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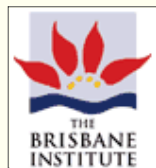
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Who pays the piper?

By [Anthony Marinac](#) - posted Monday, 19 February 2007

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One of the principles which has long underpinned free, fair and informed elections in Australia is that where a person or organisation spends a substantial amount of money in an effort to influence the way people vote, the process should be transparent.

There is no law against people or organisations spending as much as they want to in order to promulgate their message. In a free society, any person should be able to spend as much money as they can muster in order to promulgate their message or increase their political influence. The requirement is simply that we should know who is paying the piper when they are calling the tune.

This requirement is expressed in law in several ways. The two most well known are the requirement that election advertisements be accompanied by information identifying the person who authorises the comments (*Commonwealth Electoral Act 1918 s.328*) and the requirement that those incurring "electoral expenditure" must declare that expenditure. This requirement extends to third parties, who are not actually contesting the election but who seek to influence its outcome (*Commonwealth Electoral Act 1918 s.309*).

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The idea of the third-party requirement is to regulate the spending of what is called in the USA "soft money": money which would not ordinarily need to be declared as a political contribution, but which has the same effect as such a contribution. If I provide a donation to a political party in order for the party to make a commercial, I am donating hard money. If I pay for the commercial to be made, then I am donating soft money.

In Australia, until recently, it appeared that s.309 of the Commonwealth Electoral Act dealt with soft money reasonably effectively. Until, that is, the political activities of the group known as the Exclusive Brethren came to light. The Exclusive Brethren are, according to their [website](#) a worldwide Christian fellowship with 40,000 adherents. Their approach to government, again according to their website, is as follows (edited for length but not, I trust, emphasis):



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Exclusive Brethren believe in Government and are subject to it [...] Their approach is non-political. They do not vote, but hold Government in the highest respect as God's ministers, used by Him to restrain evil and provide conditions for the promotion of the glad tidings. [...] Contact with members of parliament or congress is encouraged to express a moral viewpoint of legislation in relation to the rights of God and this ongoing communication is found to be acceptable and productive.

Until recently, the group has only been mentioned in the Australian Senate three times, in 1982 and twice in 1993, in relation to an exemption which enabled members to refrain from union membership (in line with their teachings). Following the 2004 election, however, their political involvement became contentious following allegations that they funded political advertising opposing the Greens' policy on the medicinal use of cannabis. Greens Senator Christine Milne stated:

In the last federal election, in which I was a candidate for the Senate, I was attacked by brochures appearing in the media which were authorised with a single name and address in Sydney. We were unable to establish even whether that person lived at the address. Even if we had, we could not have known at that time that the person concerned represented the Exclusive Brethren. They paid for extensive print advertising which misrepresented entirely the views of the Greens in that election. We then discovered that exactly the same pamphlet, just changed from "Australia" to "New Zealand", was used to try to discredit the Clark government and the Greens in New Zealand. It has been used throughout the country. What we later discovered was, of course, that the Exclusive Brethren had had meetings with the Liberal Party in the context of that election. None of that will turn up in the political disclosures (Senate Hansard, June 16, 2006).

The Greens, as you might expect, tried to follow the chain of political responsibility for the campaign against them. In doing so, they ran into a brick wall. Responsibility was taken by a private company, Willmac Enterprises. The *Sydney Morning Herald* has reported that the company is owned by an Exclusive Brethren member. According to *SMH*, it was incorporated three weeks before the election, had assets of \$10 in cash, and yet managed to spend \$370,461 on election campaign material (*Sydney Morning Herald*, January 20, 2007).

The Australian Electoral Commission, following a 12-month investigation, concluded:

Expenditure on all seven advertisements and pamphlets was disclosed in a third party return by Willmac Enterprises following the 2004 federal election, and that consequently no outstanding disclosure obligation exists in relation to these advertisements and pamphlets. Further, there is no evidence that Willmac Enterprises received any gifts or donations from other sources that contributed to the costs of the advertisements and pamphlets (AEC advice, December 19, 2006, available at www.aec.gov.au).

Let me be clear at this point: frankly, I do not care whether the Exclusive Brethren fund political campaigns against the Greens. Good luck to them - it is a free democratic country and the more voices involved in political discussion the better.

It is concerning, however, that these events have laid out a pattern for anyone to systematically dupe both the electoral laws and the Australian people.

It appears, following the model set out by the Exclusive Brethren (I beg your pardon, I mean, of course, by Willmac Enterprises) that any group which wishes to, can hide its responsibility for electoral comment by forming a company for that precise purpose, and interposing that company between the true donors and the electoral disclosure system.

Let us imagine for a moment, that we have formed a hypothetical group devoted to something completely unsupported - say, a group devoted to reasserting the original White Australia policy. We have \$200,000 at our disposal. All we need do is create a company with an appropriately benign name and a single director; put our \$200,000 into the company's resources, then allow the company to spend it as it will. The company puts in a third-party return to the AEC, and the true donors will forever remain unknown.

A less outrageous example: currently, donations to political parties which exceed \$10,000 in value must be declared. This time, let's set up our company and allow



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major donors to provide their money to the company. The company, in turn, makes and declares a massive donation to a major political party. As far as the AEC is concerned, all is well. But as far as the electorate is concerned, who is paying the piper? Who is calling the tune to which we all must eventually dance?

Under the circumstances, the election to be called later this year may well be free, and may well be fair, but is very unlikely to be transparent.

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