Panel of Experts – Political Donations

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Re: Expert Panel on Political Donations

Dear Dr Schott,

I am a political scientist and have done a lot of research on political finance in Australian and elsewhere. This gives me a different perspective to most of the commentators on donations and corruption in NSW. I hope my contribution is somewhat useful.

Corrupt interactions between businesspeople and politicians are a response to the incentives facing businesspeople in their pursuit of financial profit and politicians in their pursuit of political power. Policy decisions can have massive effects on the profits of firms. The reform of political decision-making is outside the remit of the committee. Moreover, even in the best-designed political and legal systems, businesses can still identify points of influence that could potentially affect their profits. The committee’s remit does impact on the incentives of politicians. When politicians cannot purchase popularity they will have little incentive to sell public policy. The political demand for private finance is lowest when there is substantial public funding and there is no opportunity to buy expensive and effective television advertisements. Both these conditions apply in several European countries. For example, in all Nordic countries public funding accounts for over 75 per cent of party income (Koss 2011, 18). Therefore, although public funding in NSW is already relatively generous by Australian standards, I would advocate an increase in the proportion of party income provided by public subsidies. Unfortunately, a ban on TV advertising is outside the remit of the committee and, as far as I am aware, a previous attempted ban was ruled unconstitutional. The next most effective way of combating corruption is to impose restrictions on private money.

NSW already has quite rigorous requirements for disclosure as well as a relatively low limit on contributions. Many commentators assume that low limits on donations preclude corrupt relationships. I agree that they reduce the potential for corruption, especially in the blatant sense of bribery. However, small amounts of money, especially when donated regularly, cannot help but oblige a politician to the donor.
Reciprocal exchanges of money for future special consideration are the dominant rationale for business donations to Australian politics (McMenamin 2013, 91-94). The political reciprocation is unstated, uncertain, and unlikely to be simultaneous with the financial contribution. Business money says, softly and subtly, but insistently, that, in exchange for small but certain financial benefits, contributing businesses expect to receive special consideration when lobbying. Therefore, I advocate a further restriction on business donations in the form of requiring an AGM to approve any donation to a political party. The same should apply to unions. This very requirement has recently been introduced in Ireland, with the apparent intention of restricting business donations while avoiding constitutional obstacles.

One way to evade such restrictions is to transfer money and claim that it is not a donation. NSW law already requires the reporting of in-kind donations, loans, and donations via fundraising events. However, reporting is limited to donations and loans. By contrast, the Australian Electoral Commission (AEC) requires the reporting of other receipts over the threshold. Reported other receipts tend to dwarf reported donations. Statistical analysis suggests that other receipts track control of government (McMenamin 2008, 382-383). Therefore, it appears that many, or most, of them are influence-seeking donations, rather than other receipts. There is no reason to think that the situation is much different in NSW. I suggest that NSW emulate the federal parliament in requiring the reporting of other receipts. The AEC does not have the resources to investigate or contest the classification of receipts by donors and parties. I recommend that the NSW Election Funding Authority (EFA) be given the resources to do so that substantial penalties be imposed for misclassification. Like a tax office, the EFA could conduct random and targeted investigations, especially focusing on larger payments.

I think that punishments for contravention of funding regulations are relatively ineffective, due to the low likelihood of being caught plus the low likelihood of prosecution and conviction. The effectiveness of punishments might be increased somewhat by including financial penalties for parties. In Germany, parties can be fined up to three times the objected donation (Koss 2011, 88). This might give parties incentives to police rogue politicians themselves.

I concur with some of the broad recommendations of Australian legal academics on the committee’s website. NSW should retain the possibility of private donations; it should maintain low limits and high transparency; there should be more stringent penalties for the violation of political funding rules. I also offer some different recommendations. These arise from a social science analysis of incentives and behaviour in Australia and other countries. I am more positive about public funding and think a further increase in the proportion of income from public sources can mitigate politicians’ demand for business money. I think even small donations have the potential to corrupt the political systems. In order to restrict such donations, while avoiding constitutional obstacles and not privileging one side of politics, I suggest
that business corporations and unions cannot make donations without the consent of an AGM. I worry that restrictions on donations are avoided by the simple expedient of classifying payments as other receipts. I recommend that other receipts be reported over a threshold and that the EFA be empowered to actively audit the classification of receipts as other receipts.

Yours sincerely,

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References:

