Panel of Experts – Political Donations

Submitted by Associate Professor the Hon Dr Ken Coghill
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Date: 24 September 2014
Dear Expert Panel,

Thank you for the courtesy of accepting this late submission.

There are only two matters on which I want to comment in addition to submissions you have received from the Accountability Round Table and other sources. My comments relate particularly to Terms of Reference:

6. Whether the penalties for contravening provisions in the Election Funding and Disclosures Act 1981 are commensurate with the nature of the offence. This should include advice on penalties that could apply to donors, intermediaries or recipients of unlawful donations.

7. Any amendments to legislation to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of artificial structures or other means.

8. Any other matters relevant to political donations.

Continuous disclosure.

Voters at any election should be able to take into account by donations to political parties and third parties. This requires that donations should be published prior to polling day. Accordingly disclosure requirements should take advantage of the technology which now enables almost immediate ("real time") disclosure at insignificant cost. This was recognised in the Commonwealth JCEM 2011, Report which included:

Contemporaneous or continuous disclosure

3.111 The concept of contemporaneous disclosure involves compelling political parties to publicly disclose aspects of their finances continuously including disclosing donations as they are received. The rationale underpinning such proposals is that it allows electors to be aware of sources of party funding immediately, and, importantly, before they must cast their vote. The AEC noted in its submission that a shift from ex post facto reporting to contemporaneous disclosure would require a ‘fundamental shift in the philosophy underpinning the legislative approach to political funding’.

3.112 Associate Professor Ken Coghill from the Accountability Round Table observed that in NSW, political parties were already required to keep most of the information required for an effective system of contemporaneous disclosure. He advised the committee that at a workshop in July 2011 on the Challenges of Electoral Democracy, the deputy director of the Liberal Party New South Wales branch indicated that their branch was required to do
exactly that sort of record keeping for their own internal purposes for compliance with the provisions of the New South Wales legislation on disclosure of donations and expenditure of funds. Associate Professor Coghill concluded that:

...we have now got the evidence that that is technically possible. It is not an administrative difficulty, at least not for the New South Wales branch of the Liberal Party, and presumably not for any other political party.

54 Associate Professor Ken Coghill, Accountability Round Table, Committee Hansard, 10 August 2011, p. 1.

55 Associate Professor Ken Coghill, Accountability Round Table, Committee Hansard, 10 August 2011, p. 2.

Corporate donor proscriptions

It should be noted that a very small proportion of all businesses donate to any political party. The disclosures on the Elections Funding Authority (NSW) website for 2010-2011 record a total of 2380 donors of which about 850 (35%) appear to be business names, a number of which could be related entities. Prominent among these are businesses with the potential to benefit from the exercise of discretionary powers by government – not least businesses directly or indirectly involved in development (e.g. changes in land use, including construction, requiring approval by government) or as contractors to provide goods or services to government. Such approvals have the potential to create huge increases in market value, which provides enormous incentives to seek favourable treatment. This adds emphasis to the point that political donations which are properly a business expenses are necessarily corrupt.

If donations by businesses were to be permitted, donors should be disqualified from any relationship with government of the jurisdiction (e.g. NSW Government) with potential to benefit that business and any beneficial owner (i.e. business or person with a controlling interest), for the period of the following parliamentary term. For example, the business and its beneficial owner(s) would be proscribed from:

(i) applying for or accepting approval of any land use or other development involving the exercise of executive government authority; or

(ii) tendering for or being awarded any government contract; or

(iii) applying for or being awarded any limited licence(s).

I hope these comments assist your deliberations.

Yours sincerely

(Anonymous Professor the Hon Dr) Ken Coghill
(former Member and Speaker, Parliament of Victoria)