Panel of Experts – Political Donations

Submitted by Dr Anika Gauja & Professor Rodney Smith

The University of Sydney

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Dr Kerry Schott  
Chair  
Expert Panel on Political Donations  
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Sydney, NSW, 2001

Joint Submission to the Expert Panel on Political Donations: Dr Anika Gauja and Professor Rodney Smith

Dear Dr Schott,

We would like to thank you for the opportunity to make a submission to the Expert Roundtable. We are doing this jointly as both our views on the core issues raised by the Panel are very similar.

In making our submission, we focus on two of the five questions put forward by the committee.

• Whether it is possible and advisable to introduce full public funding of election campaigns?
• What other reforms should be introduced to improve fairness and transparency.

Full public funding of election campaigns in NSW

We do not support the introduction of full public funding of election campaigns in NSW for several reasons:

1. There is no guarantee that for public funding of election campaigns would serve the public interest. There is no precedent for full public funding in other comparable democracies, including Canada, New Zealand and the United Kingdom. It would impose a significant burden on taxpayers, with no corresponding guarantee that corruption in politics would be eliminated.
2. The constitutionality of a full public funding model is questionable.
3. By removing the ability of electors to donate to political party and candidate campaigns, full public funding would also remove an important – and legitimate – avenue through which citizens can participate in the electoral process.
4. Through their campaigning and fundraising activities, political parties perform an important function in building community support and engaging with voters and supporters. International research on political party organisations has shown that increased state support (for example, through means of public funding) has been linked to an atrophying of party memberships, reduced levels of party activism and a decline in organisational vibrancy.
5. If the full public funding of election campaigns were to be introduced, a number of further problematic issues arise. First, how might the funding be distributed so as not to disadvantage new political party entrants? Linking funding to primary votes in previous elections would advantage incumbent parties. Extending public funding to new parties contesting elections would encourage the formation of new political parties (as contesting elections would be a relatively cost-free exercise), thus increasing the overall financial cost of elections and potentially the number of frivolous parties.

6. Second, how would the regime apply to third parties, including unions and pressure groups? Would these entities also receive public funding, or would they continue to rely on private fundraising efforts?

7. Third, how might the regulatory regime draw the line between election and non-election periods? Given that political campaigning occurs between elections, particularly around specific issues and/or government policy, how might political expenditure and donations be monitored during this period? Would political parties still be able to accept donations for non-election activities?

Political corruption of the kind uncovered by the Independent Commission Against Corruption in NSW is not linked exclusively to election campaigns, rather access to ministers and other influential decision-makers. Re-designing the system of political funding in NSW would not necessarily address this type of corruption, which would be better dealt with by strengthening enforcement mechanisms for existing legislation.

Other reforms for improving fairness and transparency

Many aspects of current NSW laws covering political donations are quite adequate. The current NSW Independent Commission Against Corruption investigations suggest that the key problems lie not in flaws in the legislative framework but in weaknesses in enforcement and education.

Reforms to the legislative framework will be largely symbolic unless they are matched by increased administrative capacity. The current annual reporting period specified under the Election Funding, Expenditure and Disclosures Act 1981, for example, could be replaced with a much shorter reporting period. Unless such reports were published in a timely manner, however, the effects on public scrutiny of electoral expenditure would be minimal.

Currently the Election Funding, Expenditure and Disclosures Act 1981 and the Election Funding, Expenditure and Disclosures Regulation 2009 are administered by the Electoral Funding Authority (EFA), a statutory body chaired by the NSW Electoral Commissioner and whose other two members are nominees of the Premier and Opposition Leader. The EFA has a range of responsibilities under Act, including some compliance and investigative powers. It carries its functions out with a modest budget, estimated at $3.7m in 2013. Most of its work is carried out by the NSW Electoral Commission, which had a 2013 budget of about $48m.

Four issues in particular arise in relation to the EFA and its role in improving the fairness and transparency of electoral funding in NSW.

1. While the EFA/NSWEC carries out its most basic functions under the Act, it has not had the resources to achieve effective compliance by donors, candidates and parties.

2. The limited resources of the EFA contribute the difficulty of achieving transparency in electoral donations and expenditure. The current standard of publication adopted by the EFA, combined with the annual reporting periods specified under the Act, makes effective and timely public scrutiny of electoral expenditure difficult.
3. The EFA does not have a specific educational function under the Act. While it does engage in educational activities, these are very limited.

4. The composition of the EFA’s membership largely reflects an earlier era in which the core problem was fairness in electoral funding between the major parties. In the current political climate, this leadership structure seems inappropriate.

In response to these issues, consideration should be given to:

1. Establishing or reconstituting an authority with the responsibility for administering and ensuring compliance with the Election Funding, Expenditure and Disclosures Act 1981.

2. Providing this body with the funding, expertise and other resources necessary to undertake its publication and compliance functions in an effective way.

3. Adding a specific education function, allowing this body to inform parties, agents, candidates, donors of their responsibilities under the Act. (This would remove the ‘I didn’t know it was wrong’ defence.)

4. Reconstituting the membership of the authority to remove any suggestion of partisan influence or involvement.

Sincerely,

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