Panel of Experts – Political Donations

Submitted by The Hon. David Harper AM QC
The Accountability Round Table Ltd.

Date: 26 September 2014
Summary of this submission

This submission seeks to support the following propositions:

1. Politicians and senior public servants occupy positions of trust. Among the duties thus imposed upon them is the duty to nourish democratic governance which is open, transparent, accountable, and free of corruption.
2. Political donations can be an appropriate means of engagement in the democratic process. They also can, and do, become instruments of corruption.
3. When political donations are given and received in the expectation that, in return for the donation, direct pecuniary benefits will flow to the donor, the corollary is corruption. Corruption also occurs when money is given and received in the expectation that access – at a level denied to others - will be accorded to the donor. Many politicians fail to recognise this truth. This is a serious dereliction of their position as public trustees.
4. Publicly funded election campaigns, financed at a level which enables the contending positions to be adequately aired, are the best assurance against such corruption. Private donations to these campaigns should be illegal.
5. As an alternative to its preferred position, The Accountability Round Table Ltd sees merit in establishing an independent State agency through which would be channelled all private donations for political purposes.

The submission in more detail

The Accountability Round Table Ltd ("ART") considers that the preservation of democratic governance in Australia is essential. At the same time, it believes that some of the attributes of that governance are far from robust health. ART endorses as axiomatic two presently relevant propositions. First, that such governance should be open, transparent, accountable, and free of corruption. Secondly, that - by the nature of their professional responsibilities - politicians and other holders of high public office occupy positions of public trust. If they are to discharge the duties thus imposed upon them they must give priority to the public interest over all other personal interests. They must also assume a

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See note at the conclusion of this submission.
leadership role in ensuring the health of the democracy they serve. Accordingly, by seeking and accepting their office, they assume responsibility for promoting not only those attributes of openness, transparency and accountability to which this submission refers, but also the other principles upon which democratic governance is based and upon which it depends.

Neither of these propositions is, at present, fully realised. It is of first importance that their deficits be effectively addressed. Consistently with these precepts, ART wishes by this submission to both endorse and address the Panel’s terms of reference, which are directed towards “improvements to political transparency and accountability that are in the long term interests of the State.”

Political donations are on one view a necessary element in democratic politics. They are, according to this reasoning, a means by which those who seek to be engaged in the political process can give material expression to that interest. Properly employed, they foster an informed community, and enhance political debate. They are an aspect of the freedoms which enliven democratic governance and which are among its most precious attributes.

There is some force in this argument. But there is another side to the coin. Inadequately controlled, political donations become profoundly undemocratic. Many politicians, and those who assist them, suppress recognition of this truth. It must be identified for what it is. When political donations are given and received in the expectation that, in return for the donation, direct pecuniary benefits will flow to the donor, the corollary is corruption. That is also what follows, albeit with some decrease in immorality, when money is given and received in the expectation that access – at a level denied to others - will be accorded to the donor.

It is at this level that a denial of the reality of corruption is most common amongst the politicians who benefit from the largesse on offer. Blindness to that corruption is, consciously or subconsciously, embraced. Indeed, some politicians expressly endorse the preferential granting of access to those who have, in reality, paid for it. At the same time they are quick to deny that illegitimate advantage is thereby accorded. Theirs is, on any objective view, a classic case of self-delusion. The practice does confer an illegitimate advantage. It is wrong. If not illegal, it ought to be. There cannot be any justification for it. It also does immense harm to the status of politicians, and to the respect in which they and their profession are held. The harm to democracy is similarly significant. It is manifest today in a general disenchantment with politics, in a disinclination to join the major political parties, and indeed in a cynical passivity towards political activity generally.

There will nevertheless always be some with a pecuniary interest in an issue which is, or affairs which are, the subject of political decisions. Those affected will, necessarily, wish to put their case to those who make, or may at least influence, those decisions. They have every right to do so - unless they have, by means of a donation made to the advantage of the decision-maker, gained access to that source of power when similar access is not granted to others with an equal or better claim to the decision-maker’s time. And when rights of access morph, as
they tend to do, into the adoption of policies designed to materially benefit those to whom access has been given, rather than to advance the broader public interest, corruption prevails.

The inquiry upon which the panel has embarked is for these reasons profoundly important. ART submits that the terms of reference of the Panel can be reduced to a question to which the answer must be found: is it possible to build and maintain structures which will, when in place, encourage and promote those democratic sympathies which inspire the most commendable reasons for making political donations while eliminating the tendency towards corruption which those same donations engender?

ART submits that the answer is no. Experience, in New South Wales as elsewhere, demonstrates that for many the temptation to proffer, and the temptation to receive, funding on the explicit or implicit understanding that anti-democratic favours will follow, is irresistible. He who pays the piper calls the tune. The only means of eliminating the actuality of corruption is to fund election expenditure from the public purse, while enacting stringent laws - with stringent penalties - against any political donations.

Considerable public funding is already provided, both directly and indirectly; the latter by allowing tax deductibility for donations. In ART’s submission, the Panel should investigate and establish whether tax deductions are claimed and allowed for money paid to attend functions to meet ministers and shadow ministers on the basis that they are business expenses (and, if so, the amounts claimed and allowed per annum). Such claims would explode any protestations of innocent purpose. Political donations which are properly a business expenses are necessarily corrupt.

Apart from their tendency to corrupt, political donations favour the party or parties thought most likely to win a forthcoming election. That in itself illustrates the frequently unethical basis upon which such funds are given and received. It is likewise significant, and unfair, that the political interests thought to be unsuccessful receive less.

The level of public funding should be sufficient to ensure that parties and candidates can communicate adequately with the voting public. There is no reason to think that current levels of aggregate expenditure resulting from public and private funding are anything but excessive.

In addition to the cost of advertising, public funding should cover other campaign expenditure such as campaign rooms, preparation of advertising material, pre-poll and postal vote canvassing, and like matters. There is no reasonable democratic basis for restricting public funding to parties or candidates by reference to the percentage of the vote received. Major parties which achieve strong electoral support would receive disproportionate funding; and this would give the incumbent government parties an unfair advantage at the following election. That anomaly could be addressed by placing a ceiling on the amount received such that the governing party or coalition should not receive more than the
opposition party or coalition e.g. an average of the total entitlements (per vote) that each of the government and opposition parties would otherwise receive.

ART’s fear of the corrupt exploitation of the right to make private donations for political purposes would be assuaged in part were all such donations required by law to be channelled through an independent State agency established for that purpose, with disobedience to that requirement being a criminal offence by both donor and recipient. It would be a further requirement of such a scheme that every donation, in whatever amount up to a limit of $1,000 per donor per annum, be accompanied by sufficient information to clearly identify the individual by whom or on whose behalf the donation was made. On compliance, the agency would distribute the funds to the intended recipient, less a reasonable fee. The denotation and its source would be published by the agency.

Publicity is the means by which corruption can best be eliminated. Ministers and ministerial advisors (whether or not members of the minister’s staff or public servants) should be required to inform the agency of the identity of all members of the public with whom they have communicated about matters concerning the exercise of executive power. The names of those thus identified, if they are also donors, would then be published by the agency – which should also be charged with the responsibility of maintaining a public register with all lobbyists and their contacts with politicians, their staffers, and senior public servants.

Only natural persons should be permitted to donate; but no individual should by reason of his or her occupation, calling or otherwise (save perhaps penal servitude) be prohibited from donating.

Donations from other than individuals (that is, from corporations, unions and religious bodies and the like) should not be permitted. Their members may of course decide, and act, for themselves. The body to which they belong should not make the decision for them. Nor should the financial power of these entities, including the power to publicise their views through advertising and the like, give them an advantage which individuals may not have.

Donations should be capped to $1,000 per annum per donor.

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NOTE: The Accountability Round Table Ltd is a strictly non-partisan group of citizens with diverse backgrounds (academics, lawyers, politicians, journalists, authors and others) who are gravely concerned about the current erosion of honesty and integrity in our democracy. ART is dedicated to improving standards of accountability, probity, transparency and democratic practice in all governments and parliaments in Australia. The membership of ART’s executive may be seen on its website.