

# Nonprofit Speech in the 21<sup>st</sup> Century: Time for a Change? – An Australian Perspective\*

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## OVERVIEW

Australia inherited the common law of England including the law of charities. Charity status brings a number of concessions including exemption from income and some other taxes, and the ability to receive external gift funding from foundations and individuals. The prohibition against charities having political purposes is an artefact of English common law, and largely a twentieth century phenomenon.<sup>1</sup> Political activities by charities are permitted within certain bounds. Since the turn of the century there has been increased sector uneasiness with the application of the political purpose prohibition by Australian revenue authorities which appears to be matched by judicial unease in the lower courts. Government sponsored inquiries into nonprofit sector reform have also called attention to the state of the prohibition and its relevance in the context of a modern representative democracy which seeks participation from all sectors of society. Participation often occurs through nonprofit organisations.

Charities and some other specific nonprofit tax exempt categories form only a small percentage of the total number of Australian nonprofit organisations and many others are free within the bounds of the law to speak freely about their concerns.<sup>2</sup> It should not be overlooked that political parties in Australia are nonprofit organisations, independent of government and its administration. They are governed by their own special laws which regulate political activity.<sup>3</sup>

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<sup>1</sup> *Bowman v Secular Society* [1917] AC 406

<sup>2</sup> It is estimated that there are about 600,000 nonprofit organisations with only 53,000 being Tax Concession Charities: Productivity Commission, *Contribution of the Not-for-Profit Sector: Research Report* (2010), 59, <http://www.pc.gov.au/projects/study/not-for-profit/report>.

<sup>3</sup> Refer to Table A for details of legislation.

It is easy to dismiss establishment of a political party as a viable option for a small group of people who wish to influence government policy and administration about a public issue. The Long term dominance of just a couple of major parties is partly responsible. However, an increasing number of Australian citizens are choosing to form a political party to express their views and achieve power through the ballot box around single issues. It also appears that the costs and barriers to formation are not an insurmountable obstacle. There are tax and funding arrangements available to support a small political party as well – something which is at odds with the often expressed contention that the public purse ought not to fund partisan political activity through charity tax concessions. As will be discussed at the end of this paper, a number of nonprofit organisations in the form of single issue parties with very modest resources are facilitating public expression of citizens’ concerns and achieving significant impacts through changes to government policy and administration.

This paper first examines the Australian law of charity in relation to the political purposes prohibition. A succession of government inquiries which have not translated into law reform have recommended change. A series of lower court cases have pushed the boundaries of the current law. These are discussed before examining in detail a case currently before the High Court of Australia which may contribute significantly to the development of this issue.<sup>4</sup> The paper then turns to examine the other end of the free speech spectrum by examining the laws in relation to political parties and how this is being taken up by single issue parties. A brief overview is presented as to the significant establishment matters, ongoing maintenance and funding issues that are peculiar to political parties. A small case study of a single issue political party is offered as an example of the facilitation of free speech, not through the orthodox charitable form, but by full immersion in the political process.

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<sup>4</sup> Transcript of proceedings, *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA Trans 154 (15 June 2010); [2010] HCA Trans 155 (16 June 2010).

## The Charities Definition Inquiry

The Charities Definition Inquiry (CDI)<sup>5</sup> had its genesis in significant tax reform at the turn of the century. In 1999 the federal government decided to reform the Australian taxation system by adopting a broad-based transaction tax (known as the Goods and Services Tax or GST) to replace a wholesale sales tax (WST) and some other state transaction taxes.<sup>6</sup> The federal government did not control the Senate (the upper house of Parliament) and required the votes of a minor political party (Australian Democrats) to pass the legislation. The Australian Democrats were sympathetic to the plight of nonprofit organisations, many of which had been exempt from WST based on their taxation status. It was proposed that the GST would extend to all nonprofit organisations over a certain threshold, although they would be given some minor exemptions for uncommercial trading, charitable gaming and the like. These exemptions were tied to the definition of ‘charitable institution’ and ‘charitable fund’. Further, all charitable organisations would have to be endorsed by the Australian Taxation Office (ATO) before being able to access these and other exemptions.

To secure the support of the Australian Democrats, the government made various concessions, including a promise to hold an inquiry into the definition of charity that was used to exempt or preference certain nonprofit organisations. Nearly two years later, the political promise was delivered. On 18 September 2000, the then Prime Minister, John Howard, announced the establishment of an inquiry into definitional issues relating to charitable, religious and community service not-for-profit organisations.<sup>7</sup>

This was not a full independent Law Reform Commission brief as expected by the Democrats, but a relatively quick ‘committee’ inquiry headed by three lawyers. The

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<sup>5</sup> Inquiry into the Definition of Charities and Related Organisations, established 18<sup>th</sup> September 2000, <http://www.cdi.gov.au/>.

<sup>6</sup> *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

<sup>7</sup> The Hon John Howard MP, Prime Minister of Australia, ‘Inquiry into Charitable and Related Organisations’, *Media Release*, 18 September 2000, [http://pandora.nla.gov.au/pan/10052/20010821-0000/www.pm.gov.au/news/media\\_releases/2000/media\\_release456.htm](http://pandora.nla.gov.au/pan/10052/20010821-0000/www.pm.gov.au/news/media_releases/2000/media_release456.htm) (Pandora Archive, National Library of Australia).

Chairman was the Hon IF Sheppard QC, former Judge of the Supreme Court of NSW and Federal Court of Australia. The other members of the Inquiry Committee were Mr Robert Fitzgerald, Commissioner of Community Services NSW and former President of the Australian Council of Social Service (ACOSS), and Mr David Gonski, principal of a merchant bank, public company director and member of the Prime Minister's Community-Business Partnership. The Inquiry reported on 30 June 2001 to the Federal Treasurer. The report made 27 recommendations, among which was the introduction of a statutory definition of 'charity' with an independent administrative body for federal law.

Despite the short timeframe, a large number of submissions to the Inquiry were made by the sector, the general public and professional firms. Many submissions raised issues about political purposes and advocacy. These main arguments put forward included:

- Modern charities cannot be shackled by 17<sup>th</sup> century notions. Contemporary policy is driven by an open market of rival and robust ideas marked by governments consulting with community and experts. Several government departments noted that they specifically funded umbrella bodies and nonprofit organisations to undertake advocacy which benefited good policy development.
- Judges should be able to distinguish between 'partisan politics' (pursuit of political power or influence) and that driven by altruism seeking to convey information to the government and public concerning issues of public interest.
- Guidelines, such as those issued after consultation by the Charity Commission of England and Wales,<sup>8</sup> could draw a workable bright line between acceptable political activity and political purposes.
- The Canadian and United States legislative approaches which set percentage limits of expenditure on political activities brought significant compliance complexities and administrative costs.<sup>9</sup>

The Committee came to the conclusion that 'charities should be permitted to engage in advocacy on behalf of those they benefit'.<sup>10</sup> This needed to be balanced against charities maintaining their independence from government and other bodies. The

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<sup>8</sup> Charity Commission for England and Wales, *CC9 – Speaking Out – Guidance on Campaigning and Political Activity by Charities* (CCEW, 2008), <http://www.charity-commission.gov.uk/Publications/cc9.aspx>.

<sup>9</sup> *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001), 211–217.

<sup>10</sup> *Ibid*, 217

committee believed that the line should be drawn at charities being directly engaged in the political party process.

On the 22nd July 2003, after considering the Inquiry report, the Federal Treasurer released a draft Bill and directed the Board of Taxation to consult on the workability of the proposed definition of charity.<sup>11</sup> The Board of Taxation is a body, independent of government, which reviews potential taxation legislation and advises the government on improving its design and effectiveness. The Board was to consult not about the announced policy of the Government, but about its workability as enacted in the legislation.

A number of provisions in the Draft Bill caused significant public discussion. In a move that proved controversial, the Bill included the following ‘disqualifying purposes’ for charity status:

- illegal activities;
- advocating a political party or cause;
- supporting a candidate for political office; and
- attempting to change the law or government policy.<sup>12</sup>

‘Illegal activity’ would be a disqualifying purpose on its own. Any of the other purposes would be a disqualifying purpose if it, on its own or combined with any of the others, was ‘more than ancillary or incidental’ to the entity’s other (charitable) purposes.<sup>13</sup>

The Explanatory Memorandum to the Bill gave the following explanation:

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<sup>11</sup> Hon Peter Costello MP, Treasurer of Australia, ‘Release of Charities Definition Exposure Draft’ *Media Release*, No 059, 22 July 2003, <http://treasurer.gov.au/DisplayDocs.aspx?pageID=&doc=pressreleases/2003/059.htm&min=phc>.

<sup>12</sup> Charities Bill 2003 Exposure Draft (Cth) cl 8, [http://www.taxboard.gov.au/content/content.aspx?doc=reviews\\_and\\_consultations/definition\\_of\\_a\\_charity/default.htm&pageid=007](http://www.taxboard.gov.au/content/content.aspx?doc=reviews_and_consultations/definition_of_a_charity/default.htm&pageid=007).

<sup>13</sup> *Ibid*, cl 8(2).

1.49 There are some purposes that are not considered to be consistent with the overall charitable character of an entity. These purposes are called disqualifying purposes.

...

1.51 Any purpose of engaging in illegal activities is a disqualifying purpose.

1.52 The disqualifying purpose of engaging in illegal activities parallels the requirement that a charity does not engage in activities constituting a serious offence.

1.53 Purposes, as shown in [clause 8], with the exception of illegal purposes, are only disqualifying purposes where they are more than ancillary or incidental to the other purposes of the entity concerned. It is possible, therefore, for the entity to have purposes of these types, though they must further or be in aid of, and be ancillary or incidental to the dominant purpose of the entity.

1.54 Ordinarily, representing to Government, from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity.

1.55 However, the independence of charities from Government and from political processes is an important component of their role in serving the public benefit.<sup>14</sup>

A significant number of submissions argued that the draft Bill was an attack on nonprofit organisations' ability to advocate for a political cause or attempt to change the law or government policy. When that was combined with uncertainty about how regulators (mainly the ATO) would actually decide whether a disqualifying purpose 'is more than ancillary or incidental to the other purposes of the entity concerned', it created a deep sense of disquiet in the nonprofit sector. These debates were occurring at the same time as federal government funding contracts for community services were increasingly containing 'gag' clauses which, to varying degrees, prevented a funded organisation from speaking publicly on an issue unless it had prior government approval.<sup>15</sup> Adding to this

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<sup>14</sup> Explanatory Material, Charities Bill 2003 Exposure Draft (Cth), 11–12, [http://www.taxboard.gov.au/content/content.aspx?doc=reviews\\_and\\_consultations/definition\\_of\\_a\\_charity/default.htm&pageid=007](http://www.taxboard.gov.au/content/content.aspx?doc=reviews_and_consultations/definition_of_a_charity/default.htm&pageid=007).

<sup>15</sup> See, for example, R Melville, 'The State and Community Sector Peak Bodies: Theoretical and Policy Challenges' (1999) 3 *Third Sector Review* 41; R Melville, 'Australian Peak Bodies and the Market Policy Culture', in S Shaver & P Saunders (eds), *Social Policy for the 21st Century: Justice and Responsibility*,

concern was the draft income tax ruling on the definition of charity (TR1999/D21) which was being considered by the ATO and the *Word Investments case* which was beginning to make its way through the courts.<sup>16</sup> There was concern already about how the ATO was determining what were the ‘purposes’ of an organisation and what was merely an ‘activity to achieve a purpose’. The issue, crudely stated in terms of the *Word Investments case* was: how do you determine whether an organisation is a business that does ‘charity’ work or a charity that cross-subsidises its work with some business activities?

The draft Bill also sought to prevent any organisation that had engaged in a serious criminal offence (retrospective and no recording of a conviction required) from charitable status, with no means of rehabilitation.<sup>17</sup> Many organisations were nervous about such a provision and it was not a recommendation or issue of discussion by the CDI. It was perceived by many as a legislative weapon to wield against strident and politically embarrassing nonprofit organisations.<sup>18</sup>

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Proceedings of the National Social Policy Conference, Sydney, 21–23 July 1999, Vol. 1, (Reports and Proceedings No. 141, Social Policy Research Centre, December 1999); R Melville, ‘Nonprofit Umbrella Organisations in a Contracting Regime: A Comparative Review of Australian, British and North American Literature and Experience’ (1999) 1 *International Journal of Not for Profit Law*, 4; R Melville, ‘Voice and the Role of Community Sector Peak Bodies’, (2001) 7(2) *Third Sector Review* 89; B Dalton & M Lyons, ‘Advocacy Organisations in Australian Politics: Governance and Democratic Effects’, (2005) 11(2) *Third Sector Review* 59.

<sup>16</sup> In 2001 and again in 2002, *Word Investments Ltd* was refused endorsement for income tax exemption by the Tax Commissioner. *Word* appealed to the Administrative Appeals Tribunal which found that it was entitled to endorsement from 1 July 2002, but not before, since its primary activity at that time was running a commercial funeral business that was not charitable. At this time, the Tax Commissioner was appealing the finding that *Word* was entitled to tax exempt charitable status from 1 July 2002. (*Word* cross-appealed against the finding that it was not a tax exempt charitable entity between 1 July 2000, when the endorsement regime commenced, and 1 July 2002.) The case went all the way to the High Court: *Commissioner of Taxation (Cth) v Word Investments Ltd* [2006] FCA 1414 (Federal Court); *Commissioner of Taxation v Word Investments Ltd* (2007) 164 FCR 194 (Full Court of the Federal Court); *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Ltd* (2008) 236 CLR 204 (High Court).

<sup>17</sup> Charities Bill 2003 Exposure Draft (Cth) cl 4(1)(e), part of the ‘core definition’ of charity, charitable institution or any other kind of charitable body.

<sup>18</sup> Board of Taxation (Australia), *Consultation on the Definition of a Charity: A Report to the Treasurer*, (2003) para 3.3, [http://www.taxboard.gov.au/content/content.aspx?doc=reviews\\_and\\_consultations/definition\\_of\\_a\\_charity/default.htm&pageid=007](http://www.taxboard.gov.au/content/content.aspx?doc=reviews_and_consultations/definition_of_a_charity/default.htm&pageid=007).

The Board of Taxation handed its report on the workability of the proposed definition to the Treasurer on 19 December 2003. It made the following recommendation in relation to clause 8 of the Bill:

The Board recommends that the Government provide greater clarity to the sector on how charitable bodies may be affected by the interrelationship between subsection 8(2) and paragraphs 4(1)(a), (b) and (c).

The Board makes the following recommendations in the event that the Government decides to retain subsection 8(2) in substantially its current form:

(a) The Board recommends that the EM and if necessary the draft Bill be revised to clarify how the provisions of the draft Bill are intended to operate, and to deal with the following issues in particular:

The discrepancy between the words of the draft Bill, which maintain a clear distinction between activities and purposes, and the view expressed in the EM that charitable purpose may be determined by an examination of activities and other matters as well as purposes.

The tests that will be applied to determine whether particular activities have become purposes in their own right.

(b) The Board recommends that the draft Bill be amended to clarify whether ‘cause’ as used in paragraph 8(2)(a) is intended to mean ‘political cause’ or to have a more general application.

(c) The Board recommends that consideration be given to whether paragraph 8(2)(b) should also refer to opposing a candidate for political office.

(d) The Board recommends that the EM be revised to emphasise that subsection 8(2) applies only to:

- the purpose of advocating a political party or [a political] cause;
- the purpose of supporting [or opposing] a candidate for political office;
- the purpose of attempting to change the law or government policy;

rather than advocacy as this word is commonly understood in the community.<sup>19</sup>

On 11 May 2004, the Federal Treasurer announced that the government had decided not to proceed with the draft Bill apart from three minor matters.<sup>20</sup> The *Extension*

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<sup>19</sup> Ibid, paras 3.44–3.45

of *Charitable Purpose Act 2004* (Cth), proposed as part of the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* enlarged the charity law definition for federal purposes to include child care, self-help groups and closed religious orders. The other reforms were not implemented. In 2010 the Productivity Commission endorsed the CDI recommendations in full and further recommended that they be implemented without delay.<sup>21</sup> This path was also endorsed by the Henry Taxation Review at the same time.<sup>22</sup>

During these inquiries the ATO was conducting a consultation about what its view of the definition of charity was for its administrative functions. The Commissioner of Taxation sets out her opinion of various important matters of tax law in public rulings and at the time of the introduction of the GST proposed a ruling on the definition of charitable institution and fund. It took seven years to settle the ruling on the definition of charity, while it waited for various inquiries and High Court litigation to be completed. The ruling draws significantly from English common law: in the course of a 70 page explanation, it cites 145 English cases; 113 Australian cases; and 28 decisions from other jurisdictions.<sup>23</sup>

The final ruling stated that:

Political and lobbying purposes are not charitable. While such purposes may use educational means, this is not sufficient to show a charitable purpose.

However, political or lobbying purposes and activities that are merely incidental to a purpose that is otherwise charitable do not by themselves prevent that purpose being charitable.<sup>24</sup>

The ruling explains:

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<sup>20</sup> Hon Peter Costello MP, Treasurer of Australia, 'Final Response to the Charities Definition Inquiry', *Press Media Release*, No. 031, 11 May 2004, <http://treasurer.gov.au/listdocs.aspx?pageid=003&doctype=0&year=2004&min=phc>.

<sup>21</sup> Productivity Commission, *Contribution of the Not-for-Profit Sector: Research Report* (2010).

<sup>22</sup> Australia's Future Tax System Review, *Final Report* (2010) (the Henry Review), [http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs\\_reports.htm](http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm).

<sup>23</sup> Australian Taxation Office, *Income tax and fringe benefits tax: charities*, Taxation Ruling No TR2005/21, 21 December 2005; Australian Taxation Office, *Income tax: companies controlled by exempt entities*, Taxation Ruling No TR2005/21, 22 December 2005.

<sup>24</sup> Australian Taxation Office, *Income tax and fringe benefits tax: charities*, Taxation Ruling No TR2005/21, 21 December 2005, [18], [19].

An institution or fund whose purpose is to change the law or government policy is not charitable. This is so even if the subject matter of the change concerns the relief of poverty, education or religion.

The courts have rejected such purposes (holding them to not be charitable) because they are political in nature: ... a trust for the attainment of political objects has always been held to be invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

Examples of purposes found not to be charitable in the cases are those of a voluntary euthanasia society, a prohibition league whose purpose was the 'abolition of the traffic in intoxicating beverages' through legislative action, a proportional representation society and an anti-vivisection society whose main purpose was to replace the existing law with legislation prohibiting medical experiments on animals altogether.

A purpose of seeking to maintain the existing law is also not charitable. This is illustrated by *Molloy v. Inland Revenue Commissioner (NZ)* (1977) 8 ATR 323 where a society for protecting the unborn was held not to be established for charitable purposes. The court found the society's objects were aimed at preventing abortion law reform and said that a purpose being aimed at frustrating an obvious political object must itself be a political object for charities law.

A purpose of seeking changes to government policy or particular decisions of governmental authorities is also not charitable. Examples from the cases are an organisation whose purpose of securing the release of prisoners of conscience involved applying moral pressure to governments or authorities, and a neighbourhood association whose activities involved campaigning on such issues as government cutbacks, transportation changes, conversion of areas into condominiums and improving roads.

This is not to say that all activities associated with changing the law or government policy are necessarily inconsistent with charity. In light of the circumstances, the appropriate conclusion may be that the particular political programs and activities are in fact no more than incidental to the organisation's charitable purposes. This means the political activities are no more than ways of carrying out the charitable purposes. Such an organisation would be charitable. Many charities undertake activities to affect or change particular governmental policies or decisions as part of carrying out their charitable purposes.<sup>25</sup>

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<sup>25</sup> Ibid, [107]–[112] (footnotes omitted).

The content of the ruling on political purposes was relatively stable during the drafting process unlike the issue of ‘purposes and activities’. The first draft ruling stated that ‘an institution is accepted as charitable if its dominant purpose is charitable’, and that ‘any non-charitable purposes of the institution must be no more than incidental or ancillary to this dominant purpose’.<sup>26</sup> The second draft ruling omitted the reference to ‘dominant’ purpose and used the phrase ‘wholly, solely and exclusively’ charitable.<sup>27</sup> The final ruling settled on ‘its sole purpose must be charitable’, but ‘in carrying out its charitable purpose it can have purposes which are incidental or ancillary to the charitable purpose’.<sup>28</sup> As the paper will explore, the contentious part of the various cases has been deciding when the actual activities of a nonprofit body that has formal written charitable objects becomes in law the ‘real purpose’ of the organisation.

Meanwhile, case law in the lower courts over the last decade had been pushing at the political purpose boundary and now there is a case squarely on point before the High Court. It is ironic that the common law in Australia which has fallen so badly behind through lack of superior court cases over the last four decades may usurp government reform plans. The next section reviews recent significant Australian cases and details the Aid/Watch litigation which is before the High Court.

The High Court’s last decision requiring consideration of political purposes and charity was *Royal North Shore Hospital of Sydney v Attorney-General (NSW)*.<sup>29</sup> In that case, the Court had to consider the impact of politics on charitable trusts relating to state education. Latham CJ said using the example of state hospitals:

But it can hardly be suggested that, because the subject of public hospitals is a matter which is dealt with by legislation and in respect of which a State government will normally have a policy, any trust for the benefit of such a hospital or for

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<sup>26</sup> Australian Taxation Office, *Income tax and fringe benefits tax: charities*, Draft Taxation Ruling No TR1999/D21, 22 December 1999.

<sup>27</sup> Australian Taxation Office, *Income tax and fringe benefits tax: public benevolent institutions*, Taxation Ruling No TR2003/5, 4 June 2003.

<sup>28</sup> Australian Taxation Office, *Income tax and fringe benefits tax: charities*, Taxation Ruling No TR2005/21, 21 December 2005.

<sup>29</sup> (1938) 60 CLR 396.

adding to the number of such hospitals or for increasing their activities is non-charitable for the reason that it is directed towards political activity. A trust for the purpose of political agitation would be invalid as a charitable trust... In view of the great scope and extent of modern legislation, it is difficult, if not impossible, to suggest any subject which might not at one time or another become a subject of political propaganda.<sup>30</sup>

Dixon J noted that the law on ‘charitable purposes and political objects is in an unsatisfactory condition’,<sup>31</sup> but went on to propose that, ‘any purpose which is contrary to the established policy of the law cannot be the subject of a good charitable trust’.<sup>32</sup> The problem was, ‘when the main purpose of a trust is agitation for legislative or political changes, it is difficult for the law to find the necessary **tendency to the public welfare**’.<sup>33</sup>

In 1997, a *cy près* matter involving political purposes came before the New South Wales Supreme Court.<sup>34</sup> A will gifted the deceased’s entire estate to the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) which had ceased operating some years before the date of death. In order to apply the gift *cy près*, a general charitable intention had to be found. FCAATSI had had charitable objectives but also sought the abolition of legislation discriminating against Torres Strait Islanders and Aborigines and the introduction of legislation providing recognition in various ways; assistance towards equality; and ownership of land traditionally occupied. An issue was: did this objective infringe the political purpose prohibition?

The following part of the judgement carefully noted the words of Dixon J in the High Court to find a way out of the emphatic English formulation:

The High Court's formulation suggests that a trust may survive in Australia as charitable where the object is to introduce new law consistent with the way the law is tending. There is then no longer contrariety with an established policy of the law.

The High Court's formulation and the actual decision suggests that a trust may survive where the mode of political change falls short of political agitation, such as

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<sup>30</sup> (1938) 60 CLR 396, 412.

<sup>31</sup> (1938) 60 CLR 396, 426.

<sup>32</sup> (1938) 60 CLR 396, 426.

<sup>33</sup> (1938) 60 CLR 396, 426 (emphasis added).

<sup>34</sup> *Public Trustee v Attorney-General of New South Wales* (1997) 42 NSWLR 600.

by general education. However, there are gradations between the two extremes which are not always capable of a priori categorisation, but depend on their particular facts. One should be wary of either pejorative labels like ‘agitation’ or euphemistic labels like ‘educational’, applied to such purposes. The enquiry should rather be directed to the degree of objectivity surrounding the endeavour to influence, particularly where the trust relies on an educational end, and whether political change is merely the by-product or is instead the principal purpose. The High Court recognised that some political impact from the objects of a trust may be inevitable and need not be fatal such as an essay competition on a subject of political controversy.<sup>35</sup>

The judgement went on to describe the passing of the *Racial Discrimination Act* by the Commonwealth in 1975, followed by similar legislation in various States.<sup>36</sup> As the judge wrote in a subsequent article about the issue:

Thus a distinction was drawn between trusts for purposes which are ‘contrary to the established policy of the law’, so as to fall automatically, and trusts whose object is to ‘introduce new law consistent with the way the law is tending’; the former may aptly be called a reversal than change in the law.<sup>37</sup>

The next case brought by the ATO on this matter did not require recourse to this argument as the evidence of political purposes and activity was found to be minor. In *National Council of Women of Tasmania v Federal Commissioner of Taxation*,<sup>38</sup> the ATO argued that an unincorporated association of women’s organisations that was formed to: establish a bond of union between various affiliated societies; advance the interests of women and children and of humanity in general; and confer on questions relating to the family, the State and the Commonwealth, had become too political. The Administrative Appeals Tribunal found that:

During the years in question matters discussed at meetings, or spoken about by guest speakers, have included firearms, B-double trucks, poker machines, marijuana, anti-discrimination legislation, and the introduction of competition in the telecommunications industry.

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<sup>35</sup> (1997) 42 NSWLR 600, 608, citing *Royal North Shore Hospital of Sydney v Attorney-General (NSW)* (1938) 60 CLR 396.

<sup>36</sup> Starting in New South Wales with the *Anti Discrimination Act 1977* (NSW).

<sup>37</sup> GFK Santo, ‘Charity in its Political Voice – a Tinkling Cymbal or a Sounding Brass?’ (1999) 18 *Australian Bar Review*, 225, 236.

<sup>38</sup> (1998) 38 ATR 1174.

The Council is frequently asked to make submissions as to policy matters being considered by the Commonwealth and State governments and at local government level. It is not able to provide all the submissions that it is invited to make. Requests for submissions are referred to appropriate individuals, who in turn consult the member organisations. The policy of the Council is that submissions must always reflect the views of the Council. We take it that any such submissions are meant to reflect consensus views.

In other respects, the Council's political and lobbying activities have been minimal. Letters to newspapers have been written on its behalf only three times in 13 years. Appointments with politicians have been made only four times in 18 years.<sup>39</sup>

The Tribunal found that this was merely ancillary to its main purpose and thus the ATO's claim was not sustained.

The next case did contain some discussion about the modernisation of the political boundary. In a tribunal case brought by the Victorian Commissioner for Payroll Tax against the Australian Conservation Foundation,<sup>40</sup> a tribunal member opined,

[i]t is now plain, if it was not before, that there is no law that says a charity can be proscribed merely because you can attach the epithet political to some of its activities: for a variety of reasons many charities nowadays will not be able to avoid conduct that may be said to be political. It is in my opinion clear that the ACF should *prima facie* be regarded as charitable and it would in my view be unacceptably unworldly if the ACF were to lose that status because of misgivings expressed by some jurists (as it happens Law Lords) in another context, in another hemisphere, and in another millennium.<sup>41</sup>

The *Victorian Women Lawyers' Association case* may be instructive as the judge deciding the matter is the current Chief Justice of the High Court.<sup>42</sup> Victorian Women Lawyers (VWL) was an incorporated association that, at various times, claimed it was exempt from income tax as either a charitable institution, an association established for community service purposes, or (but not argued at trial) a public educational institution. The ATO disagreed.

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<sup>39</sup> (1998) 38 ATR 1174, [20]–[22].

<sup>40</sup> *Australian Conservation Foundation Inc v Commissioner of State Revenue* [2002] VCAT 1491.

<sup>41</sup> [2002] VCAT 1491, [26].

<sup>42</sup> *Victorian Women Lawyers' Association Inc v Commissioner of Taxation* (2008) 170 FCR 318.

VWL's constitutional objects were set out in clause 3.1:

- (a) to provide a common meeting ground for women lawyers;
- (b) to foster the continuing education and development of women lawyers in all matters of legal interest;
- (c) to encourage and provide for the entry of women into the legal profession and their advancement within the legal profession;
- (d) to work towards the reform of the law;
- (e) to participate as a body in matters of interest to the legal profession;
- (f) to promote the understanding and support of women's legal and human rights; and
- (g) such other objects as the Association may in General Meeting decide.

Its constitution also adopted and endorsed, in clause 3.2:

...the following purposes of the Australian Women Lawyers Association of which the Association shall seek to become a Recognised Organisation:

- (a) achieve justice and equality for all women;
- (b) further understanding of and support for the legal rights of all women;
- (c) identify, highlight and eradicate discrimination against women in law and in the legal system;
- (d) advance equality for women in the legal profession;
- (e) create and enhance awareness of women's contribution to the practice and development of the law; and
- (f) provide a professional and social network for women lawyers.

The court found after substantial discussion that the activities of VWL were broadly in accordance with its objects set out above.<sup>43</sup> For example, VWL did from time to time make public statements about cuts to the childcare rebate, expressed support for the tax deductibility of child care payments and drew attention to the impact of cuts to legal aid

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<sup>43</sup> (2008) 170 FCR 318, [108].

on women in the community.<sup>44</sup> However, ‘it did not endorse any political party for a federal or state election nor did it support any particular candidate’.<sup>45</sup>

The Commissioner questioned whether the activities of VWL were of ‘benefit’ or ‘service’ in relation to the association’s concerns with gender based discrimination and the need to take positive steps to overcome it. After examining the legislation in the various States and International Conventions that Australia was party to, the court decided that advancement of women on an equal basis with men was of benefit and service to the community.

The Commissioner’s objection to the ‘law reform’ objects of the VWL constitution were dismissed, as it was not a significant element of VWL’s purposes. The Commissioner also contended that either the association was for the advancement of VWL’s members directly, and only indirectly for women lawyers as a whole, or it was a social / networking group. The court found that the principal purpose ‘was to remove barriers and increase opportunities for participation by and advancement of women in the legal profession in Victoria’<sup>46</sup> and such other activities were only incidental or ancillary. The judgement underpinned this by

[h]aving regard to the social norms reflected in the *Sex Discrimination Act*, cognate State legislation and Australia’s membership of the *Convention for the Elimination of all Forms of Discrimination Against Women*, that objective was a purpose ‘beneficial to the community’.<sup>47</sup>

Thus, VWL was found to be a charitable institution for the purposes of the *Income Tax Assessment Act 1997*.

While the issue had been decided, the judgement did discuss briefly whether VWL could also fall under a separate head of income tax exemption as being ‘established for

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<sup>44</sup> (2008) 170 FCR 318, [47].

<sup>45</sup> (2008) 170 FCR 318, [49].

<sup>46</sup> (2008) 170 FCR 318, [147].

<sup>47</sup> (2008) 170 FCR 318, [148].

community service purposes (not being political purposes or **lobbying purposes**)'.<sup>48</sup> While it was doubtful whether VWL fitted under community purposes,<sup>49</sup> there was some discussion about whether it infringed the requirement of 'not being [for] political purposes or lobbying purposes'. The court had already decided that VWL did not have a political purpose. In its submission to the Court, VWL had referred to the definition of lobbying in the Oxford English Dictionary:

1. To influence (members of a house of legislature) in the exercise of their legislative functions by frequenting the lobby.
2. To frequent the lobby of a legislative assembly for the purpose of influencing members' votes, to solicit the votes of members.

VWL submitted that 'lobbying' in its statutory context bore a narrow political meaning tying proscribed political activity to direct interaction with members of parliament for stated ends and purposes.<sup>50</sup> On this issue, the Judge said:

It is not clear to me that the term 'lobbying' is to be construed so narrowly given the width of the concept of political purposes. In my opinion it could extend to representations to government or members of parliament for changes in policy as well as changes in the law.<sup>51</sup>

These cases form the context for the next case which has made its way through the appeal process to the High Court of Australia. Interestingly the new Chief Justice of the High Court was previously the Federal Court judge who decided the VWL case.

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<sup>48</sup> This was required under *Income Tax Assessment Act 1936* (Cth) s. 23(g)(v); *Income Tax Assessment Act 1997* (Cth) s. 50-10, item 2.1 (emphasis added).

<sup>49</sup> At para [163] the court noted that 'The concept of "community service" does seem to import the notion of the delivery of some practical "help, benefit or advantage" in the sense used by Jessup J. That criterion is not necessarily met by an organisation whose purpose is to change practices and attitudes in such a way as to facilitate the entry and advancement of women within the profession generally.'

<sup>50</sup> (2008) 170 FCR 318, [161].

<sup>51</sup> (2008) 170 FCR 318, [162].

## Aid/Watch Incorporated

Aid/Watch Incorporated (Aid/Watch) is a small nonprofit incorporated association with a turnover of \$A130,000, a few part time paid staff, with its work mostly carried on by volunteers. It researched, monitored and campaigned about the effectiveness of Australia's delivery of overseas aid and investment programs, but did not deliver any aid itself.

The objectives of Aid/Watch were stated in clause 2 of its constitution as follows:

AID/WATCH monitors, researches, campaigns and undertakes activities on the environmental impact of Australian and multinational aid and investment programs, projects and policies.

The main objectives of the Association are to seek to ensure that:

- Aid projects and development programs and projects are designed to protect the environment and associated human rights of local communities in countries that receive Australian aid.
- There is increased aid funding for environment programs with specific attention to renewable energy, end-use efficiency and energy conservation, small scale irrigation schemes and sustainable agriculture, land rehabilitation programs, waste management, and protection of biodiversity.
- There are complete environmental impact assessment (sic) according to the highest standards for all projects, incorporating meaningful public/community participation.
- Aid and development projects and programs incorporate the principles of ecologically sustainable development.
- There is respect for the rights of indigenous people and a recognition of their expertise in ecological management.
- Aid agencies, development banks and export credit agencies conduct full and regular consultations with community organisations, regarding the identification, planning, implementation, monitoring and evaluation of projects.
- There is accountability and transparency in the Australian aid and export credit programs including freedom of information on all aspects of projects and programs of development agencies and multilateral development banks.

- There is greater recognition of women's needs and greater involvement of women on development projects, and greater gender equity at all levels of the development process, including in consultancy firms contracted to implement aid programs and projects.
- There is a halt to structural adjustment programs that contribute to environmental degradation and dislocate or damage the poorest populations.
- There is an increased proportion of appropriate professional staff in Australia's official overseas development agency (currently AusAID), official Export Credit Agency (currently EFIC) and multilateral development agencies and consultancy firms contracted for aid programs and projects and the development banks.
- There is increased funding of development education activities within Australia and an increased public awareness of the environmental and social impact of the Australian Overseas Development Assistance Program and related private investment, including input into environmental and developmental studies.
- There is a public fund to which gifts of money or property are to be made which will be used only to support AID/WATCH's key purposes. This fund will be named the AID/WATCH fund.

Aid/Watch had applied successfully for income tax exemption<sup>52</sup> and Fringe Benefits Tax concessions as a 'charitable institution',<sup>53</sup> and it could receive deductible gifts from the public as it was an endorsed Deductible Gift Recipient on the register of environmental organisations.<sup>54</sup> In 2006, the ATO revoked its income tax concession. The reasons given were that it was not established for the benefit of the public and that its objects and purposes disclosed that its actual purpose was not charitable.<sup>55</sup> In relation to public benefit, the ATO reviewed the Annual Reports of Aid/Watch and came to the conclusion that:

the activities of Aid Watch [sic] indicate that it has a separate, political purpose therefore Aid Watch [sic] does not have a sole purpose that is charitable within the spirit and intendment of the Statute of Charitable Uses 1601.<sup>56</sup>

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<sup>52</sup> *Income Tax Assessment Act 1997* (Cth) s. 50-105.

<sup>53</sup> *Fringe Benefits Tax Assessment Act 1986* (Cth) s. 65J.

<sup>54</sup> *Income Tax Assessment Act 1997* (Cth) sub-div 30-E.

<sup>55</sup> Letter from ATO to Aid Watch Incorporated dated 2 October 2006, held on file with the author.

<sup>56</sup> *Ibid*, p 3.

The ATO decided that Aid/Watch was not beneficial to the community because its dissolution clause did ‘not state that funds cannot be transferred to an organisation which is not carried on for profit or gain of its individual members’.<sup>57</sup>

Aid/Watch sought internal review of the decision.<sup>58</sup> The review endorsed the original finding that Aid/Watch had a political purpose and was not solely charitable. The review formulated the principal question in reference to the applicable tax ruling as:

What needs to be concluded from Aidwatch’s objects and activities is whether it has a political purpose or is simply undertaking political activities to further its charitable purpose.<sup>59</sup>

The review drew on Aid/Watch’s annual reports for the years 2002 to 2004 and a draft submission to a philanthropic funder by Aid/Watch. The excerpts used from these documents seem to highlight phrases pointing to government departments being ‘a key lobbying target’<sup>60</sup> and actions such as deputations to government officers, issuing of press releases, web sites and written reports. It summed up its view in the following passage:

The fact that Aidwatch is not involved in the delivery of aid projects but is campaigning for changes to Australian government policy, and multilateral institutions’ involvement in aid and development projects demonstrates that Aidwatch has a non-charitable purpose.

Given the emphasis placed on effecting changes to Australian government policy and multilateral institutions involvement in aid and development, the non-charitable purpose cannot be considered to be incidental to any predominantly charitable purpose. The 2004 Annual Report is evidence that effecting changes to Australian Government policy is in fact Aidwatch’s dominant purpose.

One passage of the 2004 annual report appears to have been the final straw:

**AID/WATCH has a clear vision to support people and communities in low-income countries to determine the future of their development. AID/WATCH does not deliver aid projects, but works closely with grass-roots organisations in campaigning for social change. ‘We seek to push the Australian government and**

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<sup>57</sup> Ibid, p 4

<sup>58</sup> Objection Reference Number: 5567873 held on file with the author.

<sup>59</sup> Ibid, p 2.

<sup>60</sup> Ibid, pp 3, 4, 5.

**multilateral institutions to promote a logistic approach to enable local and indigenous communities to be in chare [sic] of their own development.’<sup>61</sup>**

It is notable that the ATO reviewer used the annual reports and a funding application as the source for determining what the organisation’s overall activities were and also that part which could be characterised as ‘political’. The issue of whether such reports did faithfully represent the actual activities of the organisation or what Aid/Watch may have been trying to convey to readers in that particular annual report at that time in its lifecycle (probably not with a tax officer in mind as the reader) is not addressed.

The dissolution clause was no longer in contention as, in the interim, this had been amended by Aid/Watch to the satisfaction of the ATO.<sup>62</sup>

The matter was then taken to the Administrative Appeals Tribunal which reversed the ATO’s decision.<sup>63</sup> The Tribunal classified the formal objects of Aid/Watch as being for the relief of poverty, and for education and also coming under the fourth head of charity. It considered that relief of poverty was so fundamental to the notion of overseas aid that the constitutional objects did not need express statement.<sup>64</sup> Education was represented in the objects through the production of reports and their public dissemination.<sup>65</sup> The Tribunal found that there was evidence that the activities of Aid/Watch were in accord with its formal objectives. However, the activities were characterised as ‘at the edges of appropriate conduct’, but not ‘so extreme that it loses its charitable quality’.<sup>66</sup>

The Tribunal decided that two further questions needed to be answered: ‘First, can an institution which researches, monitors and campaigns about aid but does not, itself, distribute aid, be charitable?’<sup>67</sup> The Tribunal found no real issue in this and referred to the

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<sup>61</sup> Ibid, p 8, (emphasis added by ATO).

<sup>62</sup> Ibid, p 1.

<sup>63</sup> *Aid/Watch Inc v Commissioner of Taxation* [2008] AATA 652 (28 July 2008).

<sup>64</sup> [2008] AATA 652, [23]

<sup>65</sup> [2008] AATA 652, [26]–[33].

<sup>66</sup> [2008] AATA 652, [35].

<sup>67</sup> [2008] AATA 652, [4].

cases which promoted charitable objects, such as horticulture,<sup>68</sup> agriculture<sup>69</sup> and innovation.<sup>70</sup>

The second issue was: ‘does the fact that a fundamental part of its work is campaigning, very often against government, mean that its purposes, which might otherwise be charitable, lose that status, because they are political purposes?’<sup>71</sup> The Tribunal noted that all levels of Australian government supported overseas aid and the protection of the environment and, ‘the most that can be said is that Aid/Watch seeks to influence government policy as to the nature and extent and means of delivery of overseas aid’.<sup>72</sup>

The Tribunal concluded:

Because Aid/Watch does not have changes to the law as a main object it is not disqualified from charitable status by direct application of the principles enunciated in the *Secular Society* or *National Anti-Vivisection Society* cases. It may be disqualified if its objects and activities, although not overtly political, still place undue emphasis on attempts to influence government, particularly with respect to priorities and methods. The argument against charitable status may be enhanced because of its activist approaches and confrontational methods. However, I consider that Aid/Watch’s objectives and activities, as I have found them to be, fall short of disqualifying it from being a charity.<sup>73</sup>

The Commissioner appealed to the Full Court of the Federal Court.

### **The Full Federal Court decision**

On appeal, the Full Federal Court found that Aid/Watch’s purposes were not charitable, as relief of poverty and education were not its primary purpose.<sup>74</sup> It did not

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<sup>68</sup> *Inland Revenue Commissioner v Yorkshire Agricultural Society* [1928] 1 KB 611.

<sup>69</sup> *Re Pleasants* (1923) 39 TLR 675.

<sup>70</sup> *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362.

<sup>71</sup> [2008] AATA 652, [4].

<sup>72</sup> [2008] AATA 652, [47].

<sup>73</sup> [2008] AATA 652, [49].

<sup>74</sup> *Commissioner of Taxation v Aid/Watch Incorporated* (2009) 178 FCR 423.

address any issues relating to the fourth head. The court accepted that the formal objects of Aid/Watch did come within the relief of poverty. The effectiveness of aid delivery and its environmental sustainability fell under the relief of poverty. That the organisation did not directly deliver aid itself was no bar to being charitable.<sup>75</sup>

The formal objects were also found to come under the educational head of charity through the production and dissemination of major reports.<sup>76</sup> The Court did not accept the Commissioner's view that education involved 'training or teaching through a system or syllabus in a structured manner, rather than simply a process of informing the public'. It did find that research and publications produced by Aid/Watch did have the necessary educational element and set it apart from those such as journalists who merely disseminated general information. So the Court considered that the purposes should be characterised as charitable in the legal sense unless disqualified because of their political nature.

It was agreed by all parties and the court that Aid/Watch was not engaged in 'lobbying' or attempts to influence the government directly, but rather was 'campaign focused'. However, Aid/Watch's argument that its objectives were not contrary to government policy but 'to influence government policy as to the nature and extent and means of delivery of overseas aid'<sup>77</sup> were not accepted. This was because 'the "natural and probable consequence" of Aid/Watch's activities is an effect on public opinion and then on government opinion'.<sup>78</sup> The court later remarked that 'It is for this reason that, irrespective of whether in other circumstances courts may be able to judge public benefit, in this case no such determination can be made'. Political purposes were judged to be the organisation's main purpose, rather than being ancillary to a charitable purpose which would not have affected its status.

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<sup>75</sup> (2009) 178 FCR 423, [19].

<sup>76</sup> (2009) 178 FCR 423, [27]–[28].

<sup>77</sup> (2009) 178 FCR 423, [39].

<sup>78</sup> (2009) 178 FCR 423, [47].

The judgement referred liberally to lower court cases<sup>79</sup> and extra-curial comments by an Australian judge<sup>80</sup> seeking to move the political purposes test into a contemporary context. But the Court considered any restatement of the law would require the intervention of the High Court. This is exactly where the case is at present – and where we turn now.

## Australian High Court

The Aid/Watch appeal was heard before the full bench of the High Court in mid-June 2010 and the judgement reserved. The appeal submission transcripts reveal some interesting lines of questioning by the Court.

First, one judge acknowledged that the High Court had never applied the *Anti-Vivisection case*<sup>81</sup> and stated ‘The question is whether we follow it’. While, as already shown, there have been a number of lower court cases about the common law application of the political purposes test and charity (including the VWL case discussed above, decided by the current Chief Justice<sup>82</sup>) the High Court has never had the opportunity to consider the matter until now. The dicta of several judges and more adventurous lower court decisions ‘on the boundary’ may indicate serious consideration of how the English line of cases should apply to modern Australia. This is heightened by the next issue, implied political freedoms, which was raised several times in the appeal submission.<sup>83</sup>

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<sup>79</sup> *Attorney General for NSW v The NSW Henry George Foundation Ltd* [2002] NSWSC 112; and *Public Trustee v Attorney-General of NSW* (1997) 42 NSWLR 600.

<sup>80</sup> GFK Santo, ‘Charity in its Political Voice – a Tinkling Cymbal or a Sounding Brass?’ (1999) 18 *Australian Bar Review* 225.

<sup>81</sup> Transcript of Proceedings, *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA Trans 154 (15 June 2010), 27 (Gummow J) citing *National Anti-Vivisection Society v Inland Revenue Commissioners* [1947] 2 All ER 217.

<sup>82</sup> French J as he then was in *Victorian Women Lawyers’ Association Inc v Commissioner of Taxation* (2008) 170 FCR 318.

<sup>83</sup> Transcript of Proceedings, *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA Trans 154 (15 June 2010), 6 (French CJ and Gummow J); 33 (Hayne J); HCA Trans 155 (16 June 2010), 1 (Gummow J).

Second, the transcript reveals that the application of the High Court's recently expounded notion of an implied freedom of political communication was seriously considered. The Australian constitutional arrangements do not include a Bill of Rights, although much of the inspiration for our Constitution came from the Constitution of the United States. There are guarantees of some fundamental rights and immunities scattered through the Australian Constitution, for example trial by jury,<sup>84</sup> direct suffrage and equality of voting rights<sup>85</sup> and free exercise of religion<sup>86</sup> to name a few. In 1992, the High Court held in two landmark cases that the Australian Constitution impliedly provided for freedom of political communication.<sup>87</sup> This implication came from various sections of the Constitution establishing Australia's system of representative democracy. These cases resulted in declaring invalid legislation which proscribed the use of words calculated to bring into disrepute the Industrial Relations Commission,<sup>88</sup> and legislation which prohibited the broadcasting of political advertising during an election period.<sup>89</sup>

Both statute and common law can be ruled invalid. In *Langer v Commonwealth*<sup>90</sup> the High Court held that a prohibition in the *Commonwealth Electoral Act 1918* on the publication of material that encouraged informal voting did not infringe the implied freedom of political communication. Rather the implied freedom of communication did not strike out laws which curtailed that freedom in order to further or enhance the democratic process.

Shortly after that, in *Lange v Australian Broadcasting Corporation*<sup>91</sup> the High Court had to consider whether the common law of defamation effectively burdened freedom of communication about government and political matters. The Court said that earlier High

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<sup>84</sup> *Australian Constitution* s 80.

<sup>85</sup> *Australian Constitution* ss 24 and 25.

<sup>86</sup> *Australian Constitution* s 116.

<sup>87</sup> *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; and *Australian Capital Television Pty Ltd v Commonwealth (No 2)* (1992) 177 CLR 106.

<sup>88</sup> *The Industrial Relations Act 1988* (Cth).

<sup>89</sup> *The Broadcasting Act 1942* (Cth).

<sup>90</sup> (1996) 186 CLR 302.

<sup>91</sup> (1997) 189 CLR 520.

Court cases should be accepted as deciding that, in Australia, the common law rules of defamation must conform to the requirements of the Constitution, and that the constitutional implication precluded an unqualified application in Australia of the whole English common law of defamation. Each individual's interest in discussion about government and political matters extends the categories of qualified privilege for the purposes of the law of defamation, so the notion of qualified privilege was applied to a 'communication made to the public on a government or political matter'<sup>92</sup> and will be a defence to a defamation action.

The court stated:

...ss 7 and 24 and the related sections of the *Constitution* necessarily protect that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors. Those sections do not confer personal rights on individuals. Rather they preclude the curtailment of the protected freedom by the exercise of legislative or executive power.<sup>93</sup>

The High Court set down a two-fold test to determine infringement of implied freedom of communication. The first question is whether the law effectively burdens the freedom of communication about government or political matters either in its terms, operation or effect. If the answer is yes, then the second question is: is the law reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with representative government? If the answer is no, then the law can be declared invalid.

This move by the High Court has created a deal of controversy in academic and political circles.<sup>94</sup> It raises the further question: could the common law restricting the right of a charity to have political purposes be struck down? Many await the High Court's judgement in the Aid/Watch matter with anticipation.

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<sup>92</sup> (1997) 189 CLR 520, 571.

<sup>93</sup> (1997) 189 CLR 520, 560.

<sup>94</sup> Dan Meagher 'The Protection of Political Communication under the Australian Constitution' (2005) 28 *University of New South Wales Law Journal* 30.

## POLITICAL PARTIES

As suggested in the introduction, the political purpose prohibition in charity law does not stifle other nonprofit organisations having political purposes or engaging in political activities. Political parties which are nonprofit organisations have been a feature of Australian representative democracy since self-government in the colonies. The two major parties with significant members, supporters and well developed principles are now being joined by a host of single issue parties. There are currently 72 minor parties in Australia, spread across the state and the Commonwealth jurisdictions. They include the Australian Sex Party,<sup>95</sup> Communist Alliance,<sup>96</sup> Shooters and Fishers Party<sup>97</sup> and the Climate Sceptics<sup>98</sup> – illustrating a rich diversity of Australian views and opinions. What appears to be a trend is the registration of single issue parties which deal with specific matters that would potentially fall under the heads of charity, for example disability, environment or lifestyle value issues.

So what is involved in registering a political party in Australia? The three tables attached to this paper give the framework of legislation which applies to political parties in the different Australian jurisdictions. All jurisdictions have electoral legislation which covers the registration of political parties and regulates various aspects of corporate life such as constitutional rules, conduct, reporting and funding disclosures. All political parties must seek approval to be endorsed as a political party. Requirements include:

- a written constitution;
- members (between 100 and 750 of them) who are electors in the jurisdiction;
- an approved name which is not misleading or obscene; and

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<sup>95</sup> <http://www.sexparty.org.au/>

<sup>96</sup> <http://www.comunist-alliance.org.au/menu-media.html>

<sup>97</sup> <http://www.shootersandfishers.org.au/>

<sup>98</sup> <http://landshape.org/news/>

- in some jurisdictions, an application fee (ranging from \$600 to \$2,000 – no application fee applies in five jurisdictions).<sup>99</sup>

Ongoing requirements may include:

- Financial disclosures (annually in five jurisdictions; six monthly in others);
- Disclosure of donor details or financial loans over \$1,000 (in five jurisdictions);
- Disclosure of election expenditure (in six jurisdictions);
- Restrictions on donations (four jurisdictions have restrictions on anonymous donations; one has restrictions on donations by property developers);and
- Limits on election campaign expenditure (in two jurisdictions).<sup>100</sup>

Once registered, political parties are entitled to a number of concessions. These concessions include:

- Having the party name next to candidates on the ballot paper;
- Gaining access to various electoral rolls, often in digital form;
- Being entitled to public funding (in six jurisdictions) ranging from \$1.3746 per vote to \$2.311191; and
- Tax deductibility for individuals giving donations up to \$1,500 per tax year.<sup>101</sup> (Tax deduction for business contributions has recently been removed.<sup>102</sup>)

This tax deductibility for political party donations is in some ways more generous than that for other nonprofit organisations. In Australia, tax deductibility for donations is not based on a charity definition, but on a restricted classification of charities that deliver direct relief to those in need (Public Benevolent Institutions) and other specifically named classes and organisations.<sup>103</sup> Only about half of all charities have this concession. Further, the concession is in the main only for pure gifts, so membership fees, raffle and gaming tickets are not deductible. Tax deduction for political party contributions includes not

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<sup>99</sup> Refer to Table A for details.

<sup>100</sup> Refer to Table A for details

<sup>101</sup> Refer to Table B for details

<sup>102</sup> *Tax Laws Amendment (Political Contributions and Gifts) Act 2008* (Cth) .

<sup>103</sup> *Income Tax Assessment Act 1997* (Cth) div 30.

only gifts, but also other contributions such as membership fees.<sup>104</sup> Political parties are subject to income tax, but because of the doctrine of mutuality, ‘income’ from members is not included.

Table C attached to this paper gives an indication of the size of the public funding involved and although there are some thresholds in terms of percentage of votes, minor parties have been able to secure public funding on the basis of their electoral performance. The tax expenditure on political donations is not recorded in the annual tax expenditures statement.

An example of the trend to small single issue parties is the South Australian Dignity for Disability Party (formerly Dignity for Disabled Party). In 2010, the party had a 21 year old woman elected to an eight year term in the Upper House of the Parliament<sup>105</sup> – the youngest female ever elected to an Australian parliament, and the first person who uses a wheelchair to be elected in the South Australian Parliament. This alone was a significant statement about the cause advocated by the party.

Dignity for the Disabled was formed in 2003, disbanded in 2007 and revived in 2009. It advocates for disability funding and reform. In 2003 the President wrote:

A strong, independent disability council like other public lobby groups including the AMA, the unions, retail and hotel associations, the mining lobby and teacher federations is what the disability sector so desperately needs.

The necessity of the sector to demand and insist on a peak body where members are elected by the disability community and represent all stakeholders in the sector including people with disabilities and carers and not agree to another ‘Ministerial Advisory Committee’ will be a key factor in whether disability issues retain a high public profile and key focus on government agendas or once again become just a talking point amongst people with a disability their families and carers.<sup>106</sup>

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<sup>104</sup> *Income Tax Assessment Act 1997* (Cth) s 30-242.

<sup>105</sup> The following material is drawn from: *History of Disability in South Australia: Dignity for Disabled (D4D)* <http://history.dircsa.org.au/2000-beyond/dignity-for-disabled-d4d/>; and Dignity for Disability Inc website <http://www.d4d.com.au/>.

<sup>106</sup> David Holst, President, Dignity for Disabled, <http://history.dircsa.org.au/2000-beyond/dignity-for-disabled-d4d/>.

The party is operated by volunteers and has no staff. At the 2006 South Australian election, it fielded 14 candidates including seven with disabilities. It achieved 2.1% of the first preference in the ten lower house seats contested – better than some of the more established small parties. It claims that it regularly communicates to over 2000 organisations and people on its database, as well as organising special events such as award nights and public rallies and seminars.

These small specific issue parties appear to be having an impact on Australian society and participating fully in the political process. Whether the space will become congested with new players leading to greater thresholds being placed at the entry point, in order to ration participation, remains to be seen.

## **Conclusion**

It is likely that the common law in relation to charities and political purposes will change in the near future with the impending High Court judgement in the Aid/Watch matter. As noted above, it is ironic that, after a drought of superior court cases on the meaning of charity and a glut of government inquiries with positive reform recommendations leading nowhere, it may be the judicial arm that delivers reform to this area. In the meantime, some have taken the bold step to establish political parties to advocate for policy reform on issues which charities have traditionally addressed with direct provision of aid.

Table A- Political Party Registration

	C' Wealth.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Covering legislation and websites	<i>Commonwealth Electoral Act 1918</i> <a href="http://www.aec.gov.au">www.aec.gov.au</a>	<i>Parliamentary Electorates and Elections Act (NSW) 1912</i>  <i>Parliamentary Electorates and Elections Reg (NSW)2008</i> <a href="http://www.elections.nsw.gov.au">www.elections.nsw.gov.au</a>  <i>Election funding and financial disclosures are covered by Election Funding Authority</i>  <a href="http://www.efa.nsw.gov.au/">http://www.efa.nsw.gov.au/</a>	<i>Electoral Act (Vic) 2002</i>  <a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a>	<i>Electoral Act (Qld) 1992</i>  <i>Electoral Regulation 2002</i>  <a href="http://www.ecq.qld.gov.au">http://www.ecq.qld.gov.au</a>	<i>Electoral Act (SA) 1985</i>  <a href="http://www.ecsa.sa.gov.au">www.ecsa.sa.gov.au</a>	<i>Electoral Act (WA) 1907</i>  <i>Electoral Regulations (WA)1996</i>  <i>Electoral (Political Finance) Regulations (WA)1996</i>  <a href="http://www.waec.wa.gov.au">http://www.waec.wa.gov.au</a>	<i>Electoral Act (Tas) 2004</i>  <a href="http://www.electoral.tas.gov.au">http://www.electoral.tas.gov.au</a>	<i>Electoral Act (ACT) 1992</i>  <i>Electoral Regulation (ACT) 1993</i>  <a href="http://www.elections.act.gov.au">http://www.elections.act.gov.au</a>	<i>Electoral Act (NT)</i>  <i>Electoral Regulations (NT)</i>  <a href="http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase">http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase</a>
Registering a new political party	Need either  a)one current MP or Senator; or  b)at least 500 members who are electors.	At least 750 members who are enrolled on the NSW electoral roll and who are not relied upon by another party for registration purposes	At least 500 members who are registered Victorian electors and hold membership in accordance with the rules of the party and not members of another political party.	a) at least one member of the Legislative Assembly in Qld; or  b)At least 500 members who are electors or  <b>NB : THIS IS TO CHANGE TO 200</b> electors – not yet proclaimed	a) A parliamentary party (relying on 1 MP); or  b) a political party ((relying on at least 150 electors)	At least 500 members who are enrolled to vote in WA	At least 100 members who are enrolled on Tas electoral roll	At least 100 members who are enrolled on ACT electoral roll	a)registered under the C'wealth Electoral Act; or  b)have at least 200 members who are electors (that is, on the electoral roll for an address in the Northern Territory).
Other registration	Can be either body corp or	a) An acceptable name	must include name and	Must be established on	-the name of the party and	-a copy of the party's	Each of the persons listed	The <i>Electoral Act 1992</i>	A copy of the current

Table A- Political Party Registration

	C' Wealrh.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
requirements	association  Established by written constitution	b) a registered officer  c) a written constitution  NB have to be registered 12 months prior to election	address of proposed registered officer, a copy of the constitution	basis of a written constitution.  Constitution must be a complying constitution – minimum standards set  **Must provide copy of mem'ship application for each person shown on mem'ship list	any proposed abbreviation (the name, address and signature of the registered officer  -the constitution of the party	constitution  - an abbreviation of the party name for use on ballot papers, if applicable  -the name and address of the secretary  -the names and addresses of at least 500 members who are electors	as a member is to make a statutory declaration in an approved form that he or she –  (a) is a member of the party in relation to which the application is made; and  (b) supports the application for registration of that party.  -name and address of the person who is to be the registered officer of the party and be signed by that person	defines a political party as an organisation, incorporated or unincorporated, an object or activity of which is the promotion of the election to The Assembly of a candidate or candidates endorsed by it. A party must have a written constitution  It must be signed by the secretary (however described) of the party and contain the name, address and a specimen signature of the person who is to be the registered officer. The application must be accompanied by party	Constitution of the party - A Statutory Declaration that the registered officer named above is qualified to be enrolled -A Statutory Declaration that the party is registered with the Australian Electoral Commission and details of the registration <i>or</i> A Statutory Declaration that the party has at least 200 members

Table A- Political Party Registration

	C' Wealth.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
								membership details and a copy of the party's constitution.	
<b>Application fee</b>	\$500	\$2000	\$597.50	No fee	No fee	No fee	No fee	No fee	\$600
<b>Choosing a name</b>	Name cannot comprise more than 6 words  Can't use independent party  Or an obscene name or another registered party name or similar	The name has to be 6 words or less but you can't use the words "independent" or 'independent party'  In the name  Or an obscene name or another registered party name or similar	The name cannot comprises more than 6 words or include independent party  Or an obscene name or another registered party name or similar	The name has to be 6 words or less but you can't use the words "independent"  Or an obscene name or another registered party name or similar	The name cannot comprises more than 6 words or include independent party	The name has to be 6 words or less but you can't use the words 'royal' or 'independent' In the name  Or an obscene name or another registered party name or similar	is not to include the word independent and is not to consist of more than 6 words;  Or an obscene name or another registered party name or similar	The name has to be 6 words or less but you can't use the words independent or 'independent party' In the name  Or an obscene name or another registered party name or similar  If name includes name of a living person must have consent of that person	The name has to be 6 words or less but you can't use the words independent' or 'independent party' In the name  Or an obscene name or another registered party name or similar
<b>Party's constitution</b>	Must have written constitution with one of the objects being that it will endorse candidates for House of Reps	-Political party whether a body corporate or an association must be established on the basis of a written	Must have as one of the objects the endorsement of candidates for election	Must have as one of the objects the endorsement of candidates for election to Qld	Must have as one of the objects the endorsement of candidates for election	Must specify at least one of its objects or activities is the promotion of the election to	Must have as one of the objects the endorsement of candidates for election	At least one of the aims must be to endorse candidates to contest ACT Election	Must have as one of the objects the endorsement of candidates for election

Table A- Political Party Registration

	C' Wealrh.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
	or Senate elections.	constitution or by-laws setting out the aims of the party.  -At least one of the aims must be to endorse candidates to contest elections		parliament  Rules also required to include membership of party and internal management.		the Parliament of the State a candidate or endorsed candidates.		Other matters set out as a minimum including party's decision making processes.	
<b>Process for continued registration</b>	Once in the life of each Federal Parliament, registered political parties need to review their continuing eligibility for registration upon request from AEC.	Have to lodge an annual return by 30 June to maintain registration detailing any changes to party membership or personal details of existing members.	Registered political parties need to apply to the VEC to re-register once during the term of each Parliament.	Have to lodge ¼ ly report re any changes to rules.	From 30 September 2011.  Registered parties are required to provide annual returns as to their continued eligibility	See cancellation of registration details below	the Commission may review a registered party but not more than once per year	See cancellation of registration details below	The Comm'n may at any time review the registration of a political party.
<b>Can a party be de-registered if it has not contested an election in a certain period of time?</b>	YES, 4 years (but not a Parliamentary party)	YES, if it did not contest the last election	YES, 5 years	YES, within the last two general elections	YES, if it did not contest the last election	YES, within the last two general elections	No	YES, within the last two general elections	YES, within the last two general elections
<b>Can a party with less than the required number of members be de-registered?</b>	Yes	Yes	Yes	Yes,	YES, if not a parliamentary party	Yes if not a parliamentary party	Yes	Yes	Yes
<b>Financial Disclosure requirements and other reports</b>	-must appoint an agent - The agent of each registered political party and	All political parties now have six monthly disclosure obligations with the Election Funding	No requirements	Registered political parties, associated entities and donors of	Requirement to lodge annual return commences 30/0 2011 –	Parties to lodge an annual return by 30 Nov each year	Annual return	The ACT's scheme for disclosure of political donations and	Total amounts received and paid during year

Table A- Political Party Registration

C' Wealth.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
<p>the agent of each state and territory branch must lodge an annual Political Party Disclosure Return with the AEC disclosing the details of its financial transactions for the preceding financial year. The disclosure returns operate on a financial year basis, that is 1 Jul to 30 June.</p> <p>Detailed disclosure (i.e. name, address, amount and classification as a 'Donation' or 'Other Receipt') is necessary for amounts greater than \$11 200.</p> <p>-Receipts to be reported include donations or gifts received, membership subscriptions, public election funding, income from investments,</p>	<p>Authority. Party agents must lodge a disclosure with the Authority every six months disclosing the political donations received and electoral expenditure incurred by the party during the six month period ending 30 June and 31 December.</p> <p>A reportable political donation is a donation of \$1,000 or more (or multiple donations from one donor in one financial year that total \$1,000 or more) to the same party and includes:</p> <ul style="list-style-type: none"> <li>-a donation of money</li> <li>-the provision of a service at no charge or at a discounted charge</li> <li>-the purchase of an entry ticket, raffle ticket or other item at a fund raising</li> </ul>		<p>\$1000, or more, to a registered political party must submit disclosure returns to the Commission after each 6 months.</p> <p>Candidates must file a return after each election detailing donations</p> <p>3<sup>rd</sup> parties must file a return after each election disclosing donations of \$1000 or more</p>	<p>however no provision for funding and disclosure</p>	<p>disclosing all gifts and other income received for the previous financial year</p>		<p>expenditure requires submission of both annual returns and election returns by various political participants. As of 1 July 2008, all disclosure thresholds were reduced to \$1000.</p>	<p>-Loans by individual persons or parties of \$1500 + -In-kind gifts of goods, assets and services</p> <p>Anonymous donations of \$1000+ &amp; loans \$1500 + are illegal</p>

Table A- Political Party Registration

	C' Wealth.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
	borrowed money and all other revenue.	event or function -the giving of a gift or property							
<b>Restrictions on donations</b>	Anonymous donations and undocumented loans from non-financial institutions in excess of the disclosure threshold of more than \$11 200 are illegal under the Act.	No donations from property developers allowed – prohibition introduced 2009 Certain non-monetary gifts (gifts-in-kind / indirect campaign contributions) totalling \$1,000 or more from one donor within a financial year are <b>prohibited</b> . Other non-monetary gifts of \$1,000 or more from one donor in a financial year must be disclosed as reportable political donations.	none	Anonymous donation restricted:  Candidates - \$200 or more  Parties - \$1000 or more	none	Acceptance of donations from unidentified persons or sources equal to or more than \$2100 is prohibited under the Act.	A party, MLA, candidate or associated entity (the <i>receiver</i> ) must not receive a loan of \$1 000 or more from a person or entity (the <i>giver</i> ) that is not a financial institution, unless details given as specified  Anonymous donations restricted	Anonymous gifts/donations over \$2100 prohibited	Loans other than from financial institutions have restrictions  Anonymous gifts over \$1000.00
<b>Election- related expenditure disclosure</b>	Details to be included in annual return as set out above.	Six monthly reporting – see financial disclosure info above	Candidates for both houses must file an expenditure return after each election which is audited to be eligible for public funding	-Candidates and 3rd parties who incur election expenditure over \$200 must file expenditure returns after each election - political parties and associated entities must file annual returns	No requirements	Parties required to disclose expenditure incurred in an election	The total amount of electoral or campaign expenditure by a candidate for legislative council must file an expenditure return after each election.	See financial disclosure above	Nil

Table A- Political Party Registration

	C' Wealth.	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
				which would disclose some information about expenditure			The return is to be accompanied by any invoice account or receipt in respect of each item that exceeds \$20.  No requirements for lower house		
Limit on election expenditure	none	none	Candidates for both houses are limited to \$5000	None	none	none	Legislative council candidates limited to \$11,000 total election expenditure. Only candidates can incur expenditure – no political party or 3 <sup>rd</sup> party expenditure allowed	none	none

Table B- Political Party Entitlements

	C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Covering legislation and websites	<p><i>Commonwealth Electoral Act 1918</i></p> <p><a href="http://www.aec.gov.au">www.aec.gov.au</a></p>	<p><i>Parliamentary Electorates and Elections Act (NSW)1912</i></p> <p><i>Parliamentary Electorates and Elections Reg (NSW)2008</i></p> <p><a href="http://www.elections.nsw.gov.au">www.elections.nsw.gov.au</a></p> <p><i>Election funding and financial disclosures are covered by Election Funding Authority</i></p> <p><a href="http://www.efa.nsw.gov.au">http://www.efa.nsw.gov.au</a></p>	<p><i>Electoral Act (Vic) 2002</i></p> <p><a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a></p>	<p><i>Electoral Act (Qld) 1992</i></p> <p><i>Electoral Regulation 2002</i></p> <p><a href="http://www.ecq.qld.gov.au">http://www.ecq.qld.gov.au</a></p>	<p><i>Electoral Act (SA) 1985</i></p> <p><a href="http://www.ecsa.sa.gov.au">www.ecsa.sa.gov.au</a></p>	<p><i>Electoral Act (WA) 1907</i></p> <p><i>Electoral Regulations (WA)1996</i></p> <p><i>Electoral (Political Finance) Regulations (WA)1996</i></p> <p><a href="http://www.waec.wa.gov.au">http://www.waec.wa.gov.au</a></p>	<p><i>Electoral Act (Tas) 2004</i></p> <p><a href="http://www.electoral.tas.gov.au">http://www.electoral.tas.gov.au</a></p>	<p><i>Electoral Act (ACT) 1992</i></p> <p><i>Electoral Regulation (ACT) 1993</i></p> <p><a href="http://www.elections.act.gov.au">http://www.elections.act.gov.au</a></p>	<p><i>Electoral Act (NT)</i></p> <p><i>Electoral Regulations (NT)</i></p> <p><a href="http://notes.nt.gov.au/ntelectoral.nsf?OpenDatabase">http://notes.nt.gov.au/ntelectoral.nsf?OpenDatabase</a></p>
Entitlements of reg'd political party	<p>- party affiliation being printed on ballot papers, — that is, the party name or its abbreviation,</p> <p>-political parties can have additional registrations for their branches, but each branch registered will need to separately prove its eligibility</p>	<p>-have name printed next to candidate on ballot paper</p> <p>-can nominate candidates through the party's registered officer instead of each candidate having to nominate separately</p>	<p>-have name printed next to candidate on ballot paper</p> <p>-can nominate candidates through the party's registered officer instead of each candidate having to nominate separately</p>	<p>-have name printed next to candidate on ballot paper</p> <p>-can nominate candidates through the party's registered officer instead of each candidate having to nominate separately</p>	<p>-have name printed next to candidate on ballot paper</p> <p>-can nominate candidates through the party's registered officer instead of each candidate having to nominate separately</p>	<p>-Centralised nomination Party name on ballot paper</p> <p>-Access to electoral rolls</p> <p>-Party name or abbreviation on ballot paper</p>	<p>The names of candidates will be listed in vertical columns across the ballot paper, either under a registered party name, as a group or in a column of ungrouped candidates.</p> <p>The order of</p>	<p>-have name printed next to candidate on ballot paper</p> <p>-can nominate candidates through the party's registered officer instead of each candidate having to nominate separately</p>	<p>-have name printed next to candidate on ballot paper</p> <p>- can nominate candidates through the party's registered officer instead of each candidate</p>

Table B- Political Party Entitlements

C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
<p>-the registered officer or deputy registered officer of a political party can nominate the party's endorsed candidates without requiring the signatures of 50 electors in the particular electorate, that are required to nominate any other candidate</p> <p>-election funding for candidates who received at least 4% of formal first preference votes.</p> <p>-the registered officer or deputy registered officer of a political party can make a bulk nomination of all the party's House of Representatives candidates for the State in the capital city, without needing to</p>	<p>-gain access to the NSW electoral roll including <i>e-copies</i>.</p> <p>-eligible for public funding of election campaigns and political education funding.</p>	<p>-gain access to the Vic electoral roll including <i>e-copies</i>.</p>	<p>-gain access to the Qld electoral roll</p> <p>-eligible for public funding of election</p>	<p>- gain access to the SA electoral roll upon request</p>		<p>party and group lists is determined by ballot.</p> <p>-bulk lodging of nominations</p> <p>- access to electoral rolls</p>		<p>having to nominate separately</p> <p>- gain access to the NT electoral roll upon request</p>

Table B- Political Party Entitlements

	C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
	nominate at each divisional office;								
<b>Current electoral funding rate</b>	<p>\$2.31191 per eligible vote.</p> <p>Need 4% primary Vote Election funding is paid automatically as soon as possible after the 20th day following polling day. Any balance of entitlement will be paid following the conclusion of the count of votes.</p> <p>Funding is automatic unless party has chosen not to receive public funding. Under current registrations only the Socialist Equality party has elected not to receive any public funding.</p>	<p>Has a complicated formula and 3 types of funds. Has a separate statutory authority to oversight</p> <p>Need 4% primary vote</p> <p>System based on reimbursement of campaign spend</p>	<p>\$ 1.3746 Per eligible vote</p> <p>Need 4% primary vote</p> <p>System based on reimbursement of campaign spend. Parties provide VEC with an audited statement that their election spending has been no less than their entitlement</p>	<p>\$1.64455 Per eligible vote*** (see note below)</p> <p>Need 4% primary vote</p> <p>System based on reimbursement of campaign spend</p>	Nil	<p>\$1.65674 as at 1 July 2010 per eligible vote</p> <p>Need 4% primary vote but is on a reimbursement basis- Funding is not automatically provided to either candidates or political parties, first they must provide evidence of incurring electoral expenses. If actual expenditure incurred by the candidate or party is less than the amount that would be paid under the above calculation, then the lesser amount is the amount paid to the candidate or party</p>	Nil	<p>\$1.53551 cents per eligible vote.</p> <p>Need 4% primary vote</p> <p>Public funding automatic but not obliged to accept it</p>	Nil
<b>Tax Deductible contributions</b>	Up to \$1,500 per individual taxpayer per annum. S 30-242 ITAA 1997	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Table C- Political Funding

	C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Covering legislation and websites	<i>Commonwealth Electoral Act 1918</i> <a href="http://www.aec.gov.au">www.aec.gov.au</a>	<i>Parliamentary Electorates and Elections Act (NSW)1912</i>  <i>Parliamentary Electorates and Elections Reg (NSW)2008</i>  <a href="http://www.elections.nsw.gov.au">www.elections.nsw.gov.au</a>  <i>Election funding and financial disclosures are covered by Election Funding Authority</i>  <a href="http://www.efa.nsw.gov.au/">http://www.efa.nsw.gov.au/</a>	<i>Electoral Act (Vic) 2002</i>  <a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a>	<i>Electoral Act (Qld) 1992</i>  <i>Electoral Regulation 2002</i>  <a href="http://www.ecq.qld.gov.au">http://www.ecq.qld.gov.au</a>	<i>Electoral Act (SA) 1985</i>  <a href="http://www.ecsa.sa.gov.au">www.ecsa.sa.gov.au</a>	<i>Electoral Act (WA) 1907</i> <i>Electoral Regulations (WA)1996</i> <i>Electoral (Political Finance) Regulations (WA)1996</i>  <a href="http://www.waec.wa.gov.au">http://www.waec.wa.gov.au</a>	<i>Electoral Act (Tas) 2004</i>  <a href="http://www.electoral.tas.gov.au">http://www.electoral.tas.gov.au</a>	<i>Electoral Act (ACT) 1992</i>  <i>Electoral Regulation (ACT) 1993</i>  <a href="http://www.elections.act.gov.au">http://www.elections.act.gov.au</a>	<i>Electoral Act (NT)</i>  <i>Electoral Regulations (NT)</i>  <a href="http://notes.nt.gov.au/ntec/ntec/Electorl.nsf?OpenDatabase">http://notes.nt.gov.au/ntec/ntec/Electorl.nsf?OpenDatabase</a>
Election cycle	3 years not fixed	4 years fixed – fourth Sat in March – next election 2011	4 years fixed Last Sat in Nov – next election 2010	3 years not fixed	4 years fixed – third Sat in March – next election 2014	4 years not fixed	4 years not fixed	4 years not fixed	4 years fixed – third Sat in Oct – next election 2012
No of enrolled voters as at Aug 2010 <sup>107</sup>	14 099 814	4611926	3564586	2722184	1105669	1367510	359148	247647	121144
Number of currently reg'd parties	48 This figure includes the 23	17 <sup>109</sup>	10 <sup>110</sup>	6111	36 <sup>112</sup>	7 <sup>113</sup>	4 <sup>114</sup>	7 <sup>115</sup>	3 <sup>116</sup>

<sup>107</sup> Source AEC statistical returns – note voter registration is for federal rolls but all states and territories have joint rolls.

Table C- Political Funding

	C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
	branches of the 4 major parties <sup>108</sup>								
Number of minor parties	21*	12	6	3	22	3	1	4	0
Total funding to minor parties	2007 – \$523290.67  2010 - \$628935.49  (nb: this is the interim payment but represents 99% of the public funding– a further payment is to be on finalisation of count )	Details not available have to apply to search	\$206711.17	Daylight Saving party \$3408.86 One Nation \$12694 Family First \$8866	N/A	Christian Democratic Party \$15,516.22 Family First Party \$11,807.39	N/A	Australian Motorist Party \$11,968.44 Pangallo Independents Party \$6,281.14 The Community Alliance Party (ACT) \$7,133.50  Total \$25383.08 <b>TOTAL \$295,4To52.86</b>	N/A
% of funding distribution	2007 - Majors – 97.5%	No breakdown have to apply to	Majors – \$7122724.81 =	2009 –	N/A	Australian Labor Party	N/A	Major parties- Australian	N/A

<sup>109</sup> Four major parties are: Australian Labor Party including Country Labor; Liberal Party; National Party and The Greens

<sup>110</sup> Major parties - Australian Labor Party—Victorian Branch; Liberal Party of Australia—Victorian Division; National Party of Australia—Victoria; The Australian Greens—Victoria

<sup>111</sup> Major parties – Australian Labor Party, LNP and The Greens

<sup>112</sup> Major parties - AUSTRALIAN LABOR PARTY including associated parties NEW LABOR PARTY and COUNTRY LABOR PARTY; LIBERAL PARTY OF AUSTRALIA (S.A. DIVISION); NATIONAL PARTY OF AUSTRALIA (S.A.) INC including associated parties YOUNG NATIONAL PARTY OF AUSTRALIA and ROYALTIES FOR REGIONS Registered 2/7/09. AUSTRALIAN GREENS S.A.

<sup>113</sup> Major Parties - Australian Labor Party (Western Australian Branch; National Party of Australia (WA) Incorporated; The Greens (WA) Inc; The Liberal Party of Australia (Western Australian Division) Incorporated

<sup>114</sup> Major Parties - Australian Labor Party: The Liberal Party of Australia, Tasmanian Division and Tasmanian Greens

<sup>115</sup> Major Parties - Australian Labor Party (ACT Branch); Liberal Party of Australia (A.C.T. Division) and The ACT Greens

<sup>116</sup> Major Parties Australian Labor Party NT (ALP); The Greens; Country Liberals

<sup>108</sup> The four major parties are Australian Labor Party; Liberal Party of Australia; National Party and the Australian Greens

Table C- Political Funding

C' Wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Minors – 1.06% Independents – 1.44%  2010 – Major parties 97.85%  Minor parties 1.2%  Ind 0.95%	search disclosure returns	96.31%  Minors \$206711.17 = 2.7%  Ind - \$58442.02 = 0.99%	Majors -95%  Minor 0.06%  Ind 4.04%		\$1,246,832.86 The Greens (WA) Inc \$398,133.11 The Liberal Party of Australia (Western Australia Division) Inc \$1,351,232.42 National Party of Australia (WA) \$176,641.77		Labor Party (ACT Branch) \$116,886.51 Liberal Party of Australia (A.C.T. Division) \$98,759.54  The ACT Greens \$48,832.46  Independent - Mark Parton – Independent \$5,591.28  Total %  Major 89.51%  Minor 8.59%  Ind 1.9%	