Panel of Experts – Political Donations

Submitted by Rodney Cavalier

Date: 17 September 2014
17 September 2014

Dr Kerry Shott
Chair
Expert Panel on Political Donations
GPO Box 5341
SYDNEY 2001

Dear Dr Shott,

Submission to panel on election funding laws

Attached is my submission to the inquiry you are conducting on behalf of the NSW Government. I have sought to provide you with the historical context on why the Wran Government legislated for the first scheme for public funding of election campaigns in Australia.

The burden of my submission is explaining what went wrong. Responsibility I place squarely on those responsible for administering our political parties. Incrementally, the retirement of Neville Wran, the tenets of a scheme to assist the electorate in casting an informed vote have become the current debauchment in which corruption and poor behaviour is a certainty guaranteed by the structures of party politics.

Recommendations are contained in the text as I have proceeded. I have consolidated my recommendations toward the end.

I am enjoining you to ponder why a political party and candidate in receipt of public funds should not be subject to intensive administrative oversight that satisfies tests of democracy and fairness, not only audit requirements.

Your report needs to be made public at the time it is presented to the Premier. I ask that you insist the Parliament has an opportunity to debate your recommendations before the 2015 election.

I wish you well in your endeavours. I am available to present evidence and answer any enquiries.

My submission is that of an individual.

Yours sincerely,

RODNEY CAVALIER
Australia has a crisis of democracy. The crisis is of party politics.

Background to Joint Select Committee on public funding 1980-81

In the terms of reference and associated materials available to the panel, I have not read any material on what motivated the Wran Government in 1980-81 to introduce legislation to provide for the public funding of election campaigns. My submission begins by providing some of that history.

First, the scheme was wholly conceived and written by the Labor Members of the Joint Select Committee of 1980-81. At an early stage the Coalition Members formally withdrew and took no part in proceedings.

We, the members, made our own inquiries, unassisted in any substantial way by the NSW Public Service. Our Chairman, the late Ernie Quinn, undertook an overseas study trip to Germany, Canada, the United States and Britain. accompanied by an officer of the Premier’s Department. Their report on that trip was part of our report to the parliament. You can see for yourselves how we adapted their findings.

The NSW scheme was the first in Australia. Its features were of our devising. In the absence of our political opponents, we could think aloud about what worked. We had many iterations before we landed.

Historical context 1975-1980

The landslide defeat of the Whitlam Government was of very recent occurrence. The Whitlam era and its meaning were at the centre of political discussion.

Labor’s defeat had been accompanied by a crippling debt of a dimension not previously recorded in Australian elections. Something like $500,000, a quantum that seemed beyond attainment when it became public knowledge. That our leader and the national ALP secretary had taken breakfast with certain Iraqi gentlemen with a view to obtaining contributions to the ALP campaign was a scandal of the first dimension and, for a time, seemed likely to end Gough’s leadership.

Recourse to such desperate measures made a profound impression on people like Neville Wran, as well as the then young men hopeful of entering parliament some time soon. The travails of Federal Labor in 1975, going into 1976, were a part of the genome of the approach to politics by the Wran Government at the first meeting of cabinet and caucus – and the last.

The crisis of 1975 and onwards was whether the party could raise sufficient funds to be competitive against the resources of the conservative parties and the editorial hostility of all the major media companies.

In 1980 the Wran Government was midway through its second term. Wran had led Labor to re-election in October 1978 with a primary vote above 57 per cent and had captured a majority in the Legislative Council. The Government was using its
majority to alter processes of parliamentary representation and rules for conducting elections.

Restless on several fronts, the Government passed legislation that introduced optional-preferential voting and changed the fabric of redistributions by compelling an equality of enrolments in Legislative Assembly districts. Both measures were entrenched in the NSW Constitution.

Public funding was part of the reforms.

The purpose of public funding was to augment, not replace, fundraising by parties and candidates.

**Idealism drove what we were seeking.**

Under the chairmanship of Ernie Quinn, each of Peter Anderson (Member for Nepean), Michael Egan (Cronulla), Deirdre Grusovin MLC and this writer worked cooperatively toward recommendations based on the evidence, the literature and observations from an overseas tour by the Chairman.

In 1980 the Parliament did not possess computers or any means of transferring text from one document to another, except by scissors and staples. Drafts and the final report were typewritten from my handwriting or dictation. There were lots of staples, including staples over staples. Some sheets grew alarmingly - up, down and sideways.

On length there was no restriction but there was a deadline which worked back from getting the legislation through the Parliament before the next state election.

My colleagues worked over every line. More rewriting was required. The Committee endorsed what we had done. That is, we the Labor members minus the Opposition, endorsed what we had done and the report was tabled.

We made it expressly clear we were funding localised campaigns in the interests of democracy. In our example, we thought a Labor voter in Gordon and a Liberal voter in Cessnock was each entitled to a serious campaign locally.

Funding was proportionate to (i) the primary vote and (ii) was expressly a reimbursement for actual, proveable expenditure. If a candidate or party did not spend what their vote might have entitled them to, they could not harvest money unexpended.

Funds were strictly for election campaigns and related research.

A major obstacle transpired. Our recommendations offended ALP Head Office mightily. The party machine had sought and was expecting the creation of a war chest to be placed at their disposal.

Instead, we had recommended: (1) a scheme of reimbursement so that no party or candidate could receive more than what they had actually spent up to a ceiling; (2) funding was strictly for election campaigns; (3) funding was expressly not to be used for internal party administrative purposes.

ALP head office got to Neville. Head office wanted all the money: head office wanted to allocate the money to constituencies (or not) according to their own criteria. Head office wanted to maximise the political impact of public funds by being in sole charge of all spending. Neville sought the response of the Committee members to this contention, considered the two views and backed the Committee unequivocally.
From the point of view of a party headquarters, that approach made eminent good sense. A party spends to win a majority of seats and wants to be able to ignore whomever and wherever they think unimportant.

The 1981 scheme was not principally about assisting parties and candidates to win. Our scheme was designed to assist every elector, wherever they lived, to make an informed decision. An informed decision may result in a vote for the party spending the money. Or it may not. That was not our concern. It should not be the concern of funds subscribed by taxes.

The gulf is fundamental. Your decision here is your threshold question. Your resolution of this will determine the underlying values of a future public scheme. Assuming that there should a public funding scheme.

In 1981 there was no cause to believe a public funding scheme was going to be palatable to the electorate. Polling reported public funding did not enjoy popular support. Editorials were against public funding, reportage of our doings was not favourable. The Wran Government belonged to an era when a government, convinced its cause was just, relied on persuasion to change opinion. Honest injun, that is how politics used to work.

Our Committee built its case for empowering local campaigns because we wanted to make an unpopular measure palatable. The scheme’s credibility depended on a straightforward premise: public funding was going to serve democracy, not debauch it by way of a cash bounty to political parties beyond the immediate purpose of funding election campaigns.

I suggest to the panel that each amendment to the 1981 scheme in the decades since has served to debauch democracy.

The 1981 legislation on public funding and disclosure was a scrupulous matching of our intentions clause by clause.

The then General Secretary, Graham Richardson, duly had his revenge, as he promised me he would. The Hawke Government set up a committee to inquire into public funding in its first term. I was an expert witness. Richardson told me that he would make sure there was no constituency component and was going to separate revenues from reimbursement. So it proved.

That revenge continued in NSW, once Neville Wran departed and may be regarded as more than complete.

I have made errors in my political life. My advocacy of public funding is perhaps the worst. I am thoroughly ashamed at my role in helping to establish a scheme that has changed so fundamentally that it is antipathetic to democracy.

**Parties have no right to public funds for its administration.**

Assistance to administration was expressly excluded from the 1981 scheme. Consider then that, over the four-year period of a parliament, assistance to parties for their party political activities activities is now greater than payments to parties and candidates from the election campaigns fund.
There is no justification for taxpayer support for the day to day activities of political parties. Funding election campaigns depended on a case well established and vigorously fought for. The report of our Committee was built on all available evidence from across the world.

There was and there remains no democratic principle that warrants taxpayer support for a party administration. Our Committee expressly rejected the notion.

Administrative support has a sordid beginning. The Unsworth Cabinet in 1987 agreed to extend tax dollars to party administration. No inquiry preceded the cabinet minute. The case did not require stating: the governing party would be advantaged and so would the opposition parties and the measure would sail. One minister opposed the measure.

The Liberals and the Nationals were in full support, as promised. In 1981 the Coalition had campaigned against public funding in a bloodthirsty way, promised repeal, and pledged not to accept any of their entitlement regardless of the election outcome. Their behaviour in defeat proved to be not so selfless. Here was the Coalition were six years later in blissful collusion with the ALP to grasp what tax dollars the law might be providing.

I suggest all subsequent developments in public funding are the product of collusion. The interests of the parties are complementary. They have no cause to be reasonable. The only test is what they can get away with. The result has been a shameless readiness to dip inside the public purse for party administration.

How the funds are expended are worth investigating in thorough detail. Public benefit is not a criterion. Nor is servicing party membership. The ALP publishes a party journal no longer. Not a magazine, newspaper, dodger. Not in print, not online. Never had more money, never written less except the stuff of bulletin boards and imploring for more money.

Consider what assistance has gone toward policy development outside the parliamentary parties. In the course of the past four years, the model for policy development, a model that had served since 1971 was abolished because so many policy committees had failed to meet. A new model lacked substantive support. Annual Conference abolished the new model in 2014 and reinstated a version of the old model. The prose resulting is available for the panel to examine. Your tax dollars at work?

Another excursion down memory lane: fundraising in the 1980s

If you read our Committee’s report, you will see that our prose reflects our backgrounds and the politics of the early 1980s. We did not foresee the day when Labor would become so adept at extracting money from the corporate sector.

In our time fundraising for a local campaign was conducted locally, mainly from local sources, via such tried and true ventures as raffles, barbecues, dinners, personal donations. $50 was considered a lot of money for a ticket to anything, $10-20 was more likely. $100 was unimaginable. In a reach beyond unimaginable is the thousands required to buy a place at the table where Labor now sups.

No one would have believed, not even the fiercest critic, that Labor would become so shameless in who and where it received donations from. Labor has become better at raising money than the Coalition parties.
In my own campaigns for Fuller and Gladesville 1976-84, we raised all our own money. (In 1988 there were subventions from head office.) We won Fuller from the Liberal Party’s leader in 1978 with spending just over $8000. I do not recall an individual donation that exceeded $100. Public funding in 1981 and 1984 was over, above and additional to what we raised. The arrival of a cheque from public funds in 1981 and 1984 served as intended by the law – as reimbursement for actual, provable expenditure. We used the cheque to cover spending already made.

We at a local level devised our own campaign. At a member’s kitchen table a collective of local party members - our expertise no more and no less than what we had gained solely by way of such kitchen table exercises - cut and pasted our pamphlets and leaflets. We may have submitted our doings for expert advice by an advertising agency but the text and photos were our own, written by us, shot by us.

We most definitely did not seek approval. Head Office did not presume it enjoyed the power to approve. We connected with a central message like “If you have Rodney Cavalier’s phone number you have a voice in government” (1978). Because we chose to connect. Our call. Other campaigns did not.

Examine the pamphlets of that period and you will note the individuality of design. Dimensions, paper quality, text, layout, pictorials, all are strikingly different. Pamphlets reflected local talent and funds available. The funds available, in Fuller and Gladesville, were the funds we raised ourselves.

**Parties have been captured by a political class**

The difference between then and now is that NSW party politics is in the care, control and management of a political class. I am employing class in its proper definition as a living expression of people with consciousness of each other and, exercising that consciousness, will work in common purpose to achieve power for each other.

A political class came into existence during the 1990s when there arrived a critical mass of union officials without a background in the world of work and staffers for ministers, MPs and party offices. They proceeded to operate in conscious knowledge of each other with a view to transferring power from party memberships to themselves.

What had been coteries, at most, in the 1980s running the party machines became salaried professional armies of battalion size. The denizens of the political class have more in common with each other than their respective party memberships.

In the 1970s but not before, some of us had been union officials not drawn from the ranks, some had been ministerial staffers. They were phases in a life, they were not a career. Such employment provided no advantage in seeking and winning a preselection. I received not a dollar nor any other assistance in kind from my former union in five election campaigns. Nor did I seek assistance.

In 2014 no one can win Labor preselection for a safe or winnable seat or for an upper house unless they are backed by a union bloc or enjoy the imprimatur of a general secretary or party leader; such imprimatur amounts to a sanitised expression of the same naked power. My readings on the Liberal Party indicate they are catching up.

The parties below have largely disappeared. Membership is in free fall, broken by surges. I suggest if you look behind the raw numbers of membership, you will discover the vast majority of members are pixel entries.
An audit of who remains of branches in our parties will reveal no quorums, months between meetings, meetings sparsely attended, next to no business conducted. Few branches will pass a breath on the mirror test. Branches come together as required to elect delegates to a higher body. In some instances, paperwork creates credentials for delegates who were elected by no one.

Party conferences consist of all too many delegates representing such a base. Delegates from affiliated unions to ALP conferences are essentially hand-picked by union secretaries. Many are ring-ins. Loyalty to the secretary is paramount, coming from the ranks is not all that important.

Public funding underpins parties without a membership base. An utterly reliable source of funding has become a substitute for membership activism. When the party below disappears, there are cultural consequences.

Public funding and big licks from the corporate sector have created a culture of entitlement built on the faith that personal actions bring no unpleasant consequence. ICAC hearings have been a revelation for the high and mighty: break the law and you are answerable for your actions. Now there’s a thought.

**Public funding has been a means for the triumph of tyranny**

Consider the portrait of the modern Member of Parliament? I have written these passages many times. They cannot be written oft enough.

The archetype is cased at university where she is achieving less than academic greatness. He will have demonstrated a willingness to follow a leader, not to step out of line. She will join a branch where the postage and the mail-out is met by an MP. His first serious employment is with an MP. Or a Minister where she will know nought of the subject area of the Minister’s portfolio. Or a union where he will not have worked in the industry covered by the union employing him. Or her.

She is preselected perhaps for where she lives, perhaps for somewhere she has no association; he has minimal or zero community record. Her campaign is managed by people appointed by party headquarters, it is paid for by party headquarters, its strategy in microscopic detail is determined by party headquarters.

What we mug branch members did by ourselves on kitchen tables is now an industrialised process performed by salaried professionals on a fee scale that reflects the monopoly they enjoy in preparing materials for a party. Public funding has made possible the creation of a career stream for high salary operatives said to be cluey about public relations and the pretence that their advice on the political cavalcade is worth paying for.

To continue.

Having been elected, he enters the caucus of the faction to which he owes everything; she votes as the leadership instructs, he confirms for another parliamentary term the hegemony of the processes that made her possible. When she delivers her maiden speech - a moment which now enjoys a gender neutral name - it is probable that the staffer of a minister will have written it. Someone who hopes to walk in her or his footsteps.

The processes of such advancement obviate the humanising essential for a successful adult life – what we call maturing in response to personal experience, intellectual
growth, changes subtle in objective response to change in the world. When your outlook on politics is determined for you and your continuing advance depends on adhering to that determination, maturing does not come to pass. Every day we see a living example of non-adults in adult jobs.

**Consequence is corruption**

If the panel is pondering why the Independent Commission against Corruption has been discovering such evidence of corruption and tolerance for criminal behaviour, I suggest to you that parliaments across Australia on both sides are filling with individuals who are values-free and scarcely connected with the local party membership.

If you have Members of Parliament who do not need a local membership (1) to win preselection, (2) to raise money for a campaign and (3) to be soldiers in the cause of a local campaign, I suggest you have the answer as to why there has been a quantum degeneration in the standards of public life.

The taxpayer has funded the takeover of our political representation by a political class. Why should the state and the taxpayer fund a takeover of our political representation? Public funding and company donations have separated local representation from local communities and local party organisations.

That was not the intention of the Joint Select Committee, 1980-81.

Parties in government have legislated about campaign income from donations and other sources and played with disclosure levels. The parties have portrayed themselves as concerned about the corrupting possibilities of donations from developers or the rights of trade unions to donate to the party of their choice.

Concern is a posture.

The problem is not with the givers of money. The problem is with who seeks the money. The problem in our political system is the political parties. The parties have, demonstrably, been corrupted. To be clear, it is not that they are run by dishonest people. Standards are now so debased that the doing of wrong is the standard inherited by those coming into party office. For more than a decade, party officials have been indifferent to the sources of donations to the parties.


The treatment of the career of Eddie Obeid - (Kate McClymont & Linton Besser, *He who must be Obeid*. Vintage 2014 – explicates the influence achieved for he who is a source of large licks of cash for a political party. It is wonderful what being a source of cash makes possible.

I have written review essays on these two books if the panel members should be interested.

Amendments to the public funding laws since 1981 has spawned a cast of characters who have thrived inside parties in which the members lack any real say. I am recommending to the panel the need to reverse essentially every change since 1981 with a view to (1) imposing strict statutory requirements about democracy on the
parties, (2) protecting the rights of party members and (3) ensuring that the rule of law is standard operational procedure in the internal affairs of parties.

The assault on 1981 has been incremental, then it gathered pace.

**Incremental assault on the principles of 1981**

The constituency fund was debauched by party headquarters, in the first instance, by charging extortionate sums for basic materials like posters and how-to-votes, fortified by a direction that such materials could be purchased from only one source – party headquarters.

Eric Roozendaal hated the notion that unwinnable constituencies were entitled to a campaign. He expressed his outrage to me about the capacity of the Southern Highlands Branch ALP (of which I was and am a member) to build reserves.

Each whittling has been able to count on the support of the Liberal Party machine. Cooperation became easier as both sides became much the same people.

Now there is a clause in the Pledge made by ALP candidates for the Legislative Assembly that they will sign over all proceeds from public funding. This pledge is criminal in its disregard for the intentions of parliament.

In the 1890s the Political Labour Leagues required candidates to make a pledge that they would act to build a better world in accordance with decisions of the party. In 2014 Labor candidates pledge to hand over all the funds received from the taxpayer to party headquarters. Is your panel aware of that undermining of the principles of 1981?

The Federal Parliament in May 2013 provided us with an exhibition of all-pervasive power of the political class in both parties working in effective collusion.

**Whittling and the heist of May 2013**

Labor and the Coalition, machine to machine, negotiators to negotiators, endorsed by the respective leaderships, did a deal to plunder the public purse. Absent was a scintilla of justification about public benefit.

All was plain sailing until two veterans of the Labor caucus, Senator John Faulkner and Daryl Melham MP, stood in their places and let the architects of the collusion and the gutless know what was what. For their troubles, they were scoffed at and dismissed as yesterday’s men. The rest of caucus went along with collecting the cash, unconcerned by warnings about the perils once word went forth and the punters worked out what was afoot.

A single phrase from Senator Faulkner’s speech was reported. That single phrase informed the electorate that he was “ashamed” of a party which has done so much to warrant John Faulkner’s shame. The deal sanctioned by caucus could come to pass only if absolute radio silence was imposed.

Caucus consensus overlooked what happens when an exercise is not a party fix in collusion with the other wing of the political class. Admit the light of day and the political class has to countenance public opinion and the rule of law. In such an exercise they are seriously ill-equipped.
The arrangement duly foundered. The Liberal Party backbench revolted, the Liberal Party Federal Executive was unimpressed, the Liberal Party frontbench pulled the pin on the deal.

The Liberals in a collective sense possessed the antennae to know this could not play with the electorate and, yes, possessed some semblance of what is decent. The Labor caucus and the Labor machine were in another universe altogether. The federal public funding fiasco of 2013 reveals that exceptions to scurvy behaviour are precious few.

The heist of May 2013 was the culmination of three decades of honour among thieves. Let us not overlook that the heist was in the order of $58 million. The heist lacked even a pretence of public benefit. The taxpayer was going to pay Labor and the Coalition to run themselves.

Desperation drove a measure so sordid. Led by the ALP National Secretariat, it was all or nothing. Lawful expropriation of taxpayers’ money was intended as a bulwark against meaningful party reform.

Freeing parties of any obligation to their membership is the strategic purpose of full public funding of election campaigns.

Findings at ICAC have served not as a warning about the direction of party politics. On the contrary, the corruption exposed and the prospect of campaign cash have served to encourage the advocacy of full public funding of elections.

Full public funding equals a reward for scandalous behaviour. Parties demonstrably corrupted are to be rewarded with a massive new quantum of public funding. Without any corresponding obligations to make their decisions subject to tests of representativeness, lawful authority, proper form and process.

Full public funding will consummate the tyranny of the political class. Be not in any doubt that will be the outcome.

**Public funding, if it continues, must come with onerous conditions**

I recommend the abolition of public funding except for those parties and candidates that (1) sign up to a series of democratic and procedural standards and (2) agree to audit and investigation into any aspect of their internal affairs which has a bearing on candidate selection and the composition of selection bodies.

Oversight, investigation, penalty. None of that is new to the recipients of public funds in NSW.

The NSW Government does not otherwise give moneys to individuals and organisations without scrutiny of their bona fides. I have been involved at both ends: in grant giving with the likes of the Sesquicentenary of Responsible Government and with grant receiving as with the Sydney Cricket Ground Trust.

The authority giving a grant ordinarily requires evidence of legal status, the authority to make the application, proper process in applying for a grant. The recipient has to follow guidelines in acquitting the grant. These requirements are about a lot more than meeting audit requirements. A bad manuscript will not result in the final tranche of funds to publish a book.
Grants and subventions may be in the hundreds of dollars to a few thousand. Oversight and regular reporting are basic standards.

When the quantum is in the tens of millions, specialist task forces may act as an overseer. In the transport portfolio, the government protects its subsidies via nightly oversight.

NSW Governments have intervened in the affairs of essentially private bodies like the National Trust and the Federation of P&C Associations because its subsidies entitled the government to ensure propriety and good governance. Charities will suffer intervention if their practices are below standard.

The giving of public funding to political parties is not predicated against any test of governance.

Consider the sums of money involved. The 2011 NSW Election cost the taxpayer $21,535,937.38 in payments to candidates and parties to conduct their campaigns. A separate and staggering number was the $28,931,695 for administration and policy development 2009-2013. The new formula for 2013-2014 means another $10,171,589 for administration.

By my reckoning, the taxpayer has injected over $60 million into the coffers of parties and candidates.

I know from my own experience a writer receiving a grant of $10,000 is subject to a more thorough scrutiny than parties scoring $60 million.

**Embrace the detail, evoke the Devil**

The panel needs to recommend that the money paid to parties from taxpayer funds entitles the government to appoint an independent monitoring body to investigate any and all party political activity with a bearing on candidate selection for the NSW Parliament. Be very clear. I am advocating the statutory right to inquire into any party activity of interest to the authority.

Oversight begins with ensuring adherence to the Rules of the party. In what other field of endeavour can a recipient of government subsidy not be obliged to adhere to its own Rules?

By *choosing to receive public funds*, parties in receipt of public funds will be bound by the lawful obligations of Australia and New South Wales and be subject to the rule of law. Party rules which deny a legal relationship between members and the party will be null and void.

Racing went through these pains after the Second World War. Painful or not, all forms of racing became subject to quasi-judicial review. Health checks and swabbing of horses ceased to be internal. Racing tribunals have become the model for professional sports in which livelihoods are at stake. Given the stakes, racing could not be left to arrangements between mates and a plethora of inconsistent ad hoc judgements.

Party preselections - and denial of the right to a preselection - affect the livelihoods of MPs, potential MPs and potential staffers. A preselection contest affects the fond hopes and sense of worth of everyone entitled to vote in such a preselection. Denying a preselection breaks hearts and has fuelled the dangerous levels of cynicism abroad.
The state has a legitimate interest in the internal affairs of our parties

The state has a legitimate interest in (1) ensuring that parties are vigorous internal democracies, (2) selection procedures for candidates are by way of a fair contest (fundamental), (3) contests conducted in accordance with party rules. The oversight authority needs to be vested by law with all powers necessary to ensure the contest is fair.

Why is the state directing tax dollars to candidates who have no legitimate claim on a preselection other than the assertion of force majeure by the party machine and parliamentary leadership? The notion of force majeure has no place in the affairs of a democratic party receiving public funding.

Trade unions endured state intervention in their affairs in the early years of the Menzies era. As a result of legislation, members of a union or a union executive could petition for a court-controlled ballot. After ferocious resistance by the Left of the time, supporters of the Left by the mid-1950s were using petitions to achieve court-controlled ballots to ensure a fair contest. By the 1970s, executives of Left unions were petitioning for a court-controlled ballot as a matter of course.

Industrial courts had an active time throughout the Cold War examining the rules and constitutions of trade unions. It was not sufficient that the rules had been passed at a properly constituted meeting after due notice was provided. The Commonwealth Industrial Court could and did strike down clauses that were found to be “oppressive, unreasonable and unjust”. Their judgements were usually a lay-down misère.

Probability of strike down, based on legal precedent, had a beneficial effect on union leaderships and their legal advisers. The net effect was to make democracy and transparent procedures the only possible principle in writing rules.

For all the criticisms of trade unions in recent years, the great majority of unions have rules and democratic practices that shame our political parties. Why should political parties in receipt of public moneys be entirely without the restrictions that apply to trade unions and racing authorities? To ask such a question is to answer it.

A beautiful set of principles, expressed no less beautifully in formal rules, means not much if those rules can be set aside by the leadership of the party. Rules are absolute, like the law; otherwise rules are of not much value in protecting the party membership against tyranny.

Emergency circumstance to justify wrongdoing is plain hokum

Political parties circumvent their own rules by invoking various forms of emergency powers. The flimsiness of cause is worthy of the Weimar Republic.

One dodge is to place the party on a “campaign footing”, a state of affairs which requires nothing more than the administrative authority passing a resolution that declares that the party is on a campaign footing. The resolution does not need an anchor in objective reality; an election need not be imminent nor need the party be operating any differently than before the resolution was passed.

Placing the party on a campaign footing has been a dodge to place preselections beyond judicial review in the knowledge that the courts will not enquire into the merits of the decision. Yes, party conduct is that cynical.
In preselections where a candidate unfavoured by the leadership has too good a prospect of winning, impositions will take place by way of either (1) centralised panels in which the inner groups of the political class divide the spoils among themselves or (2) the blunderbuss of having the parliamentary leader write a letter to the ALP National Executive seeking intervention so that the National Executive selects the anointed of the political class.

The National Executive came into existence in 1915. For its first 75 years the Executive required the applicant for intervention to make the case with the burden of proof loaded against the applicant. During the 1990s, as the Executive became a creature of the political class, intervention was an act of caprice exercised without a pretence of just cause. In the 21st century there have been more interventions in these first 14 years than in the 85 years of the 20th.

Just as union members and members of voluntary associations enjoy a statutory or common law right to challenge an unjust decision in the courts, so a member of a party receiving public funding must be entitled by Act of Parliament to appeal to the civil courts about any decision by the administrative authority and internal tribunals. I suggest the prospect of thoroughgoing judicial review will eliminate in the fullness biased and improper decision making.

Achieving justiciability is a tortured, expensive business

Courts have been reluctant to intervene in the internal affairs of a political party since a decision in 1934 of the High Court of Australia (Cameron v Hogan, 51 CLR 358). The merits of the case were open and shut: a party member won preselection, the ballot was set aside, the winning candidate (a former Premier) was expelled without charges being laid and without a hearing. Notwithstanding, a majority of the High Court – Rich, Dixon, Evatt and McTiernan, no less - made their judgement because a political party is a voluntary association, like a sporting club, which people join consensually. Being members does not create an “enforceable contract”.

Over the decades there have been many endeavours to bring justiciability to the affairs of voluntary associations. Cameron v Hogan stands as law, though with many breaches.

Justice Wootten in McKinnon v Grogan 1974 (1 NSWLR 295) gave their Honours a judicial tickling for what they decided in 1934.

The resultant categorization in legal analysis of a great political party, or the effective regulatory institution of a major sport in the community, with a group of friends agreeing to meet for a game of tennis, is simply inadequate. One can understand that judges, who feel so keenly the importance of standing apart and being seen to stand apart from partisan politics, would be reluctant to see the internal factional struggles of political parties brought into the courts. But the proper desire to avoid identification of the judiciary with partisan politics is not a justification for eschewing responsibility for legal questions which happen to arise in the political arena. Courts have to venture amongst political divisions in many cases, notably in deciding constitutional issues and in enforcing the rules of trade unions, and a proper discharge of the judicial function in such areas will do more for their standing and reputation for impartiality that a failure to assist in settling the legal aspects of disputes which ravage great and small institutions in the community.
A turning of the tide seemed to have been achieved in South Australia in 1999 when Ralph Clarke, a state Labor MP, raised the issue of branch stacking and the improper admission of members (some 2000 were admitted on a single day). Justice Mullighan examined party rules and found that these people were not permitted to take part in the election of delegates for the preselection.

Justice Mullighan offered a fine recital of the law (Clarke v ALP South Australian Branch, SASC 365) in finding for Mr Clarke. A victory in court was soon ashes in the mouth for reason that Mr Clarke’s victory in court steeled the resolve of his opponents, the controllers of the union bloc vote. Note that Ralph won 81 per cent of the branch vote but that mattered not as the branch votes amounted to only 25 per cent of the total. I suggest such ratios are an example of tyranny.

As the law stands, an already reluctant judiciary will not intervene when a tyranny takes the care to observe manner and form.

I am recommending to the panel that your report advises the NSW Parliament to sweep away all the common law inhibitions about intervention in the affairs of political parties. A statute needs to express that the affairs of political parties are justiciable and express the rights of individual members to seek relief through the courts.

If you can achieve such an outcome, yours will have been a magnificent achievement.

**A working model for oversight is available for immediate adaptation**

A working model for statutory oversight is the *Fair Work (Registered Organisations) Act 2009*.

Section 5 contains “Parliament’s intention in enacting this Act” and the standards required. Those standards are as follows.

(a) ensure that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and

(b) encourage members to participate in the affairs of organisations to which they belong; and

(c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and

(d) provide for the democratic functioning and control of organisations

I put it to the panel. Why are political parties in receipt of public funding not subject to at least this standard? The principles of this Act are based on the values that RG Menzies imposed in the early 1950s; they are principles happily enacted by a federal Labor government and passed without opposition by the Coalition parties.

The same Act provides remedies and protections. Consider s.142 which lays out the general requirements for the rules of organisations.

(1) The rules of an organisation:

(c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament’s intention in enacting this Act (see section 5) and the objects of this Act and the Fair Work Act, are oppressive, unreasonable or unjust; and
Why should members of political parties not enjoy the same rights and protections from tyranny and capricious decision-making as members of unions and employer organisations? How can an official of a union affiliated to the ALP object to party members enjoying the same rights and protections as his or her union members? On what grounds could the Liberal Party oppose such measures?

Rules making and administrative decisions subject to a test of being oppressive, unreasonable and unjust will transform the operations of political parties.

Corruption becomes standard practice

Corruption is a product of taking shortcuts instead of following manner and form; shortcuts become habit forming; disregard for democracy and the rights of party members is a casualty. Wanting an outcome so very badly does not justify, for party leader and machine leadership, the assertion of force majeure - however noble the purpose.

Unconcealed contempt for rules and proper process is comparatively recent. In 1979-80, to give a concrete example, the leadership of the NSW Branch ALP had an understandable desire to obtain a safe Labor seat for Neville Wran. The agents of that cause were the redoubtable John Ducker, ALP President, and Graham Richardson, General Secretary. Neither was a slouch in the persuasion department.

What they encountered were entrenched MPs not prepared to stand aside. While ever those MPs enjoyed the support of local branch members, they were invulnerable. Ducker and Richardson did not pursue the cause; it did not occur to them to do otherwise. They did not contemplate setting aside the Rules. Such a step was outside their values system. The rude, democratic culture of old Labor stood in the way. It was a culture they respected. They were part of that culture.

Now there is no hesitation to do whatever it takes to achieve a leader’s wishes. It is not that modern leaders are intrinsically corrupt. With the collapse of the old culture, it has not occurred to contemporary leaderships that party Rules and decent practice bind them. They think they are godheads.

I suggest that the certainties of public funding have fuelled the arrogant presumption that leaders know better.

Almost every activity of a party will be justiciable

Knowing every activity is justiciable will ensure that smart people wanting to advance in politics will operate inside the law and according to standards of civilised behaviour. Adjustment may be painful; adjustment the pained will make.

A Conference ballot to select candidates for the NSW Legislative Council is, for example, a proper matter for the new oversight authority to scrutinise. The ballot, if there be a ballot, involves the votes of delegates from federal electorate councils. The electorate council for the Illawarra seat of Throsby did not meet for nigh ten years c.2001-2011 yet sent delegates to the ALP Annual Conference for all that time. Throsby did not meet for another two years after 2012.

The ALP electorate councils for the state seats of Goulburn, Burrinjuck and Wollondilly held annual meetings in 2013 and did not meet again until April-June 2014. Party organisation across much of NSW is a fiction.
A roving audit of local cricket clubs and district associations is standard practice in cricket. Being able to field teams and players in viable competitions is the sort of solid evidence required for the cricket authorities that clubs and districts are ridgy-didge. In cricket you cannot pretend the existence of what does not exist.

I suggest that such scrutiny in NSW, as a matter of certainty on one side of politics, both sides more likely, will find that local branches are not ridgy-didge. If political parties were administering cricket competitions, the competitions would be, for the most part, without teams and without players. In full richness of a corrupted culture, you could count on such confections giving trophies and electing delegates to somewhere. The example is not one I draw from fantasy; the Labor Party in NSW in the 1930s had associations for cricket, vigoro, tennis, swimming and golf, involving dozens of teams and thousands of participants. Now there is nothing.

Amendments to the public funding laws

I put forward for consideration amendments to the public funding laws that impose obligations upon parties receiving tax dollars as follows.

1. A party must be controlled by its membership. In the case of the Australian Labor Party, that will mean an organisational structure of the kind that prevailed 1891-1916.
2. Unless a party can demonstrate membership control, it will not receive public funding.
3. Rules and internal arrangements create a legal relationship between members and between members and the party.
4. Public funding be administered by a new authority with far reaching powers of investigation with the force of law.
5. Every decision on candidate selection and the composition of selection bodies is a matter examinable by the new authority.
6. Internal party tribunals must be quasi-judicial.
7. Members have a fundamental right to seek remedy in the civil courts.
8. Corrupt behaviour will have a consequence beyond the party.
9. The courts and a new authority will be able to intervene to set aside a provision in the Rules or administrative practice that is oppressive, unreasonable or unjust.
11. A scheme for public funding that operates strictly as a reimbursement scheme. Moneys should never be paid to any candidate, or party, unless documentation is provided to prove campaign expenditure has been incurred to at least an equivalent amount. That is, there will be no windfalls.

A party that considers such oversight is intrusive does not have to receive public funds. It is a simple choice - the money or the box.

I suggest that parties will adapt to new requirements, however onerous they may regard them as being. Unions adapted in the 1950s and think nothing now of court oversight.
I suggest that the panel examine the success of General Dwight Eisenhower who issued orders about looting ahead of the Normandy landings in 1944. His earnest intention was to preserve the friendship of allied citizens and win the future cooperation of the enemy. Courts martial were assembled in the afternoon of D-Day and for a few days after to punish those caught looting. Punish the courts did. Thereafter, looting was not a substantial problem.

The first branch secretary enjoying 120 hours of community service for falsifying minutes will send a powerful signal that rorting is no longer acceptable practice. A custodial for systemic fraud and forgery will send a signal more powerful.

**A crisis in Australian democracy**

The panel may not have been created with ambitions to demolish the fundamentals of corruption. I suggest that you must. A tinkering with donations will not alter anything.

I have written a book on the crisis in Australian politics (*Power Crisis: the self-destruction of a state Labor government*, Cambridge University Press 2010). In recent years other books and thoughtful commentary have been exploring shortcomings in government, the weakening of the ranks of the public service, the flight of courage, the absence of underlying values, a narrowing of the gene pool for parliaments.

In a succession of books, Paul Kelly has been nailing what he now calls the Australian Crisis - see Paul Kelly, *Triumph and Demise: the broken promise of a Labor generation* (Melbourne University Press 2014). The degeneration which he chronicles so well is not an accident of personalities in conflict. The present pass is the necessary consequence of the structures of the major political parties and the absence of internal democracy.

An outsider will see a nation’s shortcomings more clearly than we who are natives. Nick Bryant reported on Australia for the BBC. He was aghast at the decline that occurred in front of his eyes.

As the country has grown stronger, its politics have become nastier and more adolescent. In a progressively more consequential country, politicians have made themselves increasingly irrelevant. Australians find themselves in the anomalous situation of witnessing simultaneously the rise and fall of their country. (Nick Bryant, *The Rise and Fall of Australia*, Random House 2014)

These writings are dealing with nothing less than a crisis in Australian democracy. The source of the crisis is in Australia’s political parties. Who else could be responsible?

Re-empower party members, invest in them the lawful right to insist on adhering to rules and proper process, I suggest party members will be frontline defenders of internal democracy principle.

The ending of public funding is a viable option. If public funding is to continue, it needs to be turned on its head. Make it available only for election campaigns and, by making it available, deploy public funding as a force to cleanse corruption and make parties representative of their members. It is an either or.
The Baird Government has the opportunity to prove wrong the firm belief, held by me and most anyone who knows how politics work, that the Coalition parties will not ever do anything that democratises the Labor Party for the sound reason that a undemocratic Labor Party, a party so much less than it might be, gifts the Coalition a permanent structural advantage over Labor.

Unless parties are parties of their members, they are not entitled to public funding. A statement as unequivocal needs to be inserted in the Act as the intention of Parliament in making available public funding to parties and candidates.

RODNEY CAVALIER