Panel of Experts – Political Donations

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Expert Panel on Political Donations  
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Dear Panel Members

**Inquiry into Political Donations**

Thank you for the opportunity to make a submission to this inquiry.

I do not believe that full public funding of NSW election campaigns is feasible or desirable. Such a scheme:

- would impose a high cost on State taxpayers, without any guarantee that it would remove corruption from the system.

- may be unconstitutional. Politicians and parties would only receive money for their electioneering from the public purse. Donations from other sources would be banned. In 2012 in *Unions NSW v New South Wales*, the High Court struck down a law that prohibited the making of political donations by corporations, unions and anyone not on the electoral roll. It is hard to see how another ban on these groups, as well as on voters at large, could survive a legal challenge.

- is not in the public interest. People aspiring to public office ought to be able to seek financial backing for their campaigns, and people supporting these politicians and what they stand for ought to be able to make a modest monetary contribution. The focus is now so strongly on the evils of political donations, that we forget that they play an important role in a democracy. Having to raise money to fund a campaign forces politicians to connect with voters. A donation can also be an indication of support for that person’s fitness for office and their policies.
the problems of designing a full public funding model are insurmountable. How should, say, $100 million be divided amongst parties and candidates? It could not be distributed according to votes at the prior election. That would give the victors an unfair advantage, and could frustrate a popular mood for change. Opinion polls should also not be used. Polls go up and down, and are subject to significant sampling errors. And how should the money be divided as between the established political players, and new parties and independent candidates? What about organisations that campaign without standing people for public office? Should business, union, environmental and other groups also receive public funding? Or will they be locked out of having a say during election time? There are no adequate answers to these questions.

We should not eliminate political donations, but rather restrict them to a low level and ensure they are disclosed. This will alleviate the risk of undue influence. A low cap will also encourage politicians to seek support from as many people as possible, thereby dispersing the influence that any one donor can have. This should also lessen the problems associated with donations from particular sources, such as developers.

A number of positive suggestions for reform have already been made by others, such as in the report prepared by Dr Joo-Cheong Tham, Establishing a Sustainable Framework for Election Funding and Spending Laws in New South Wales (A Report Prepared for the New South Wales Electoral Commission, November 2012).

I would propose the following changes:

1. improve the disclosure regime so as to require continuous disclosure of donations during the election period.

2. place greater obligations upon political parties for the receipt of public funding. Parties should be accountable in return for such funding by way of meeting minimum standards of accountability and transparency with regard to their processes and functions. This should include the capacity for external, independent review of key decisions.

3. strengthen the enforcement of the regime. A politician who affects an election result by receiving an unlawful donation or spending more on their campaign that they are permitted, faces a fine of only $11,000. In addition, they can only be prosecuted within three years of their offence. If they can keep their illegal conduct secret for this period, they escape even a fine. The penalty is too low, and the possibility of prosecution too remote, to provide a sufficient disincentive. The three year limit on prosecutions should be repealed and the maximum fine for breaching political donation laws increased tenfold to $110,000. Serious breaches by a serving politician should also lead to their automatic expulsion from Parliament. If a person gains an unfair advantage in an election, and so breaches the trust of the people who voted for them, it seems only fair that they lose their seat.

Yours sincerely

George Williams