Election Funding, Expenditure and Disclosures Act 1981 (NSW)

- Limits on amounts of ‘political donations’ – no differentiation amongst individuals, groups etc

- Limited exemption for membership fees (including organisational affiliation fees)

- Limits on ‘electoral communication expenditure’ (certain categories of ‘electoral expenditure’):
  - no aggregation of expenditure for co-ordinated campaigns except when ‘associated parties’

Original Election Funding, Expenditure and Disclosures Amendment Bill 2011 (NSW)

- Ban on ‘political donations’ from all except those on electoral rolls

- Limits on amounts continue to apply those on electoral rolls

- Limited exemption continue to apply those on electoral rolls

- Exemption otherwise repealed in fact

- Additional circumstance of aggregation of expenditure: expenditure by ‘affiliated organisation’ (e.g. trade union affiliates of ALP)
The final amendments: Electoral Funding, Expenditure and Disclosures Act 2012 (NSW)

- All measures in original Bill retained

- But definition of ‘electoral expenditure’ amended:
  - general definition retained: s 87(1)
    "electoral expenditure" is expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.
  - However, exclusion added: s 87(4)
    Electoral expenditure (and electoral communication expenditure) does not include expenditure incurred by an entity or other person (not being a registered party, elected member, group or candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.
The problems

- Citizenship-based conception of democratic politics: what about the political rights of permanent residents and long-term temporary residents?

- Partisan impact on NSW ALP:
  - unfair aggregation rules: over-inclusive and under-inclusive
  - unjustified interference with freedom of party association with de facto ban of a type of party structure

- Narrowing of ‘electoral expenditure’ only ameliorates some of above

And will it lead to increase in issue-advocacy through looser controls on ‘political donations’ and ‘electoral communication expenditure’?