INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS

Organisation: Independent Commission Against Corruption
Name: The Hon David Ipp QC
Position: Commissioner
Date Received: 22/01/2010
1. **Basis of submission**

1a This submission is made on the premise that paragraphs (1) and (2) of the Terms of Reference published on 4 December 2009 for the Joint Standing Committee on Electoral Matters’ (“the Committee”) *Inquiry into public funding of election campaigns* (“Inquiry”) are a given. That is to say, the ICAC’s submissions are made on the assumption that a “comprehensive public funding model” will be introduced and “all but small donations by individuals” will be banned.

1b The Terms of Reference state that the Committee will consider a number of matters numbered (a) to (p). Of these only aspects of (b), (f) and (g) and all of (i) and (l) fall within the Commission’s sphere of interest. The other matters to which the Committee has referred are substantially political matters on which the Commission does not wish to be heard. Accordingly the matters the Commission will address are:

- The manner in which public funding should be allocated (b).
- Monitoring of public funding (f)
- Monitoring of expenditure by political parties and candidates (g)
- Regulation of expenditures by third parties on political advertising or communication (i)
- Prevention of avoidance and circumvention (l).

1c This submission applies equally to state and local government.

2. **Corruption prevention principles**

2a World-wide experience is that there is no easy solution to preventing corruption stemming from political donations, and banning all but small donations is no exception to this rule. That said, the Commission strongly supports the proposal that a comprehensive public funding model be introduced and that all but small donations by individuals be banned in order to curtail the perceived influence that money has in politics. The Commission would, however, suggest the following principles guide the Committee’s deliberations.

**Minimising opportunities to skirt the legislation**
2b Strong motivations exist for political parties and other interested parties to attempt to circumvent legislative provisions of the kind contemplated. Various ingenious methods, apparently unforeseen by legislators, have been deployed in those countries which have introduced similar legislation. These methods are well documented in the relevant literature.

Ensuring disclosure and oversight

2c Experience in many jurisdictions has been that the mere capping of donations has not been effective. Capping must be coupled with requirements for effective disclosure of relevant information and appropriate sanctions for non-compliance. The view of the Commission and many other bodies around the world is that disclosure, transparency and oversight are the primary corruption prevention mechanisms in relation to improper attempts to influence public officials. The International Foundation for Electoral Systems (“IFES”) wrote in 2009:¹

*Political finance disclosure is the main policy instrument for achieving such transparency. Disclosure refers to the timely dissemination of information about parties and candidates’ receipts and expenditures of material resources. While other forms of regulations are available for controlling the role of money in the political process - such as spending limits, bans on certain forms of income, and the provision of public funding - effective disclosure is required for such other regulations to function properly.*

2d The Commission, however, submits that increased disclosure alone, even with high compliance and public availability of the data will not achieve the goal of oversight by relevant oversight bodies, voters, public interest groups and the media. The amount of disclosed data will be vast. To illustrate, disclosure on just six financial and affiliation factors for the 5,000 candidates that typically stand in local government elections would create 30,000 pieces of data per election.

2e Transparency requires these data be analysed into meaningful information. Oversight requires that the information become usable knowledge for voters, the media and public interest groups. In the U.S. such analyses of data are carried out by numerous well-funded public interest groups such as Democracy Watch. Australia is economically smaller and traditionally less philanthropic, and therefore has fewer public interest groups able to perform the important analysis of the raw disclosure data.

2f The Commission believes there would be an advantage in such analyses being conducted via public funding of an independent authority such as the Electoral Funding Authority.

Avoiding thickets of regulations

2g Generally speaking, overly complex legislation should be avoided. Thickets of legislation often lead to legal loopholes and difficulties with compliance and enforcement. Governing legislation should be as clear as possible.

3. Recommendations

Term of reference (b) - the manner in which public funding should be allocated

The manner in which public funding should be calculated and allocated, including whether it should take into account first preference votes, parliamentary representation, party memberships subscriptions, individual donations and/or other criteria.

Recommendation 1: calculating and allocating public funding

The Commission recommends that no weight be placed on party membership subscriptions and individual donations as a determinant of entitlement to public funding.

3a Relying on party membership to obtain public funding could create an incentive for membership numbers to be corruptly misrepresented. It would also be expensive and time-consuming for a body such as the Election Funding Authority or the Commission to investigate any alleged misrepresentations.

3b Making public funding contingent on private donations would in fact intensify the importance of such donations. The effect would be that the amount of public monies received would be dependent to some extent on the amount of individual funding received. This would create an incentive to maximise such funding by splitting donations, or otherwise working around the donation limit to come within the designated threshold.

Terms of reference (f) and (g) - monitoring of public funding and expenditure by political parties and candidates

(f) Whether any restrictions should be imposed on the expenditure of public funding and, if so, what restrictions should apply and how should the expenditure of public funding be monitored;

(g) whether any restrictions should be imposed on expenditure by political parties and candidates more generally and, if so, what restrictions should apply and how should expenditure be monitored.

Recommendation 2: annual statements
The Commission recommends that any political party, person or other entity that receives public funding for political purposes should be required to publish an annual statement containing relevant information about income and expenses.

The annual statement should contain:

- A record of all contributions from identified third parties, whether by money or other means, directly or indirectly received, in the year in question.

- Full details of all expenses for political purposes of whatever kind, incurred in the year in question out of public funding.

- Full and detailed explanations of any difference between the party’s current assets as reflected in its previous annual statement and contributions and other monies received, on the one hand, and expenditure on the other. Any change in the amounts reflected for current assets and all use of monies received in the period in question must be reconciled with expenditure.

Recommendation 3: auditing of annual statement

The Commission recommends that:

- All annual statements of the kind described should be audited.

- Audits should be undertaken by an independent statutory authority

- A well-funded investigative unit should be established and hosted by the Electoral Commission

- Each entity should be obliged to publish its annual audited accounts in some public form and, in particular, on the internet.

Term of reference (i) – regulation of expenditure by third parties on political advertising
Whether there should be any regulation of expenditure by third parties on political advertising or communication.

3c As the Committee has noted, the regulation and enforcement of third party expenditure caps is fraught. Therefore the Commission advocates increased disclosure as a key corruption prevention tool in this area.

Recommendation 4

Any entity who, within a specified time incurs expenditure for political purposes (not including contributions from identified third parties referred to in Recommendation 2) that is capable of benefiting a political party, entity or candidate must:

- identify that he, she or it has incurred that expense, and
- disclose the source of the financing of that expense.

3d This, for example, would include third party advertisements that are relevant to election campaign topics.

Term of reference (l) – prevention of avoidance and circumvention

What provisions should be included in order to prevent avoidance and circumvention of any limits imposed by a public funding scheme.

Recommendation 5

The legislation should provide for sanctions for non-compliance with the legislative provisions. The sanctions should provide substantial fines and imprisonment for individuals.

3e Intention to deceive should not be an element of any offence relating to false disclosure or non-disclosure as such an element has historically been extraordinarily difficult to prove with the consequence that few convictions are obtained.

3f The deterrent effect of such sanctions will depend on the efficiency of the regulatory requirements and the effectiveness of the investigatory body.

4. Corruption risk management

4a Inappropriate combinations of capping and funding will create varied incentives to work around the system in ways that may be corrupt. One of the combinations likely to be
conducive to corruption is providing public funding well below the amount needed and capping donations at $1,000, without capping direct or third party expenditure. This combination of arrangements has contributed to some of the problems that have emerged in the U.S. system.

4b For example, a model that provides low cost access to the media reduces the demand for media funding and therefore reduces the power of third party advertisers to engage in dealings. Conversely a cap on donations coupled with a low level of public funding but unlimited expenditure and no assistance on media expenses could be expected to maximise the power of third party groups to engage in dealings, as has been seen in the U.S.

4c The Commission recommends that the specific models be examined for both unintended incentives and opportunities to behave corruptly as well as the corruption prevention efficacy of the models.

5. References


International Institute for Democracy and Electoral Assistance (IDEA), R Austin and M Tjernström, Funding of Political Parties and Election Campaigns, IDEA, 2003.

