Working Paper 3 – The Merits of Full Public Funding

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The merits of full public funding

There are various arguments regarding the merits of full public funding of election campaigns.

Full public funding is said to result in ‘clean’ elections, not only by removing the potentially corrosive influence of political donations, but also by levelling the playing field through the provision of adequate financial support for all election contestants. It has been suggested that if full public funding is the price of democracy, it is a price worth paying.

However, it is not clear if full public funding does in fact achieve these results: its corruption-proofing benefits are disputed, despite the cost to taxpayers; and banning donations may not level the playing field but instead disadvantage newer parties and independent candidates. In addition, banning political donations can be seen as a constraint on the legitimate desire of individuals and organisations to participate in the democratic process, and may also decrease the motivation for parties and candidates to engage with their grassroots supporters.

This paper details the arguments for and against the introduction of full public funding of State election campaigns in New South Wales.

1. Preventing corruption and undue influence

The key argument in favour of full public funding is that it would prevent corruption and undue influence. By removing the reliance on private funding, and replacing it with a legitimate funding source, it is hoped that full public funding would restore confidence in the integrity of the political system. Speaking on the legislation to introduce partial public funding to New South Wales in 1981, Premier Neville Wran famously said: “It removes the risk of parties selling favours and declares to the world that the great political parties of New South Wales are not up for sale”.

Where private funding is permitted, there is the potential for abuse: donations may be used as a means for wealthy individuals or corporations to buy influence, gain unequal access to politicians, or to skew the debate away from the interests of ordinary voters who do not have the resources to participate financially. Particular concerns have been voiced about the influence of donations from property developers as well as industries with negative social consequences (such as the liquor, tobacco and gaming industries), and indeed donations from these sources are now banned in New South Wales.

A move to ban political donations and introduce full public funding is gaining momentum in New South Wales on the grounds that it could restore public trust in the integrity of the political system. In a 2008 submission on electoral funding reform, Premier Mike Baird referred to his inaugural speech in which he said: “The potential remains today to buy legislation and this alone highlights how serious the issue has become. I have formed the view that donations are at a corrosive level in New South Wales.” He concluded that “...if election campaigns were fully funded by the public

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1 New South Wales, Parliamentary Debates, Legislative Assembly, 15 April 1981, p 5944 (Neville Wran).
purse, we would remove the potential to buy access and legislation."\textsuperscript{2} Opposition Leader John Robertson also supports full public funding, noting in July 2014: "Full public funding of elections is a critical reform for good government in our state … We can make the next election the cleanest ever by the introduction of full public funding of elections".\textsuperscript{3}

Comparative funding models around the world are discussed in Working Paper No. 2. It finds that while public funding of elections and political parties is increasingly common internationally, levels of funding support vary widely between jurisdictions. No country has implemented a mandatory full public funding scheme at a national level, although in practice some jurisdictions come close to providing full public funding: in Belgium 80 per cent of party revenue comes from public funding, and in Iceland it is 90 per cent.

It is difficult to assess the potential effectiveness of full public funding in New South Wales given that it has not been introduced in any Australian jurisdiction. However, research conducted in the United States has evaluated the impact of so-called ‘clean elections’ at a state level. Brogan and Mendilow conclude that full public funding “played a more modest role than anticipated by advocates and critics alike”, and that the most significant feature of ‘clean elections’ was the ‘telescoping effect’ which saw the strengthening of pre-existing electoral features.\textsuperscript{4}

An alternative view is that no matter what system is in place, whether it be full public funding or a mixed system of public and private finance, some people will always seek to circumvent the restrictions to obtain more campaign resources and gain an electoral advantage. According to this argument, deliberate non-compliance with electoral laws should be dealt with by tougher penalties, and more effective enforcement. The current penalties in place in New South Wales have been criticised for being too low; the penalty for deliberately contravening the provisions around caps on donations or spending is $22,000 for parties and $11,000 otherwise.\textsuperscript{5}

The NSW Electoral Commissioner has advocated strengthening the offence provisions in the NSW electoral legislation by the introduction of strict liability offences. The Commissioner has stated that “the current general offence provision requires the prosecution to prove that the defendant had actual knowledge of the unlawfulness of his/her actions which effectively presents the successful prosecution of all but those offences where an admission has been made”. He has described this change as “fundamental to promoting fairness, equity and integrity in the campaign finance regime”.\textsuperscript{6}

\textsuperscript{2} Select Committee on Electoral and Political Party Funding in New South Wales, NSW Legislative Council, Inquiry into Electoral and Political Party Funding in New South Wales, June 2008, Submission 165, Mike Baird, p 3.


\textsuperscript{5} Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 96HA.

\textsuperscript{6} Joint Standing Committee on Electoral Matters, NSW Legislative Assembly, Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981, May 2013, Submission 18, Mr Colin Barry, NSW Electoral Commissioner, p 90.
In addition to strengthening sanctions, it has been argued that the long-term focus of corruption prevention should be on cultural change – so that compliance with the electoral laws becomes an accepted part of politics in New South Wales. The allegations currently being investigated by the Independent Commission Against Corruption (ICAC) regarding corrupt payments to members of Parliament, and the soliciting of donations from prohibited donors, have led some commentators to highlight the fundamental importance of cultural change within parties. Following the ICAC hearings, Williams advocated party reform, noting that: “Rather than setting an example for the public, NSW politicians are too often displaying low ethical standards”. A reflection of the public cynicism around political integrity in New South Wales is the voluntary ‘Politicians Pledge’ produced by the St James Ethics Centre that commits elected members to act with the highest standards of integrity including to “respect the trust placed in me by the people through the ballot box”.

Finally, the introduction of full public funding would leave unresolved one of the key challenges to effective regulation of electoral finance in New South Wales, namely the inconsistency between state and federal laws. This inconsistency makes it legal for state-based parties to accept donations that exceed the donations cap, so long as the contribution is directed to a federal election campaign.

2. Levelling the playing field
The second key rationale in favour of full public funding is that it would level the playing field by providing an adequate level of financial resources for all election contestants, including minor parties and independent candidates. It has been argued that ending the reliance on private finance could prevent candidates from being elected just because they spend the most money.

Partial public funding has been available to participants in elections in New South Wales since 1981, and minor parties have noted the importance of this financial support increasing their competitiveness. The Shooters Party advised that: “Prior to the introduction of public funding in 1981, it was almost impossible for minor parties to contest elections with any optimism, because of their inability to raise the finances needed to contest an election …”.

However, while a certain level of public funding may assist in ensuring a level of equality between election participants, it has been claimed that full public funding advantages established parties at the expense of minor parties and independents. Tham has referred to this as the “cartel thesis” according to which “public funding has been used to entrench the position of the dominant parties”. Tham notes that: “The dangers in this context are that high eligibility thresholds are set (denying...

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9 Select Committee on Electoral and Political Party Funding in New South Wales, NSW Legislative Council, Inquiry into Electoral and Political Party Funding in New South Wales, June 2008, Submission 89, Shooters Party, p 3.
smaller parties from a share of public funding) and that the public funding scales are tilted towards the dominant parties (for instance, by calculating according to the number of parliamentarians).”

3. Participation in the democratic process

One of the main arguments against the introduction of full public funding is that it would have a negative impact on participation in the democratic process. This is because political donations can be a means for public engagement in the political process, and a way to show support for a particular party or candidate. Donations can also assist the emergence of new parties and independent candidates, as citizens are able to donate money as a tangible means of showing their support and ensuring that their concerns are reflected in the election process. It is not that donations themselves are inherently bad: they only become problematic when linked to corruption and undue influence.

According to this argument, the opportunity to secure political donations motivates parties and candidates to interact with the public, and provides an incentive for grassroots engagement. Where parties and candidates are at least partly reliant on donations, the need to fundraise can increase responsiveness to voters’ concerns, as well as to a party’s membership base.

The powerful imperative to engage with individuals in order to secure donations can be seen in US President Barack Obama’s election campaign, in which he raised enormous amounts of money through small individual donations. For example, in his 2011 re-election campaign, nearly half of his donors donated a total of $200 or less, raising a total of US $56.7 million.11

Indeed, constitutional experts have suggested that a ban on all political donations in New South Wales could be ruled invalid by the High Court, as it could unreasonably hinder democratic participation. Williams stated that: “Last year, the High Court struck down an O’Farrell government initiative that prohibited the making of political donations by corporations, unions and anyone not on the electoral roll. It is very hard to see how another ban on these groups, as well as on voters at large, could survive a legal challenge”.12

In the wake of the High Court decision, Twomey commented: “While the High Court accepted that caps on political donations and expenditure did amount to burdens on political communication, it also hinted that such laws would be regarded as reasonably appropriate and adapted to achieve the legitimate end of avoiding the risk or perception of corruption and undue influence”. Twomey

10 Dr Joo-Cheong Tham, ‘A case against a system of full public funding of political parties’, prepared for the NSW Electoral Commission, June 2014, pp 3-4.
concluded that “Laws that ban all political donations are likely to be invalid unless it can be shown that it is a proportionate response to actual cases of corruption”.13

4. Cost to taxpayers
Another significant argument against full public funding is the cost to the taxpayer. The current system permitting private donations recognises that public funds are limited and subject to competing demands. The funding of elections through a mix of private and public funding lessens the impost on public funds, and minimises the costs to the taxpayer.

The cost of elections is considered in Working Paper No. 4.

However, as noted at the start of this paper, there is growing momentum for the argument that if full public funding is the price of democracy, it is a price worth paying. This is because full public funding may remove the potential for donors to exert undue influence, and remove the incentive for parties and candidates to push the boundaries of the political finance regime to gain an electoral advantage.

The question for taxpayers to consider is whether an increase in the public funding allocated to elections is justified as the price of democracy, when this money could instead be spent on other public goods (e.g. schools or hospitals).

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