Panel of Experts – Political Donations

Submitted by Alexander Reid

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Submission to the Panel of Experts on Terms of Reference

This submission is made by me, Alexander Reid, in a purely personal capacity, as a resident of New South Wales.

Introduction

It is commonplace in NSW for commercial companies and wealthy individuals to make donations to both Coalition parties and the Labor Party. It cannot be the case that those donors wish both parties to succeed in being elected to a majority in both Houses of Parliament. We can make the economist’s assumption that donors are economically rational: when they pay money out, they expect to get value for it. The only possible purpose for donating to the two competing parties is the expectation that, whoever wins and attains power in NSW, the winner will feel a sense of obligation or generosity to the donor. The only possible purpose for donating to both competing parties is to purchase political influence, which can be used to further the interests of the donor. This view can only be reinforced by the evidence about illegal donations heard by ICAC over the last six months.

The use of donations for the purpose of buying influence is inherently anti-democratic, because it leads to the growth in power and influence of wealth individuals and corporations, inevitably at the expense of the interests of the ordinary voter.

One answer to the problem of political donations as a way of buying influence is to ban private political donations and provide for full public funding of political funding. One issue with full public funding of political parties is the question of how funding is to be proportioned, and the obvious answer is in proportion to the current number of seats held by the party in question. The obvious answer confers an advantage on incumbent parties at the expense of new parties – it is effectively a ‘barrier to entry’ for new parties. Moreover, it creates another financial burden for members of the public.

But there is a second answer to the problem of political donations as a way of buying influence. It is as follows.

An alternative model for managing political donations

If donations to political parties are anonymous, they cannot be used to purchase influence with our politicians. The following is proposed as a scheme to ensure the anonymity of political donations:

- All donations would be required to be made to the NSW Electoral Commission, nominating the party to which the donor wishes to make a donation.
- Any donation made or purported to be made with respect to a particular candidate for election would be treated as a donation to that candidates’ political party.
- The NSW Electoral Commission would be required to hold the donations in trust, to preserve their anonymity, and to pass the donations on to the appropriate party in an aggregated amount on a periodical (say monthly) basis.
• It would be a matter for the party receiving aggregated amounts of donations from the NSW Electoral Commission to disburse those amounts, at its discretion, amongst its candidates to fund the candidates’ campaigns.

• It would become illegal to make a donation directly to a politician, and penalties would need to be substantial – they should be predicated on a presumption that the donation was intended to be given as, and was received as, a bribe and the penalties should be commensurate with the offence of bribery. An additional automatic penalty of forfeiture of parliamentary superannuation entitlements should apply on conviction of such an offence. A minimum threshold amount could be prescribed, so that for example a donation from one individual could be made provided it does not exceed perhaps $100 per week.

• It would also become illegal to tell a politician or a person related to, or associated with a politician or a political party that a donation exceeding a threshold amount had been made to the party.

• If fundraising events are not to disappear, then limited exceptions would need to be made to permit donations at fund raising events with a personal limit on the donation that can be received from any individual (eg $100). Provision might be made to have an official of the NSW Electoral Commission present to receive and receipt donations.

• It would be illegal for a corporation to make a political donation. Corporations do not vote and do not have a mind separate to their directors. They have no business making campaign donations. If directors in their individual capacities wish to make donations they can do so.

Ensuring the anonymity of donations should do much to stymie attempts to purchase influence, particularly if it is legally very clear that acceptance of personal donations is illegal and will be treated as if the donation were a bribe.

This model is referred to here as ‘the alternative model’.

The Panel’s Terms of Reference

The Panel’s terms of reference are oriented towards consideration of a model that involves the provision of full public funding for State election campaigns. However, the terms of reference do not preclude consideration of other models. I make the following comments in relation to each term of reference, predicated on my advocacy of the alternative model outlined above:
1. Feasibility of providing full public funding of State election campaigns

Full public funding is clearly feasible, and provided it is combined with a measure making illegal the making of campaign donations to individual politicians and parties, it will largely and perhaps entirely remove the use of campaign donations to purchase influence.

Nevertheless, full public funding will impose an additional burden on taxpayers which taxpayers may be reluctant to bear. The measure may be politically unpalatable. And it is not the only way to attack the use of campaign donations to purchase influence.

2. What is the appropriate expenditure cap?

If the alternative model is adopted, the need for an expenditure cap need not arise. Parties could expend the total amounts donated to them via the NSW Electoral Commission.

3. If full public funding is to be provided, what measures can be put in place to ensure the integrity of public funding...

These questions need not arise if the alternative model is adopted.

4. If full public funding of State election campaigns is not to be provided, what models are recommended? If the alternative model were adopted:

(a) Caps... would not be required
(b) Measures to ensure caps are effective...would not be required
(c) Regulation of third party campaigners...would require no fresh regulation
(d) Impact on minor parties and independent candidates...There would be no impact on minor parties, but independent candidates (who are not members of a political party) would need to be able to receive aggregated donations directly from the Electoral Commissioner, in the same way that parties would receive aggregated donations.
(e) Level of public funding...no public funding would be required, therefore no level need be set

5. If the alternative model were adopted:

(a) what controls should apply to the making of donations...

In my view, any individual should be entitled to make an anonymous donation, but there is no reason why a corporation should be entitled to make a donation of any kind. Corporations do not have a mind or opinions separate to those of their directors, and are not entitled to vote. There is no legitimate reason why they should be permitted to make political donations.
(b) The appropriate frequency and timing of disclosure obligations

Candidates for political office should be required to declare any donations they have received, or which have been applied for their benefit, or which have been received by any person on their behalf.

The declaration should be made prior to the time of the election for which they stand, and confirmed before being sworn in as a member of parliament.

A false declaration should be attended by the usual penalties for a false declaration, but if proven should also carry the consequence of automatic disentitlement to any parliamentary superannuation benefit.

6. Penalties for contravening provisions of the Election Funding and Disclosures Act 1981:

The integrity of the alternative model I have proposed in this paper is dependent upon the core principle that politicians must not accept donations (or other benefits) from any person. Violating that principle should carry penalties of the same order as accepting a bribe – indeed the rebuttable presumption should be that any amount paid to a politician (with an exception for ordinary gifts of a personal nature) has been tendered and accepted as a bribe.

An additional penalty would consist of the automatic forfeiture of parliamentary superannuation entitlements upon conviction of the offence of accepting a donation.

Similarly there should be an offence of offering a donation, or making a donation, to a member of parliament.

Obviously exceptions would need to be made for normal personal gifts from personal friends or family, and perhaps a minimum amount ($50?) before the prohibition applies, but the receipt of multiple amounts of $50 or less should also be prohibited.

As outlined above, exceptions could be made by way of a minimum threshold of donation before the prohibitions apply (eg $100), and to allow fund-raising events to be held, provided no individual donor makes a donation exceeding the threshold amount.
7. Any amendments to legislation to prevent avoidance of limits on political donations or disclosure requirements

The alternative scheme I have proposed would not require limits on political donations, but as outlined under 5(b) above, disclosure requirements would need to be imposed by legislation.

This submission was prepared by Alexander Reid BA, LLB, MPA, solicitor (NSW).

Signed

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