorate staff employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) are paid for by public funds. On the issue of whether such employees are able to work on party political matters, the Department of Finance – which is responsible for administering the MOP(S) Act – takes the following view:

> *MOP(S) Act employees are employed to assist the parliamentarian to carry out duties as a Member of Parliament and not for party political purposes. Accordingly, employees may undertake activities in support of their employing Senator or Member's re-election but not in support of the election or re-election of others at the Federal election*.[4]

How working on the re-election of a Senator or Member could constitute anything other than work for a party political purpose is unclear. Insofar as such matters are in the interest of a political party, rather than the public, they should not be funded by taxpayer money, and there should be a clear ban on staffers and electorate officers working on them. This could be achieved by an amendment either to the MOP(S) Act or the Statement of Standards for Ministerial Staff.

In either case, appropriate enforcement of penalties for breach of the ban is essential. A significant weakness of the Statement is that it is not independently enforceable: even if a ban on work on party political matters were implemented, a parliamentarian would have no obvious incentive to penalise their staff for working to promote interests aligning with the parliamentarian's own interests.

3. Ban on government advertising 2 years after previous election

Expenditure of public monies on government advertising is regulated by the *Public Governance, Performance and Accountability Act 2013* (Cth). Section 71 of this Act requires that Ministers satisfy themselves that any expenditure they approve is for a proper purpose – that is, a purpose that is efficient, effective, economical and ethical. Advertising that is of a party-political nature cannot meet this threshold.

The *Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities* (*the Guidelines*) set out guidance on the use of public funds for information and advertising campaigns by these entities. For example, advertising campaigns valued at more than $250,000 are required to be considered by the Independent Communications Committee, which must then provide advice to agency Chief Executives.[5]

The Centre for Public Integrity proposes that expenditure of government advertising be banned after the expiration of 2 years from the date of the previous election, except for in exceptional circumstances. These 'exceptional circumstances' could mirror the circumstances under the Guidelines which provide for the Special Minister of State to exempt a campaign from compliance on the basis of a national emergency, extreme urgency or other compelling reason.[6]

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[4] Department of Finance, "MOP(S) Act Employees", https://maps.finance.gov.au/federal-elections/mops-act-employees accessed 13 April 2022.
[5] Communications Advice Branch – Department of Finance, "Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities", October 2020, Guideline 10.
[6] Ibid, Guideline 9.

Start-up fund for new parties and candidates

In recognition of the fact that access to adequate resources to run a campaign is a significant barrier to entry by new parties and candidates, the Centre for Public Integrity proposes the establishment of a dedicated start-up fund to by administered by the Australian Electoral Commission.

Such a fund could see monies up to a capped amount loaned to registered parties or independent candidates ahead of elections (subject to appropriate security), with the loan dischargeable by the provision of evidence proving electoral expenditure to the relevant value.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham, Geoffrey Watson SC and Professor Gabrielle Appleby. Former directors include the Hon Tony Fitzgerald AC QC and the Hon David Ipp AO QC. More information at www.publicintegrity.org.au.