“How we live is so different from how we ought to live that he who studies what ought to be done rather than what is done will learn the way to his downfall rather than to his preservation.”

— Niccolò Machiavelli, The Prince

In coming to this Review, my first request is that Panel Members not view the question of political donations as one of great moral moment, or moral panic. As such, Machiavelli’s above-quoted observation is instructive.

There have been kilometres of commentary in the press and, “packs” of journalists and cameras outside the ICAC (Independent Commission Against Corruption) hearings. However, whether we should be surprised by much of what has been revealed is another matter?

Personally, I do not think so. Perhaps, the audacity of some of it is unprecedented, but one should equally look back with a cautious eye. In his book, ‘You Didn’t Get it From Me’, journalist Steve Chase observes:

The ICAC was a creature of the Greiner Government. Even though it was a great achievement in its early years, many in the Coalition would come to harbor grave
Has much really changed? In the first few pages, Mr. Chase certainly refers to the increasing pace of political life, the impact of the ‘electronic age’ and, the press conference “grab”. 

I say this, because unlike some who may approach the Panel, little of what I’ve heard shocks me. Politics is not necessarily a nice game played by Queensbury Rules in Gentleman’s Clubs of a by-gone era. Nobody goes to see a politician or a departmental official to pass the time of day; we go because we want something. Personally, one has done this in the past, will likely do it again and, in working to establish my consultancy ADJ Consultancy Services, aim to lobby similarly for others in the future.

And, in this, there is nothing wrong in my opinion. It is in the hands of each individual citizen as to how actively they wish to inject themselves into the public and political life of their local, State or national community. Those who chose to absent themselves, for whatever reasons, cannot really complain when they find others taking the opportunity to advance interests at the former’s expense.

However, it is the point at which money becomes involves that excites a great deal of interest. After considering Working Paper 3, I am not convinced of the merits of public funding, drawing conclusions similar to those of the Hon. Peter R. Graham QC. My greater concern is the declaration of donations. In this respect, one disagrees with the concepts coming from the High Court. The Court finds corporations, unions and the like, to be fit and proper civic sites for political communication, and while numerous

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2 Stephen Chase, You Didn’t Get it From Me: a reporter’s account of political life in New South Wales From 1988-2001, ABC Books (and supported by the Sesquicentenary of Responsible Government in NSW), 2006, pp. 9-10
3 See ibid., p.11
4 See ibid., p.20
5 See ibid., p.41
7 See for example, my submission on to Treasury on the Governance of Non-profit Organisations at http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2011/Review%20of%20not-for-profit%20governance%20arrangements/Submissions/PDF/Johnston%20Adam.ashx as at 15 September
objections can be raised to this formulation of the common law,\(^8\) this is the law as it stands.

Accepting this, any corporate entity, union, think-tank or other not-for-profit body which purports to give money to a political party should be able to cite an annual resolution, where members, shareholders and/or stakeholder representatives (whichever is applicable) have approved the donations. This resolution,\(^9\) along with the member/shareholder/stakeholder membership list, should be disclosed as part of any declaration. A failure to make appropriate declarations should cause the corporate veil to be lifted and, the controlling minds of the body to be personally liable for malfeasance. Equally, continued breaches should see entities lose their corporate seal; it seems to have been forgotten by many that corporate personality was originally granted by the Monarch-in-Parliament.

I also do not see any need for there to be a minimum (or maximum/capped) amount of money to be set, before a declaration needs to be made. Members of political parties know (or should know\(^{10}\)) that they are joining public organisations, aimed at electing 2014. My concerns are that many of these bodies are corporations and, from personal experience (as related in the submission) I wonder about the true accountability of these bodies. Furthermore, governments lose uncounted billions in revenue when charitable organisations are given tax concessions (for example, see my submission to the National Commission of Audit at [http://www.ncoa.gov.au/docs/submission-adj-consultancy-services.pdf](http://www.ncoa.gov.au/docs/submission-adj-consultancy-services.pdf) as at 15 September 2014)

\(^8\) My objections begin with what is happening to the most vulnerable in our State. Many services, notably in the disability sector, which used to be provided by government, are increasingly being outsourced to the NGO or private sectors. As I submitted to the Public Accounts Committee’s recent *Inquiry into Efficiency and Effectiveness of the Audit Office of NSW* disabled, elderly and other dependent people were being quietly denuded of their citizenship, as their care and support is outsourced; see [https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/BDDEDC83E0A9FF20CA257BCF000C442C](https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/BDDEDC83E0A9FF20CA257BCF000C442C) as at 15 September 2014. I tried to address these issues through reforms suggested to the Expert Panel on Recall Elections at [http://www.dpc.nsw.gov.au/%20data/assets/pdf%20file/0008/131120/06%20Johnston.pdf](http://www.dpc.nsw.gov.au/%20data/assets/pdf%20file/0008/131120/06%20Johnston.pdf) as at 15 September 2014 (dead link). The reforms would have made anyone responsible for public money (including NGOs, corporations, grant holders, as well as any civil servant, subject to a Recall Petition. I also left it to a confidence vote of Parliament, as to whether the official who was the subject of a petition retained public confidence. Unfortunately, none of the Recall Election proposals were advanced by the State Government. I attach my submission to the Recall Election report as Appendix 1.

\(^9\) The Electoral Commission should periodically audit these resolutions. In my view, for a resolution to be valid, just over half of an organisation’s members/shareholders/stakeholders should have cast valid votes and, just over half of these should be in favour of the proposed donation.

\(^{10}\) I am a member of the Liberal Party of NSW, but write this submission in a personal capacity.
people to public office. Equally, if membership dues and other individual donations were publicly listed, then branch stacking should become that much more difficult.

To address the power of political party head offices, political donors should be required to designate which candidate or campaign they wished their donation to go to. This would deprive party Head Offices of much discretion and power over money, members or campaigns. Hopefully, it would also do much to focus attention on local campaigns, local issues and local candidates, at the expense of centralist so-called “Presidential-style” leadership campaigns.

I trust these comments are of some assistance.

Yours faithfully,

Adam Johnston
Proprietor, ADJ Consultancy Services

16 September 2014
Dear Panel Members,

The idea for recall elections in NSW comes after the experience of fixed term electoral cycles and, a long term Labor Government in this State, whose governance progressively deteriorated, to the point where absurdity met stupidity; along with every other descriptor between these points.¹ This history does not need to be repeated in this submission.

While recall elections do feature in Congressional systems of Government (most notably, in California, which saw Austrian-born body builder and actor Arnold Schwarzenegger become that US State’s 38th Governor²), they are not as common in Westminster systems of Government. However, there is a highly developed form of recall election in the Canadian Province of British Columbia. This jurisdiction has systems in place for both the recall of politicians,³ as well as a capacity for citizens to initiate referenda to introduce or amend Provincial laws.⁴

A complicating factor is that while British Columbia has a unicameral Parliament,⁵ NSW has a bicameral system of parliamentary representation. Ideally, Legislative Councillors should be similarly subject to recall, just as any Member of the Assembly. The Victorian Legislative Council divided

¹ While I am a member of the Liberal Party of Australia, I am writing this submission from a purely personal perspective, not a partisan one. All comments, references, research, errors and omissions are my own, as are the conclusions and recommendations.
² For example, see Arnold Schwarzenegger: From Wikipedia, the free encyclopedia http://en.wikipedia.org/wiki/Arnold_Schwarzenegger as at 24 July 2011
⁵ See the Legislative Assembly of British Columbia Homepage http://www.leg.bc.ca/ at 24 July 2011; also see Legislative Assembly of British Columbia, From Wikipedia, the free encyclopedia http://en.wikipedia.org/wiki/Legislative_Assembly_of_British_Columbia as at 24 July 2011
into geographic regions returning a specific number of members,\textsuperscript{6} demonstrates that an Upper House ballot need not represent a State-wide vote. Dividing the NSW Legislative Council up into Victorian-style regions would make the concept of an Upper House Member’s recall election geographically, numerically and financially feasible.

The percentage of eligible voters needed to sign a British Columbia-style recall petition could be adjusted upwards on account of the population size of metropolitan regions, while being adjusted the other way for rural regions on account of the ‘tyranny of long distance campaigning’. Meanwhile, Victoria also limits the number of Upper House members who can be appointed as Government Ministers and, sends the whole Council to the ballot box at an election.\textsuperscript{7} A similar reform would be an effective way to end the guaranteed eight-year term for Legislative Councillors in NSW, as well as preventing any “sheltering” of Ministers (or Shadow Ministers) in the Legislative Council.

Additionally, there seems no reason why the concept of the public recalling of officials should be limited to State parliamentarians. Petitions could similarly recall bureaucrats, local government councillors and civic officials and judicial officers, in an expansion of Premier O’Farrell’s \textit{People’s Petition} procedure.\textsuperscript{8} After all, while electors may periodically change governments, and the politicians who temporarily lead them regularly change senior departmental staff; and what parts of which (renamed and reorganised) agency report to one or other Minister, the bureaucracy itself largely remains intact. Arguably, a recall capacity affecting all branches of Government asserts the democratic values of parliamentary and popular sovereignty simultaneously, consistent with the Australian Westminster-style parliamentary traditions. Officials responsible for any State department or agency could be called before Parliament to explain themselves in light of a Recall Petition. The Parliament could then determine whether it wished to send a message to the Governor recommending dismissal of the officers concerned.


\textsuperscript{7}See ibid

Finally, given the growing amount of Government goods and services being delivered by the private sector, it is in my view vital to bring government contractors and private sector providers of goods and services funded by the State, within the remit of the recall procedures. As someone with a disability, government funded employment, equipment and other care providers who fail to deliver on promises (even when I sign contracts of service) have truly tested my patience at times. To find further that one cannot legally enforce fulfillment of agreements because they are based on unenforceable memoranda of understanding (to which I as a client am not a party to) is the ultimate insult and frustration.

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The delivery of publicly-funded programs in areas such as labour market placement, skill training, provision of welfare, health and housing services and relationship counselling was outsourced. Services were contracted out through competitive tenders. At least to some extent program recipients were able to choose from a range of providers ...(However, driven) by the best of motives – to improve commitment to service delivery – the private sector language dangerously confuses the nature of the public sector. Customers can choose whether to buy and from whom. Citizens (and I embrace residents in this term) have no such choice. They are being delivered responsibilities as well as rights: the services they receive as entitlements also impose obligations. Public services are not shopping malls. ...During the years in which I oversighted line agencies I gained considerable experience in contracting out the delivery of publicly-funded programs in indigenous affairs, employment, training and education. I recognised it was not without risk. I saw a danger that public servants might mistakenly believe they could outsource accountability or, worse, hide administrative failure behind a cloak of commercial-in-confident. I thought it was a good thing that the APS integrity network – particularly the Commonwealth Ombudsman and the Auditor-General – were given the powers to bring the same scrutiny to the behaviour of contractors (insofar as their activities related to the use of public funds) as to public servants. (my emphasis)

While such reforms as the ones I have emphasised above are important and welcome steps, they do not necessarily provide aggrieved service recipients the same form of public acknowledgement as a petition. The Parliamentary Petition, with a renewed force and standing, may well be of assistance to many people. Information on the NSW Parliamentary website indicated the Petition’s historic importance in the Westminster tradition, but that it is does not have anything like the prominence it once did. Refer to NSW Legislative Assembly Practice, Procedure and Privilege - Part One Chapter 13 – Petitions http://www.parliament.nsw.gov.au/prod/LA/precedent.nsf/0/DF2F78120FD59221CA25765A00778C8A/$file/Part%201%20Chapter%2013%20Petitions.pdf as at 25 July 2011.

10 See my submission to the Henry Tax Review, particularly the Appendix at pages 6 – 9 (Adobe numbering), beginning at the heading “Employment agencies”. From this heading on I discuss my less than positive view of the memorandum of understanding which encapsulated the allegedly ‘special’ relationship between Disability Works Australia (an employment broker) and the ACT Government. At great personal inconvenience in terms of time, and some money, I prepared papers and went to meetings for an employment program, which was ultimately discontinued in mid-process by the ACT. There was no-one from either the ACT Government or Disability Works Australia who suffered any funding penalty or other consequences for their failure to deliver to “clients” like me. The Web link is: http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf as at 25 July 2011
While admittedly, my examples are mainly in the Commonwealth jurisdiction, State Governments of all political persuasions have been ready to facilitate the corporatisation, privatisation and/or sale of public instrumentalities. While agreeing with Dr. Shergold that this policy has had clear benefits, this is not the full story. When it comes to the question of individual service recipients (particularly those with disabilities or who have other conditions which may make them vulnerable) being able to hold private sector bodies, charitable non-government organisations and the like, to true account for goods, support or other agreed outcomes delivered, only one party has most of the bargaining power. And, it is not the service recipient or their family most of the time.

Ministers, Department CEO’s and Director Generals, the Executive Officers of NGO’s, their staff, judicial and other officers; indeed anyone who finds themselves responsible for running a publicly funded agency or program, whether it is identified in the State Budget for financial assistance, or support comes as a grant or via some departmental instrument, agreement, or authorisation, all should know the potential power of a Recall Petition.

In short, I recommend that:

1. NSW adopt a Recall Election process, similar to that in operation in the Province of British Columbia, Canada;
2. NSW reform the Legislative Council, in line with arrangements in the State of Victoria, in order that recall provisions can be fairly applied to Council Members, as well as Assembly Members;
3. NSW apply recall principles to all branches of Government and state officials, including those from the private, charitable and non-governments sectors, who from time to time, are given State funds to implement Government policies and programs.

Yours faithfully,

Adam Johnston

July 26, 2011

11 See Shergold, op. cit., p.4