Panel of Experts – Political Donations

Submitted by Dr Simon Longstaff AO
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Dear Dr. Schott,

I am writing in response to your invitation to make a submission to the Panel.

Introduction:

Political systems are distinguished according to where they locate the ultimate source of authority. For example, in political theory: a ‘theocracy’ ultimately locates authority in the person of God, a ‘plutocracy’ ultimately locates authority in the persons of the wealthy, an ‘aristocracy’ ultimately locates authority in the persons of the virtuous. In a democracy, ultimate authority is located in the persons of the governed (the people).

All discussion of election funding should hang on this point. Why? Because, the NSW Parliament (from whose members each government is formed) is a public institution currently at risk of losing legitimacy at the hands of private institutions: the political parties and, of those, in particular the Liberal and Labor parties.

In their private pursuit of public power, members of our largest political parties have degraded public trust in democratic institutions and processes – to the point of putting at risk the standing of Parliament. In turn, the parties’ drive to secure funding, is directly linked to this pursuit of power. The greater their hunger for power, the greater their demand for funding – a demand that is at risk of being satisfied by seeking and securing donations from those whose private interests may be at odds with those of the public. Dependent on such sources of funds, in a sense beholden to their funders, political parties and those of their members elected to Parliament are at risk of changing the actual character of our polity from being a democracy to a plutocracy.

Of course, it is possible (in principle and practice) to preserve one’s independence of mind even when being funded by an interested party. For example, many arts companies and NGOs receive government funding while maintaining their independence. No doubt many politicians exercise this capacity with sincerity, discipline and conviction. Yet, the findings of the Independent Commission Against Corruption (ICAC) suggest that, for the time being at least, it would be imprudent to rely on the character of individual politicians as the ultimate assurance that public power will not be used for private profit.
So it is that we argue that the structural arrangements for funding elections (and society’s political processes more generally) should be designed with a principal purpose in mind – to strengthen and maintain the legitimacy of representative democracy in New South Wales.

A ‘threshold’ question

While few people are likely to disagree that the end of enhancing and protecting the quality of democracy in New South Wales should be pursued, there will be considerable disagreement about what might constitute legitimate means for doing so. A fundamental question to be addressed is this: is it justifiable to apply taxpayers’ funds in support of the activities of political parties?

In practice, the payment of taxpayer funds to a private actor for a public purpose is widely adopted. Governments provide such funds in a broad range of cases, including payments made to:

- the private operators of prisons (e.g. the GEO Group);
- private schools (numerous examples);
- privately owned hospitals offering public services (e.g. St Vincent’s Hospital, Darlinghurst);
- privately owned arts companies (e.g. Bell Shakespeare);
- private charities that are performing public services (e.g. Mission Australia – sometimes specifically delivering services on behalf of governments – but not always);
- … and so on.

In each case, the payment is justified on the grounds that the recipient is performing a public function. As will be obvious from the inclusion of Bell Shakespeare in this list, not all private recipients of government funding are involved in delivering services of direct practical utility. Governments have a long-established history of investing public funds in activities that enrich the cultural life of society – deepening communal ties, fostering creativity and stimulating discussion of matters of social importance.

Some would argue that existing practice is a poor basis for future policy; that government funds are misapplied either when paid to private operators (in general) or, perhaps, when used for any purpose other than to provide essential government services (like health and education) by the most cost-effective means. Against this it might be argued that we should adopt a broad notion of what amounts to being ‘cost effective’. That is, to judge such matters purely on the basis of short-term financial calculations would be to misunderstand the obligation of government to invest in those means of providing public goods that are most efficient and effective (taking into account all ‘externalities’).

There can be few more important tasks for a liberal democratic government than to enhance (or at least protect and preserve) the quality of democratic institutions and practices on which its legitimacy ultimately depends. Such a goal is at least as important as the provision of adequate services in health, education, security and the arts. Under the current arrangements, the ‘externalities’ being borne by the political economy of New South Wales include the costs of: corruption, falling levels of trust, the rise of ‘money politics’, and so on. If public funding of elections (and a portion of the cost of maintaining private political structures between elections) can reduce these costs – and improve the quality of democracy in the State – then it would seem to be justified.
The alternative is to rely entirely on private sources of funding – often made available by those who would create (at least implied) obligations amongst public officials with the expectation of advancing the donors’ private interests through the agency of public power.

In principle, public funding of political activity may be the ‘lesser evil’ – and may even turn out to be a positive good. The issue then turns on whether or not it is possible to devise a system of funding that is fair, transparent and practicable.

We believe that such a system of funding is possible – and that it can be implemented in a manner that reflects public aspirations.

Our recommendations are that:

1. The NSW Parliament establish and resource a Statutory Public Fund i) governed by an independent Board of Trustees and ii) administered by the NSW Election Funding Authority (EFA), which will be used to pay for:
   a. the administration of registered political parties, and
   b. political campaigns run by registered political parties and elected independents.

2. Monies from the Public Fund be disbursed to registered political parties and elected independents on the following basis:
   a. an administration payment to registered political parties – disbursed on a pro-rata basis in proportion to fully paid-up financial members of each party, plus
   b. an additional amount for use in campaigning allocated on a pro-rata basis in proportion to the votes cast (above a minimum threshold) for each candidate (or party) standing at the most recent NSW state election.

3. The proposed Public Fund include a statutory reserve that would be available to help pay for the establishment costs of new registered political parties or independents seeking election.

4. Registered political parties or independents be restricted in their expenditure on election campaigns to the amount provided to them for this purpose by the statutory fund plus up to 10% more money raised from other sources (see recommendation 6 below).

5. Any person (including a Corporation, Trust or unincorporated association) be entitled to make tax deductible donations (of any amount) to the Statutory Public Fund (see recommendation 1 above) in support of the general democratic process.

6. In any election cycle, citizens enrolled on the electoral roll be entitled to make one tax deductible, public donation of up to $10,000 for application to a specific registered

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1 Some of the details included in the following recommendations (e.g. references to specific sums of money) may require revision.
political party or independent of their choice. Donations would be made via the EFA that would, in turn, distribute the funds to the nominated recipient.

7. Citizens on the electoral roll, individually or collectively, be eligible to engage in private political advocacy (including advertising and other forms of campaigning) – but that their expenditure be capped at a maximum of $200 per individual, per election cycle.

8. Corporations, trusts and unincorporated associations, individually or collectively, be eligible to engage in private political advocacy (including advertising and other forms of campaigning) – but expenditure be capped at a maximum of $100,000 per related entity, per election cycle.

9. The EFA maintain an online public register of all donations, above the value of $1,000 made via the EFA to a specified political party or elected independent. It should be a requirement that the details of all donations be entered into the register by no later than three business days after being received by a registered political party or independent.

10. Parliament enact legislation that would proscribe all other forms of funding of political parties or elected independents.

Rationale:

The proposals outlined above have been developed with the following principles in mind:

- To preserve the liberty of citizens to express their opinions and engage actively in the political process (recommendations 6, 7 and 8);
- To ensure that, to the greatest extent possible, the result of elections is determined by factors other than the relative volume of funding available to candidates; (recommendations 1, 2, 3, 4, 5 and 10) – that is, to apply a reasonable limit to the amount of money spent on election campaigning – but in a manner that respects the essential character of liberty.
- To promote transparency in relation to the identity of all significant donors to political parties and independents; (recommendation 9)

Principal Objections

Is this not an unjustifiable restriction of liberty?

Citizens are constantly asked to sacrifice a portion of their liberty for the common good. For example, we are all bound to: wear seatbelts when driving, observe the speed limits, turn up on election day and cast a ballot, refrain from violence – even when provoked, pay taxes for purposes that offer no individual benefit, etc.

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2 The term ‘related entity’ requires formal definition. The intention is to prevent the establishment of a network of shell companies, subsidiaries or other types of organisation predominantly for the purpose of evading the funding limitations imposed under this recommendation.
The proposals outlined above do involve a modest restriction in liberty – in that they place a cap on how much of one’s personal funds can be expended on political activity. However, the right to engage in free political speech is preserved – both in terms of supporting a political party or independent and in terms of direct campaigning on one’s own account. Furthermore, and **most importantly**, the proposals suggest an **unrestricted** capacity for citizens to join together and ‘pool’ their funds for collective action around a political issue of common concern (the greater the number of people coming together, the more funds available for direct political action). This aspect of the proposal is consistent with the democratic ideal – and is arguably in conformance with relevant principles on which the High Court would rely when deciding on the constitutionality of such measures.

Why should I pay for parties with whose views I disagree?

Taxpayers’ funds are applied to many purposes that individuals would find to be of no personal use or value or in relation to causes that they do not support. For example, individual taxpayers fund: roads they will never use, schools that they (or their children) will never attend, welfare programs that they will never draw on. Governments will use public funds to pursue policies quite at odds with the views of some taxpayers, for example: opening safe-injecting rooms for use by drug addicts, building detention centres to hold refugees, supporting arts companies that present material considered offensive, etc.

The use of public funds for the purpose of reinforcing the legitimacy of our core democratic institutions is a like case. Not everyone will agree with the specific allocations made – but it will be in the interests of all citizens to renew the foundations of our polity.

It should also be noted that the proposal is to allocate funds, in part, in proportion to the number of members who belong to a political party (thus encouraging engagement in the political process) and, in part, according to the proportion of votes cast for candidates at the last election. This will help to reduce the likelihood that an individual’s taxes are being applied to a party whose philosophy or policies he or she does not support.

**In summary**

We believe that the proposals outlined above would advance the common good in a manner that preserves the essential demands of political liberty – which count for nothing if the overall system is degraded or corrupt.

Please feel free to contact me if you wish to discuss this submission.

Yours sincerely,

Dr. Simon Longstaff AO  
Executive Director  
St James Ethics Centre