Panel of Experts – Political Donations

Submitted by Patrick Synge
Public officer, Funding & Disclosure (Inc)

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When in May of this year Mike Baird announced the introduction of new legislation “to address a gap in election funding regulation that has arisen following last year’s High Court decision, which overturned the NSW Government’s ban on corporate donations” he also announced that he had established this panel of experts “to consider the best way to remove any corrosive influence of donations in NSW politics. Donations reform is a key step in my commitment to clean up politics in NSW.”

Let us hope that he and his government is able is able to achieve effective reform. It is sorely needed. Not just in NSW but throughout the country. I look forward to reading your final report and then seeing what action the government takes. The recent ICAC revelations have added a sense of urgency.

One almost has to start by defining the word ‘donation’. When does a ‘donation' become a ‘bribe’?

Does anybody really believe that when a business entity, perhaps needing government approval or a legislative change in order to achieve its goals, gives substantial amounts of money to political parties it is simply to “further the cause of democracy”? This may, in fact, sometimes be the case but the perception in the electorate is that money buys influence and this perception is only reinforced when politicians are found to have accepted ‘donations’ that have been proscribed. Growing cynicism among voters is causing a widespread apathy that is undermining our democracy.

"If we identify popular control and political equality as the two central values of democracy, then the influence of private money must be seen as a significant corruption of democratic politics. However, if we add liberty to these values, and especially if we interpret liberty as applying to artificial subjects like corporations, the issue becomes more complex”.¹

It is clear that banning donations completely is not going to happen so there is little point in examining this if we are serious about looking for achievable outcomes. Public funding of political parties and elections is, for some, an attractive option but it’s fraught with problems of how to apportion the funds and and is, anyway, likely to be politically unattractive as it would be seen by many taxpayers as simply giving more money to politicians.

So, realistically, we are left with considering how to ‘clean up’ donations. The simplistic view is to simply put a cap on donations and campaign spending but this "would make the political system more lopsided in favour of the government of the day. Campaign finance laws restrict private political actors but not governments, the biggest political advertisers. The High Court has upheld the federal government’s power to advertise as it chooses. Though there are codes of practice for government advertising, except in the ACT these have no legislative basis.”²

Two recent campaigns against federal governments illustrate the power of third party campaign spending: the ACTU campaign against WorkChoices and the mining companies campaign against the mining tax. Did these campaigns distort democracy or were they an integral part of the democratic system? Does it really make any difference that one campaign was managed by elected members of Trade Unions to benefit their members while the other was managed by the elected board members of mining companies to benefit their shareholders? It would seem that if campaign spending by third parties is limited government advertising should also be restricted if democracy is to flourish. If not, incumbency is even more advantageous than it already is.

¹The big winners from more restrictive campaign finance law are elements of the existing ‘political class', principally the political parties but also the media. NSW is the best example. Though political parties lose donations, they are compensated through increased public funding. Their third-party critics and rivals receive no compensation for lost donations, and are also restricted in how much they can spend. Political outsiders

1 Barry Hindess, Political Science Program, Research School of Social Sciences, The Australian National University, for the Democratic Audit Political Science Program, Research School of Social Sciences, The Australian National University, Report No.3.
will have less access to politicians through purchasing places at functions, increasing the value of personal connections to politicians, political advisers, and public servants.\textsuperscript{3}

So if capping donations and restricting spending are so problematic what are we left with? Transparency and accountability.

We know that democracy can be bought and sold. We see it all around us. The new PUP party that now holds the balance of power in the Senate is a classic example. It may not be ideal but at least we believe we know where the money comes from and can take this into account when voting.

All donations should be disclosed. All donations: not just in the lead up to elections. All donations: not just those above an arbitrary amount. All donations should be disclosed in ‘real time’: not months after an election.

Funding & Disclosure (Inc) has established a website that gives candidates for public office the opportunity to voluntarily disclose all donations in ‘real time’. It is not complicated or onerous. We developed it on a shoestring budget and will be offering disclosure to candidates in the upcoming NSW by-elections and the Tasmanian Local Government elections. A first in Australia.\textsuperscript{4}

This ‘real time’ disclosure is new in Australia but similar systems have been operating in the US and Canada for some time. The system operating in Ontario, Canada is backed up by legislation and is the model that we suggest should be introduced here though we believe it could be simplified and streamlined.

“Real Time Disclosure of Contributions: when contributions in excess of $100 and contributions from a single source that in the aggregate exceed $100 are made to registered political parties or registered leadership contestants, their chief financial officer must file a report with the Chief Electoral Officer within ten business days after the contribution is deposited. The Chief Electoral Officer in turn must publish the information on the Elections Ontario web site within ten business days of receiving the report.”\textsuperscript{5}

Robert Furolo MP (Lakemba) suggested in debate, on the same day as Premier Baird announced the appointment of this panel, that “consideration should be given to strengthening the disclosure requirements. A possible solution to this issue would be to require all political donations to be made to the Election Funding Authority New South Wales and then channelled to the intended recipient candidate or political party. This independent clearing house model would obviate the need for candidates to appoint agents to manage receipt of their donations and would enable real-time disclosure by the Election Funding Authority for voters to know who is donating, how much they are donating and to whom they are donating. While further reforms of our election funding laws are necessary, we should be careful not to ignore the sound foundation we have developed in New South Wales. Again to quote Dr Joo-Cheong Tham: “Given the revelations being made in ICAC hearings, it may be odd to point to New South Wales as a model to follow. Yet, what is being largely alleged in these hearings is deliberate non-compliance with these laws; conduct that is occurring in spite of these laws, not because of them”.”\textsuperscript{6}

Funding & Disclosure’s website is obviously far from perfect and could quite easily be made more effective and simpler to use and yes, it depends on honesty but then so does our tax system. The ATO manages that system for the entire population and a similar entity could be created to police the relatively few candidates for public office if disclosure was to be made compulsory.

We are not suggesting that ‘real time’ online disclosure is in itself a solution to the many issues concerning political funding but it is an inexpensive and easily achievable tool that would improve the current situation.

\textsuperscript{3} Andrew Norton: Democracy and money : The dangers of campaign finance reform, Centre for Independent Studies (Australia), p3
\textsuperscript{4} http://www.fundinganddisclosure.org.au
\textsuperscript{5} http://www.elections.on.ca/en-CA/Tools/FinancialStatementsandContributions/RealTimeDisclosure.htm
\textsuperscript{6} https://www.parliament.nsw.gov.au/Prod/Parlment/hansart.nsf/V3Key/LA20140528055?Open&refNavID=HA8_1