Submission No 145

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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For the sake of democracy: Submission to the NSW Legislative Council Select Committee Inquiry into Electoral and Political Party Funding

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC also receives funding from the NSW Government Department of Energy and Water for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions

The NSW Legislative Council Select Committee inquiry into electoral and political party funding

Executive Summary

PIAC congratulates the NSW Legislative Council for establishing this Select Committee to inquire into the funding of and disclosure of donations to political parties, and candidates in State and local government elections.

PIAC is of the view that such an inquiry is long overdue. Democracy benefits from having diverse views represented in parliaments, councils, debates and campaigns. It is through the presence of different voices that new agendas can be created, that vested interests can be challenged and that governments can be held to account. The notion of popular control of public decision-making, which lies at the heart of democracy, requires this pluralism. Therefore the principles of equal representation, and equal opportunity for citizens and parties to participate in political life must be central to any consideration of political financing, as must the principle of ensuring that elected members are free to work in the public interest, unencumbered by undue influence, conflict of interest or corrupt practice. Any arrangements, which compromise these principles, must be regarded as serious threats to the public interest and representative democracy.

Clearly there is significant concern in NSW and Australia more broadly that current arrangements for the financing of politics is failing to meet basic standards required in a healthy representative democracy. While the relationship between big business and politicians grabs many headlines, so increasingly do allegations of inappropriate use of public funds for partisan purposes by incumbents and governments.

PIAC notes the broad nature of the terms of reference of this Inquiry and agrees that such an approach is necessary because of the inter-related nature of the various funding and disclosure arrangements. It is important to review all aspects of political financing mechanisms because different players are privileged through different funding sources and disclosure requirements. For example, if recommendations that limited private funding were agreed to and implemented but inappropriate spending of public money through government advertising and other means was not better regulated, this would clearly leave incumbent governments inappropriately privileged.

PIAC trusts that this Committee and the NSW Parliament will embrace the opportunity to make NSW an example of best practice in political financing and create a precedent that can be followed by all other levels of government in Australia. While PIAC recognises the benefit of uniform electoral law across Australia, the lack of such uniformity should not be used as an excuse for inaction. PIAC presents comment and recommendations related to Commonwealth issues in this submission in the hope that the NSW Government will be a strong advocate for electoral reform at that level through the Council of Australian Governments (COAG) and other fora.

In summary PIAC believes that:

- only individual citizens should be able to make financial contributions that support political parties and candidates and such donations should be capped;
- election spending of political parties and candidates should be capped;
- the financial and other privileges of incumbents and governments must be better regulated to minimise politically partisan use;
- citizens have a right to full information regarding the financial activities of governments, political parties and candidates and any other parties who have significant political influence;
- public funding should be provided to parties and candidates at local, state and federal levels in order to give greater financial equivalency, and that this funding be tied to compliance with electoral law.

Summary of recommendations

- That political parties be required to provide full disclosure of their financial status, similar to the requirements for listed companies under the Corporations Act 2001 (Cth).
- That the NSW Government implement the recommendations of the 2007 ICAC Position Paper *Corruption risks in NSW development approval process*.
- That reforms to political finance recommended in this submission apply to local councils.
- That public election funding be provided for local government elections.
- That a proportion of direct election funding be spent on agreed broader social objectives.
- That parties be required to detail expenditure of direct election funding in a comprehensive and timely manner.
- That public election funding be forfeited for non-compliance with requirements.
- That there should be mandatory, detailed, regular and easily accessible public reporting of entitlements and individual MP's use of them .
- That regulations regarding the use of entitlements be amended to ensure that they cannot be used for politically partisan purposes.
- That strict guidelines for government advertising be developed and that Auditors General should be given a role in reviewing advertisements before they are published or broadcast.
- That government should provide annual reports outlining expenditure on advertising, public relations and public opinion research
- That the recommendations of the Senate Finance and Public Administration References Committee on government advertising and transparency and accountability be given serious consideration by both the NSW and Commonwealth Governments

- That both the NSW and the Commonwealth Governments reintroduce inclusion of project and program funding detail in the budget papers and schedules of appropriation acts.
- That tax and electoral laws be amended in order to permit tax deductibility on donations up to a maximum of $100 and to remove tax deductibility for corporate donations.
- That all parties, candidates and associated entities be required to publicly report on all donations in a timely manner and at least annually
- That during election periods parties be required to report more frequently on all donations
- That the definition of 'gifts' be amended to include money raised at fund raisers and similar events.
- That consideration be given to requiring that parties have returns independently audited.
- That reporting requirements of political parties and candidates include that details of donors are disclosed.
- That all reporting is informed by the objective of ensuring easy access and comprehension by citizens.
- That all parties, candidates, third parties and influential associated entities be required to report on details of political expenditure.
- That both federal and state electoral commissions are adequately resourced to enforce current reporting requirements.
- That a review of the role Electoral Commissions be undertaken to determine whether consideration should be given to the establishment of a non-parliamentary body that would be given delegated authority to develop electoral law.
- That those provisions of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) that reduced disclosure requirements be repealed.
- The definition of 'associated entities' to be broadened to include activities not currently included but which qualify a 'threshold of influence' test.
- That there be a ban on all donations to political parties, candidates and associated entities from corporations, unions and organisations and that individual donations be capped.
- That if the above recommendations are not agreed to that there be a cap set on all donations to political parties, candidates and associated entities from corporations, unions and organisations and individuals.
- That any entity that has contracts with state or federal governments and foreign citizens be prohibited from making donations to political parties, candidates, associated entities.
- That limits on expenditure in election campaigns be introduced for parties, candidates, associated entities and influential third parties.
- That public funding be conditional on compliance with expenditure disclosure requirements and set expenditure limits.
- That consideration be given to introducing a sliding scale of public election funding.
- That greater provision of free or fixed (low) fee broadcast time be considered, including for new contestants.

Response to Term of Reference (a): all matters associated with electoral funding and disclosure

PIAC recognises that funds are required to actively engage in democratic processes, as an elected representative or as a political party. The question is not whether there should be funding but how can the risks to effective representative democracy of funding arrangements be minimised.

In most states in Australia there are various forms of both private and public funding of political activity. Parties also raise funds internally through membership fees. There are also contributions in kind made to parties and candidates through the voluntary service of members and supporters.

Generally speaking, the current system of political financing has resulted in high and increasing costs of campaigns, political inequality, perception of and/or actual corruption and voter disenchantment. The increased spending is particularly the result of private donations and public funding. The system is also characterised by a lack of transparency and inadequate regulation, monitoring and accountability mechanisms.

In this regard, Australia does not compare well to other developed countries such as Canada and New Zealand where measures have been introduced to improve accountability, transparency and fairness in financing arrangements.

The main concerns expressed about the impact of current private and public political financing arrangements on our democracy can be categorised into two general areas:

- lack of accountability and perception of/or actual corruption;
- political inequality.

Accountability and transparency

Without transparency or access to information, accountability becomes an impossible goal. Access to information is an important democratic principle and a right of all citizens.

Actions of elected representatives and officials that significantly curtail freedom of information weaken democracy, as citizens are hampered in their capacity to obtain the information necessary to make informed political judgments.

In its 2003 report to the Commonwealth Heads of Government Meeting, *Open Sesame*, the Commonwealth Human Rights Initiative (CHRI) argued that the right to information underpins the realisation of all other rights, and this right is recognised through Article 19 of the *International Covenant on Civil and Political Rights*. At its inception the United Nations called the right to freedom of information 'the touchstone for all freedoms to which the United Nations is consecrated'. And that while the duty to enable access to information rests with government, the duty to release information has widened to include other organisations, institutions and corporations where their activities affect the rights of citizens. [1]

PIAC supports strong disclosure requirements and robust and independent monitoring of all political expenditure and receipts of funding and other support from both internal party, public and private sources.

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[1] Commonwealth Human Rights Initiative, Open sesame: Looking for the right to information in the Commonwealth (2003) Executive Summary.

While accountability issues in private and public funding are addressed in some detail below, PIAC is of the view that the internal financial dealings of political parties should also be subject to full disclosure, as is the case for corporations. Any political financing regime that is based on the principles of fairness and accountability must recognise the advantage accrued wealth can give political parties and should therefore require full discloser of financial circumstances of parties including capital assets.

As stated in recent media comment:

> … it is just extraordinary that Australian political parties can keep their assets hidden from public scrutiny. Based on media reports and some publicly available documents, the ALP and its affiliated unions would appear to have net assets of between $700 million and $1 billion.[2]

Recommendation

That political parties be required to provide full disclosure of their financial status, similar to the requirements for listed companies under the Corporations Act 2001 (Cth).

Accountably of public financing

There is considerable direct and indirect public funding of the political process.

Direct public funding

Direct public funding takes the form of election funding and through funds such as the NSW Political Education Fund and federally through annual funding of research centers.

It was in NSW, in 1981, that the first attempt was made in Australia to avoid the potentially corrupting influence of private money on politics through the introduction of public funding of elections. The Federal Government followed NSW in 1984. The Commonwealth Joint Select Committee on Electoral Reform 1983 said that public funding would:

- assist parties in financial difficulty;
- lessen corruption;
- avoid excessive reliance upon 'special interests' and institutional sources of finance;
- equalise opportunities between parties; and
- stimulate political education and research.[3]

In the debate in NSW, The Hon DP Landa (Minister for Education and Vice- President of the Executive Council) stated that

> The purpose of this bill … is to provide a fair and equitable basis for the funding of election campaigns undertaken by political parties as well as minor groups and individual candidates… Parties and candidates should be entitled to have the resources available to inform the electorate of their policies and platforms. More important, the electorate has the right to be informed of those policies and platforms before being required to cast a vote for their parliamentary representative.[4]

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2 Stephen Mayne, 'Revealed: ALP's $10m loan with CommSec', *Sun Herald* (Sydney), 10 February 2008.

3 Australian Electoral Commission, Submission to Joint Standing Committee on Electoral Matters Inquiry into Disclosure of Donations to Political Parties and Candidates (2004) 10.

4 New South Wales, *Parliamentary Debates*, Legislative Assembly, 29 April 1981, 6318 (DP Landa).

And the independent MP, John Hatton, MP declared that:

> … the objectives … sought to assist the expression of people's will; to facilitate as far as practicable equal opportunity for people to stand for office independent of personal wealth … to encourage independents, minority parties and interested groups to participate in the democratic process, to encourage the seeding of a variety of principles, policies and ideas into the body politic … to facilitate and financially encourage research development and evaluation of new policies and approaches to political social and economic problems. They also aim to produce a well informed electorate to reduce the influence of wealthy and powerful interest groups on candidates, for example union and corporation power, and to ensure a viable and effective opposition…[5]

Unfortunately, however, the reality has unfolded quite differently from this original, bold vision. Direct public funding has supplemented the continuing and increasing private contributions and has done little to reduce the influence of wealthy and powerful interest groups. It has not resulted in financial equivalency between parties or improved accountability and transparency. Neither does it appear to have stimulated research, policy evaluation or programs to support a 'informed electorate', as anticipated or hoped for in the original NSW parliamentary debate.

In 2004, the Australian Electoral Commission (AEC) commented that public funding does not appear to have achieved the goals of reducing party reliance on funds from sources other than public funding or equalising the opportunities between parties and it may be appropriate for the scheme to be reviewed. The comment included the suggesting that a degree of funding could be paid yearly to assist with administration costs.[6]

In NSW, eligibility for public funding is based either on being elected or winning 4% of the vote with the payment of election funds being a reimbursement scheme, which requires some reporting of expenditure. Public election funding has not been made available for local councils.

Eligibility for funding under the federal system is based on receiving 4% of the vote and it has no requirement for detailed reporting of expenditure. The amendments to the *Commonwealth Electoral Act 1918* in 1995, which decreased disclosure requirements, undermined the accountability improvements intended when public funding was introduced.[7]

Western Australia (WA) has strong expenditure reporting requirements even though that State does not have election funding. Categories of election expenditure that are required to be reported on include:

- broadcast advertisements;
- published advertisements;
- advertisements displayed at theatre or place of entertainment;
- production costs for advertisements;
- production of election-related material;
- production and distribution of electoral matter that is addressed to particular persons or organisations (direct mail);
- consultants or advertising agent's fees; and
- opinion polls or other research.[8]

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5 Ibid 6318 (John Hatton).

6 Australian Electoral Commission, above n 3, 11.

7 Sally Young and Joo-Cheong Tham, Political Finance in Australia: a skewed and secret system (2006) 98.

8 Ibid 45.

PIAC believes that detailed and timely reporting of expenditure should be the least that is expected.

A separate but important point is that neither the Federal nor NSW election funding models require that direct election funding be tied to anything other than very broad political outcomes. As is clear from the *Hansard* reference above, the original rationale for introducing public funding did include the expectation that broader benefits would result from public funding.

PIAC supports the tying of at least a portion of direct election funds to particular social objectives, such as occurs in other countries. This could support a refocusing on grass-roots democracy and deliberative democracy including community consultation and campaigns, policy development, and party building; countering the current tendency in Australia for political parties to spend the majority of their funds on election advertising in the election period.[9]

While it could be argued that the NSW Political Education Fund and federally funded research centres serve this function, PIAC is of the view that accountability and representative and deliberative democracy would be enhanced if parties were required to earn at least a proportion of their public electoral funding through such activities.

Local Councils

PIAC believes that equitable funding arrangements for local government must be part of any reform of political financing. The fact that candidates for local council elections cannot attract any public election funding can result in a narrowing of the field of candidates, as only wealthy individuals or those who attract donations can run effective campaigns. The need to remove sources of potential conflict of interest or undue influence through donations and other means is very important at the local level.

Unlike state and federal spheres, councils are not made up of a government and a legislature. Basically everyone is the government and the opposition. At state and federal level the expectation is that Ministers do not usually make decisions on individual applications. Such decisions are delegated to the appointed officials, and if those decisions are set aside, it is usually of interest to the community, and the legislature. However, at local government level, there is greater involvement of councillors with individual constituent proposals. It is therefore particularly important that accountability and transparency is strongly mandated and enforced.[10]

PIAC believes that there is democratic merit in planning matters being dealt with at a local level. Local Councillors are able to better understand and represent local communities needs. The presence of this different level of decision-making can also provide a check on the power of the State Government. However, having said that, the potential for corrupt practice is as much a threat to representative democracy at local level as it is at the state level and improvements in performance transparency and accountability are much needed at both levels.

The Independent Commission Against Corruption (ICAC) comments, in a summary of its activities for 2006-07[11], that the most frequently represented government sector for all allegations from the public was local government. It was suggested by ICAC that this was an indication of the interest and 'high level of

9 Ibid.

10 A C Harris NSW Auditor-General, 'Public accountability: Can there be professionalism without politics?' (Paper presented at the Institute of Municipal Management (NSW Division) 1997 Annual Conference, 30 July 1997).

11 'How 2006-07 added up for the ICAC', *Corruption Matters* (Sydney) 30 November 2007, 4.

interaction' citizens have with local government. Development applications were the most frequently complained about public sector activities. While such high complaint levels are of concern and may be used to argue that the role of local government in planning should be removed, the comment from ICAC regarding the 'high level of interactions' supports the democracy argument that it is at local level that people are able to engage in decision-making processes.

In its 2007 Position Paper, *Corruption risks in NSW development approval process*, ICAC outlines a number of options for reform of the development approval process. While ICAC does not see that the different roles of councilors necessarily create greater risk of corruption it does recommend that reasons should be given for all development decisions. PIAC supports this recommendation as sees it as particularly important where councilors set aside the recommendations of council officers.

The ICAC also makes a number of recommendations aimed at clarifying the obligations of councilors in the area of non-pecuniary interest and argues that improved disclosure requirements at a local level would be of benefit in corruption prevention. It recommends the *Local Government (Elections) Regulation 1997* (WA) as a good model.

Recommendations

That the NSW Government implement the recommendations of the 2007 ICAC Position Paper Corruption risks in NSW development approval process.

That reforms to political finance recommended in this submission apply to local councils.

That public election funding be provided for local government elections.

That a proportion of direct election funding be spent on agreed broader social objectives.

That parties be required to detail expenditure of direct election funding in a comprehensive and timely manner.

That public election funding be forfeited for non-compliance with requirements.

Indirect public funding

Indirect funding occurs through:

- parliamentary entitlements of incumbents;
- the privileges of government;
- tax subsidies, through tax deductibility of private donations (increased in 2006 to $1,500, from $100);[12]
- generous tax concessions to elected representatives, not available to other Australian workers.

Parliamentary Entitlements

While some parliamentary entitlements such as superannuation only benefit the individual elected representative, many other entitlements such as salaries, allowances for staff, postage and print are of benefit to the parties more generally. The more members elected, the greater is this advantage.

Federally, under (then) Prime Minister The Hon John Howard MP, existing rules regarding entitlement to and the use of parliamentary allowances have changed to further benefit incumbents. In 2006, the printing allowance was increased to $150,000 with almost half allowed to be carried over to the next year, and to be used for postal vote applications and how-to-vote cards.[13]

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12 Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth), Sch 4.

13 Young and Tham, above n7, 56.

Equally in NSW comment has been made regarding transparency and accountability of the use of parliamentary entitlements. In the NSW Auditor-General's report to Parliament in 2004, the Auditor General commented that records indicated that Members of the Legislative Assembly used their Electorate Mailout Account more in the month preceding the election than at any other time during 2002-003.[14]

> The use of the Electorate Mailout Account by some Members of Parliament could be construed as funding activities of a direct electioneering or political campaigning nature. This would contravene the conditions set by the PRT.[15]

The NSW Auditor General made several recommendations in that report including that:

- Parliament should consider publishing the spending of Members' additional entitlements.
- Parliament should consider the governance structures surrounding the payment of these allowances.
- Members should keep their records diligently to help ensure they do not overspend entitlements.[16]

PIAC believes that parliamentary entitlements should be better regulated at both NSW and Federal levels to ensure that they are not used for politically partisan purposes.

Recommendation

That there should be mandatory, detailed, regular and easily accessible public reporting of entitlements and individual MP's use of them.

That regulations regarding the use of entitlements be amended to ensure that they cannot be used for politically partisan purposes.

Privileges of government

Governments have the responsibility of managing the public purse and they have an ethical responsibility to ensure that it is the public interest that informs all decisions about expenditure of funds. It is of concern to PIAC that in recent years both the NSW and Commonwealth Governments have chosen to abuse this privileged position in a number of ways.

Examples of such abuses include the use of government advertising for political purposes, the delaying of official campaign launches in order to prolong access to parliamentary entitlements, disregarding the caretaker convention, creating large public relations and media units with increased use of consultants. And while the issue may be one of poor record keeping rather than actual corrupt practice there is concern that pork-barreling to gain electoral advantage in marginal seats is also occurring.

The Auditor General in his *2007-08 Performance Audit of the Regional Partnerships Program* commented that the flexibility in the application assessment and Ministerial approval process created problems in ensuring accountable, transparent and equitable public administration.[17]

Government advertising and the use of public relations and media units for political purposes

Government advertising has become a serious concern at both NSW and Commonwealth levels.

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14 NSW Auditor-General, Report to Parliament 2004 Volume 1 (2004) 12.

15 Ibid.

16 Ibid 11.

17 The Auditor General, Audit Report No 14 2007-08 Performance Audit of the Regional Partnerships Programme: Volume 1—Summary and Recommendations, 19.

The Federal Government's $14 million GST 'community information and education campaign' in 1998 was described by Tony Harris, former NSW Auditor-General, thus:

> This was the awful precedent, which permitted government to advertise all of its election promises using public monies, as long as those policies had been approved (not necessarily introduced) by cabinet. Although the federal auditor-general approved the campaign, eight auditors-generals in the states and territories saw the advertisements as setting an unfortunate precedent.[18]

Similarly, in 2005 the Howard Government undertook an advertising campaign on its industrial relations policies before it had introduced the relevant legislation. This campaign was not in the context of a general election but was undertaken to offset non-government sector advertisements that criticised the intended legislation.

Harry Evans, Clerk of the Senate, pointed out in 2006 that the lack of transparency in such public spending was the result of the current financial system.

> … the financial system now in place makes it extremely easy for government to find large amounts of money for virtually any purpose, including new advertising campaigns for new projects…
>
> illegalities and serious problems in the management of special appropriations and special accounts had been pointed out in reports of the Australian National Audit Office and that these problems were not the product of poor management alone, but of a financial system which by its nature leads to loose dealings with money. The Department of Finance and Administration has promised better management, but the Parliament is still not in the position properly belonging to a legislature, of actually approving the expenditure.[19]

Similar points have been raised in NSW, most recently in 2007 regarding the Labor Government's spending on advertising. In debate on the NSW Opposition's Government Publicity Control Bill 2007 the point was made that AC Nielsen media research showed that in the last year the NSW Government had been the seventh largest advertiser in Australia, up from tenth in 2005. While there are, of course, legitimate reasons for governments to advertise, the key issue of concern remains whether that advertising is party political and the level of transparency of the funding. In the same debate the point was made that there was insufficient detail available regarding the costs of research, development and production of advertisements.

The NSW Auditor-General also commented that:

- there was an increase in spending on media advertising leading up to the March 2007 State Election;
- the current guidelines are not adequate to prevent the inappropriate use of public funds for advertising; and
- it was difficult to obtain information on the total amount spent on the advertising campaign.[20]

PIAC is of the view that such weaknesses of accountability in the political financial system raise questions about probity, which go much wider than just government advertising. While PIAC does not dismiss all

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18 Tony Harris, 'The Auditor-General's Role in Politics' (Paper presented at the Political Finance and Government Advertising Workshop, Canberra, 25 February 2006) 6.

19 Harry Evans, 'Government advertising – funding and the financial system', *Parliament Matters,* February 2006, 8-9 <http://www.anzacatt.org.au/prod/anzacatt/anzacatt.nsf/key/library.html> at 18 February 2008.

20 NSW Auditor-General, Auditor General's Report to Parliament 2007 Volume 5 (2007) 300.

merit of accrual accounting and its associated outcome and output reporting, the move away from detailed program and project items in budgets has significantly reduced the capacity of the Parliament to scrutinise the expenditure of public funds by governments.

In March 2007, the Commonwealth Parliamentary Standing Committee on Finance and Public Administration made a number of recommendations that:

> … would go some way to restoring the Parliament's constitutional and historical prerogatives with regard to the control of the Executives' funding and expenditure.[21]

Recommendations included 'that expenditure should be reported at the levels of programs in budget documents, including in the schedules to the Appropriation Acts'.[22] PIAC is of the view that the current lack of transparency is a threat to Australia's system of parliamentary democracy.

Government advertising is quite strictly regulated in several countries, such as the United States of America where the *Consolidated Appropriations Act 2004*, states that 'No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress'.[23] In Ontario, Canada, the *Government Advertising Act 2004*[24] requires that the Auditor General be provided with all proposed advertising and conduct are review of the material provided to ensure it complies with the requirements of the Act, which include that it 'must not be partisan' and 'must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government'.[25]

The Senate Finance and Public Administration References Committee published the report of its inquiry, *Government Advertising and Accountability* on 6 December 2005. The Committee found that '[e]xpenditure on Commonwealth government advertising has climbed steadily since 1991-92'.[26] Furthermore, the official figure of $126.75 million excludes significant areas of related expenditure and so is a serious underestimate of the total cost.[27] Amongst the Committee's recommendations were the strengthening of the disclosure requirements, and requiring the Auditor-General to provide independent scrutiny of compliance with regulations. [28]

Related to the concern about the political use of government advertising is the use of government resources for establishing large public relations and media units and the employment of consultants to undertake political work for government. This creates another problem for transparency and disclosure as consultants can claim that information is protected from disclosure on the basis that it is 'commercial in confidence' and thus create even more secrecy than if public servants were responsible. It is also important

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21 Senate Standing Committee on Finance and Public Administration, Parliament of the Commonwealth of Australia, *Transparency and accountability of Commonwealth public funding and expenditure* (2007) ix.

22 Ibid 52.

23 Consolidated Appropriations Act, 2004, HR 2673, §601.

24 Government Advertising Act, SO 2004, c 20.

25 *Government Advertising Act,* SO 2004, c 20, ss 2(2), 3(2), 4(2) and 6(1).

26 Senate Standing Committee on Finance and Public Administration, Parliament of the Commonwealth of Australia, *Government advertising and accountability* (2005) xiii.

27 Ibid 17.

28 Ibid, see recommendations 5-13.

where consultants are employed that procurement guidelines are of a high standard and are complied with. This issue has been raised a as matter of concern at local council level by the ICAC 2007 Position Paper on *Corruption risks in NSW development approval processes*.[29]

> The engagement of consultants is an area in which councils need to take steps to deal with possible conflicts of interest. Such steps can include using competitive processes to select consultants, rotating consultants regularly, and considering the nature of the work assigned to them. Contracts can include provisions designed to manage conflicts of interest, for example provisions requiring that conflicts of interest are declared, or prohibiting the consultant working on other contracts that would present a conflict during the term of the contract.[30]

There needs to be greater regulation, transparency and scrutiny of the use of government resources. There is a critical role for the parliament in this matter as well as for independent bodies such offices of the Auditor General.

Recommendation

That strict guidelines for government advertising be developed and that Auditors General should be given a role in reviewing advertisements before they are published or broadcast.

That government should provide annual reports outlining expenditure on advertising, public relations and public opinion research

That the recommendations of the Senate Finance and Public Administration References Committee on government advertising and transparency and accountability be given serious consideration by both the NSW and Commonwealth Governments

That both the NSW and the Commonwealth Governments reintroduce inclusion of project and program funding detail in the budget papers and schedules of appropriation acts.

Tax subsidies

Tax deductibility of donations to political parties was increased from $100 to $1,500 in 2006 and widened to include corporate donations. This has resulted in a significant increase in public subsidy to political parties, through revenue foregone. PIAC does not believe that such an increase and widening of eligibility is in the public interest. While tax deductibility of small donations (up to $100) may stimulate involvement of citizens in political activity and therefore serve a good public purpose, this argument cannot be applied to donations made by corporations whose mission is to maximise profit and who—quite properly—do not have the same rights as individual citizens in a democracy. Increasing the threshold to $1,500 also does not meet the requirements of good tax policy as it is regressive, unfairly advantaging those who are already well off.

Recommendation

That tax and electoral laws be amended in order to permit tax deductibility on donations up to a maximum of $100 and to remove tax deductibility for corporate donations.

Accountability of Private Funding

At both NSW and Federal levels the inadequate disclosure requirements of private donations to political parties have resulted in perceptions of a culture of secrecy, undue influence and corruption. Critical to the effectiveness of any disclosure requirements is whether or not they result in the true source and total amounts of donations being disclosed. While strong disclosure and transparency requirements cannot

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29 Independent Commission Against Corruption, *Corruption Risks in NSW development approval processes* (2007) 62.

30 Ibid 7.

stop the potential purchase of undue influence of donors, they at least ensure that citizens can see who is giving money to which parties, and when this occurs. Transparency is an essential tool in curbing corruption.

There are three key areas of concern regarding accountability of the current system of private donations:

- the use of associated entities and third parties;
- reporting requirements are inconsistent and inadequate;
- a weak enforcement system.

The use of associated entities and third parties

The first concern is that parties and candidates can exploit loopholes to avoid current disclosure requirements and that there is little interest from the major parties in closing those loopholes. An example is the practice of splitting big donations into smaller amounts below the threshold or donating amounts in every state and territory.

The use of fundraisers and 'associated entities' and 'third parties' to hide the identity of donors continues to be of concern. Disclosure requirements must cover all significant political actors. For example, if the use of trusts as conduits for political donations is permitted all other disclosure laws become somewhat irrelevant.

Associated entities are usually defined as an entity that is either controlled by one or more political parties or operates wholly or to a significant degree for the benefit of one or more political parties. The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* extended the definition to include entities that are financial members or have voting rights in a political party.

Under disclosure schemes third parties refer to entities other than registered parties, their associated entities, candidates, donors with disclosure obligations and broadcasters and publishers.

PIAC is of the view that 'third parties' and influential 'associated entities' must be covered by disclosure and other electoral law and by any legislated limits on expenditure. The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) increased reporting requirements of third parties; including requiring detailed reporting of expenditure, even though this is not required of political parties. It is argued by Young and Tham that the wide definition of 'electoral matter' under the *Commonwealth Electoral Act 1918* results in activities that are not reasonably related to politics, government or election being caught. This has created an unreasonable administrative burden on some organisations. Equally, the broadening of the definition of 'associated entity' to include entities that are financial members or have voting rights in a registered party imposes reporting requirements that are not necessarily reasonable. As suggested by Young and Tham, a 'threshold of influence' could be used to determine when reporting requirements should be imposed. Young and Tham also argue that voting rights and financial membership are not the only ways that influence can be brought to bear on political parties, and therefore the above requirement creates an inequitable disclosure regime.[31]

The *Canada Elections Act*[32] covers registration, financial and reporting requirements for third parties. 'Third party' is defined as a person or a group, other than a candidate, registered party or electoral district

31 Young and Tham, above n 7, 116-117.

32 Canada Elections Act, 2000, c 9.

association of a registered party.[33] Third-party election advertising spending is limited[34], every election advertising expense incurred on behalf of a third party must be authorised by its financial agent.[35]

Including third parties in political financing regulation raises particular issues that must be carefully considered. Issue-advocacy organisations play an important role in a democracy as they can often raise issues that mainstream political parties may chooses not to raise. Regulations must ensure as much as possible that election spending limits are not completely exhausted through the activities of third parties but equally that third parties are not prevented from genuine issue advocacy.[36]

Not only must there be wider capture of the various sources of funding in disclosure and other electoral laws, but where possible there must be consistency in the requirements. For example, associated entities do not have to forfeit anonymous donations, which are over the set limit, however political parties do.

The AEC has made a number of recommendations over the years in regards these concerns.

Reporting requirements are inconsistent and inadequate

The second concern is that reporting requirements are inconsistent and inadequate, in terms of what is required to be reported, when it is required to be reported and how it is to be reported. Disclosure laws should require detailed reporting of both donations and expenditure that is timely, frequent, accurate and easily comprehended. Such disclosure laws should also apply to all significant political actors. In terms of timeliness, NSW electoral law is particularly lax, requiring parties to report the donations they receive only every four years.

The definition of donations or 'gifts' is too loose. Currently the definition of 'gift' means that it is the giver of the gift who will determine whether the payment is a donation. In the case of fund-raisers the question of whether the amount paid, for example for a dinner, is 'market value' is made by the giver. The AEC has made several recommendations in this regard including that all payments at fundraising events be deemed to be donations.[37]

Ease of comprehension is also a very important aspect of transparency. The NSW Greens have set up a website to provide clear information regarding donations to political parties, including the sectors and interests donors have come from. This website is used by media and the wider community and provides important information to inform public debate. It is unfortunate that it has been left to a political party to provide this information, as it should be an essential aspect of the public reporting of political finances.

Countries such as the United Kingdom, the United States of America and Canada all require much more frequent reporting and some countries, such as New Zealand, require returns (at least from parties with significant income) to be checked for accuracy by an independent auditor.[38] The AEC has made a similar recommendation in 2004 to the Joint Standing Committee on Electoral Matters, commenting that as a result of the poor record keeping of some parties the AEC had difficulty in determining the degree of

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33 *Canada Elections Act*, SC 2000, c 9, s 349.

34 *Canada Elections Act*, SC 2000, c 9, s 350.

35 *Canada Elections Act*, SC 2000, c 9, s 357.

36 Colin Feasby, 'Issue Advocacy and Third Parties in the United Kingdom and Canada', (2003) 48 *McGill LJ* 11.

37 Australian Electoral Commission, above n 3, 24.

38 Young and Tham, above n 7, 119.

compliance with electoral laws. The 1996 post-election report suggested that annual returns be accompanied by a report from an accredited auditor attesting to the correctness of the return.[39]

The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth), which increased the thresholds from $1,000 to more than $10,000 for anonymous donations and loans, and from $1,500 to $10,000 for other donations has seriously diminished transparency and accountability at a Federal level. PIAC believes it is in the public interest that these increases in thresholds be repealed and replaced with stringent regular pre-election reporting requirements using the previous lower thresholds.

PIAC believes there is an urgent need for the introduction of stronger disclosure requirements for both receipts and expenditure of private donations to political parties, candidates and other significant political actors.

At the NSW level, ICAC recommends in its 2007 Position Paper *Corruption risks in NSW development approval processes* that:

> … the Premier consider amending the *Election Funding Act 1981* to require persons submitting development applications or rezoning proposals to the Minister for Planning to declare any political donations they have made to the minister or to his or her political party.[40]

And that:

> … the Minister for Planning include, in the list of designated development, development in respect of which a declaration as to the making of a donation has been made.[41]

The above recommendations are a disturbing indicator of how high the level of concern is in NSW about the impact of donations on development decisions, and also reflect on the standards of public administration in NSW. As already stated high standards of public administration are a fundamental requirement for transparency and accountability.

A weak enforcement system

The third concern is that there is a weak enforcement system. Accountably is dependent not only on disclosure requirements but the capacity to have them effectively enforced, including a penalty regime that can act as a deterrent. There have been concerns raised about the adequacy of the resources of both the NSW and federal electoral authorities to properly ensure compliance with electoral law. However, the AEC points out that while it is empowered to have fairly broad investigative powers, it is not able to go on 'fishing expeditions' and that the Commission must have 'reasonable grounds' before undertaking an investigation into a matter. It does not have powers on par with the Australian Competition and Consumer Commission as some appear to expect and amendments would need to be made to electoral laws if this were the will of the Parliament.[42]

This raises interesting questions, which deserve further serious consideration. Brendan McCaffrie argues that consideration could be given to establishing a non-parliamentary body to which authority regarding electoral law is delegated. This would be one way of dealing with the tendency of political parties to

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39 Australian Electoral Commission, above n 3, 12.

40 Independent Commission Against Corruption, above n 29, 12.

41 Ibid.

42 Australian Electoral Commission, above n 3, 13.

prioritise partisan interests over democratic principles when creating, amending or neglecting electoral law. Emerging democracies such as Jamaica and Costa Rica have created such non-parliamentary bodies in order to protect the integrity of their democracies. Setting up such a body and delegating authority to it is not a threat to the supremacy of parliament as the parliament always retains the right to oversee and abolish such a body. While the authority to determine electoral boundaries is already delegated to the AEC, McCaffrie does not see the AEC as the appropriate body for further delegation of development of electoral law.[43]

PIAC has some sympathy with this proposal. The record shows that indeed partisan interests too often have resulted in changes to, or neglect, of electoral law, which in turn causes damage to our democracy. The federal reduction of disclosure requirements introduced in 2006 and the failure to take up AEC proposals to pre-empt exploitation of loopholes in legislation are recent examples.[44]

Recommendations

That all parties, candidates and associated entities be required to publicly report on all donations in a timely manner and at least annually

That during election periods parties be required to report more frequently on all donations

That the definition of 'gifts' be amended to include money raised at fund raisers and similar events.

That consideration be given to requiring that parties have returns independently audited.

That reporting requirements of political parties and candidates include that details of donors are disclosed.

That all reporting is informed by the objective of ensuring easy access and comprehension by citizens.

That all parties, candidates, third parties and influential associated entities be required to report on details of political expenditure.

That both federal and state electoral commissions are adequately resourced to enforce current reporting requirements.

That a review of the role Electoral Commissions be undertaken to determine whether consideration should be given to the establishment of a non-parliamentary body that would be given delegated authority to develop electoral law.

That those provisions of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 *(Cth) that reduced disclosure requirements be repealed.*

The definition of 'associated entities' to be broadened to include activities not currently included but which qualify a 'threshold of influence' test.

43 Brendan McCaffrie, Removing partisan bias from Australian electoral legislation: A proposal for an independent electoral law committee (2008).

44 Australian Electoral Commission, above n 3, 15.

Response to Term of Reference (b): the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates

The notion of banning all donations from corporations, unions and organisations to parties and candidates goes to the heart of current concerns about the influence of private money on politics and democracy including. Key concerns include:

- through large donations, donors purchase access that is not available to ordinary citizens or smaller, particularly not-for-profit, organisations with limited resources and that this access can result in undue influence;
- reliance on private donations creates a conflict of interest for parties and candidates and can cause them to make decisions that keep donors on side, rather than serve the public interest; and
- there is not a level playing field and the major parties that receive the majority of donations enjoy an unfair advantage over new entrants and minor parties and that incumbents are more likely to attract funding.

In the previous section PIAC has made recommendations that support increased transparency and accountability in the spending and receipt of both public and private political funding. However greater reporting and transparency will not in itself remove the potential for the perception and/or reality of undue influence being purchased by large donors. Neither will it create a more equitable political environment. Even with high standards of disclosure our democracy will continue to be weak as the well-funded major parties dominate the debate and drown out minor parties and independents.

It is only through limiting expenditure and donations that these objectives of probity and fairness can be met. Expenditure and donations can be limited through caps or through total bans.

In Canada there has been progressive tightening of disclosure requirements. In 1991, the Royal Commission on Electoral Reform and Party Financing recommended that:

- Election expenses incurred by any group or individual independently from registered parties and candidates not exceed $1,000.
- Sponsors be identified on all advertising or distributed promotional material.
- There be no pooling of funds.

Subsequently, in 2003, a law was passed that banned all but very small donations from corporations unions and organisations, and allowed only capped donations from individual citizens and permanent residents and prohibited cash donations of over $20.[45]

This change in the law was the result of a scandal involving government expenditure, which involved large contracts being granted to advertising companies that supported the Liberal Government at the time. An Inquiry found a clear link between the granting of the relevant contracts and the making of political donations and cash gifts to members of the Liberal government.[46] Then, in 2006, further changes

45 An Act to amend the Canada Elections Act and the Income Tax Act (political financing), SC 2003, c 19.

46 Andrew Geddis, 'The regulation of election campaign financing in Canada and New Zealand' (Paper presented to the Political Finance and Government Advertising Workshop, Canberra, 25 February 2006).

to federal rules for financing of federal elections were made in the *Federal Accountability Act*[47], which introduced refinements to the political financing regime under the *Canada Elections Act*, including a complete ban on corporate and union contributions and limits on individual contributions to $1,000 per year. Limited tax credits for political contributions were made available as well. The *Federal Accountability Act* also prohibited candidates from accepting gifts that could be seen to influence them in the performance of their duties, if elected, and required reporting of gifts worth more than $500.[48]

An alternative approach to a system-wide ban on donations is to only limit or ban donations from particular groups or individuals who have a particularly strong interest in government decisions. Such a prohibition exists currently in Victoria where, under the *Electoral Act 2002* (Vic), there is a cap on donations of $50,000 each financial year to each political party for holders of gambling and casino licences. There have also been calls for the banning of donations from developers, such as through the Private Members Bill tabled by NSW MLC Lee Rhiannon.[49] While PIAC has sympathy with the intent of this proposal, limiting only particular interest groups does not provide a whole-of-system protection against possible influence and corruption. At different times there will be strong interest from various quarters: other industries, forestry, mining, religious groups and so on.

Other proposals include that there be a ban on donations from individuals or companies that have contracts with government, and a ban on foreign donors. PIAC is sympathetic to both these proposals.

Some argue that trade unions should be treated differently from commercial corporations because they are internally democratic, and therefore could have a derivative right to participate in the democracy.[50] However PIAC is of the view that organisations cannot have a direct claim to democratic representation as they are not citizens

Opposition to a complete ban on donations is based on the proposition that being able to donate to political parties is a form of political expression and therefore freedom of speech is denied through bans. It is also argued that being able to receive donations is related to the right to political association. However, the contrary argument is that such rights belong to individual citizens, not to corporations or organisations or political parties as such.[51]

Rather than imposing a ban on all donations from corporations, unions and organisiations some argue that limits should instead be imposed on all donors, including individuals, as occurred originally in Canada. Young and Tham also propose that donations could potentially be limited by heavily taxing over a certain limit.[52]

PIAC supports the adoption of the Canadian model because it is stronger and simpler. Any attempt to just limit particular interest groups, while understandable, is inequitable and rather *ad hoc*. Such an approach will result in ongoing and prolonged debates about which new interest groups may need to be included or removed on prohibited lists. PIAC favors a whole-of-system approach, because it is more equitable. A

47 Federal Accountability Act, SC 2006, c 9.

48 Ibid.

49 In 2003, Greens MP Lee Rhiannon introduced the *Anti Corruption (Developer Donations) Bill* to the NSW Parliament, to amend the *Election Funding Act*.

50 Young and Tham, above n 7, 26.

51 Ibid 34.

52 Ibid 122.

whole-of-system approach also will more effectively control election spending and create greater financial equivalency among parties and candidates, which in turn will create a more level political playing field and an enhanced system of representative democracy. A simpler system arguably also results in simpler compliance requirements, which in turn could result in reduced possibility of loopholes being found. This is another important equity issue because the major players are better resourced to find such legal loop-holes.

Recommendation

That there be a ban on all donations to political parties, candidates and associated entities from corporations, unions and organisations and that individual donations be capped.

That if the above recommendations are not agreed to that there be a cap set on all donations to political parties, candidates and associated entities from corporations, unions and organisations and individuals.

That any entity that has contracts with state or federal governments and foreign citizens be prohibited from making donations to political parties, candidates, associated entities.

Response to Term of Reference (c): the advantages and disadvantages of introducing limits on expenditure in election campaigns

Many European countries have introduced regulation to control election spending in order to level the playing field and enhance representative democracy.

Introducing limits on expenditure in elections campaigns is potentially a way of addressing concerns about the spiraling costs of campaigns and political activity, and the unequal fund-raising capacity of minor parties and new entrants compared to the major parties. Limiting spending will not, however, completely address the concerns about the potential undue influence of large donors, or prevent conflict of interest situations arising. This is because, if for example there was a limit of $100,000 on a party's election spending, there is no reason the whole amount or large proportion of it could not come from one donor.

If, however, a cap on expenditure was accompanied by bans or limits on donations from corporations, organisations and individuals and there was greater regulation and monitoring of use of public funds by incumbents, then indeed there may be greater equality in the political environment as well as less potential for undue influence and corruption. There were expenditure caps in place in Australia for many years at Federal level and in some states, although they were not well enforced. They were finally abolished at Federal level in 1980 after the Tasmanian Supreme Court enforced the spending limits.[53] Tasmania is currently the only place in Australia where a limit on election spending exists: $10,000 (increasing each year) per candidate to the Tasmanian Legislative Council.

There are some key issues to be resolved if capping of election expenditure is to be effective. Issues of enforceability have to be addressed. The AEC, in its submission to the Joint Standing Committee on Electoral Matters, made the point that no specific legislation could effectively close down all possible future disclosure loopholes, but that tax law provides an example of an approach that could be applied to electoral law. That is, that:

> … disclosure provisions in order to deal with future avoidance schemes as they arise need a general provision prohibiting arrangements contrived with a purpose of circumventing disclosure arrangements and that any such arrangements "should be punishable by a fine that is sufficient to act as a deterrent…[54]

Another issue to be overcome is the lack of clarity regarding when election campaigns start; an issue particularly where there are not fixed dates for elections, and therefore less of an issue in NSW than other parts of Australia.

In Canada, candidates and registered parties are subject to indexed election expenses limits based on the number of electors registered in the applicable riding.

Election expenditure can also be restricted through imposing limits on political advertising. In New Zealand, Canada and the United Kingdom, regulation of political advertising is used to limit election spending. In Canada there are limits on advertising by third parties.

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53 Young and Tham, above n 7, 94.

54 Australian Electoral Commission, above n 3, 17.

In the United Kingdom parties are given access to free broadcast time but not allowed to buy air time for political advertisements. In Australia there was an attempt to ban paid advertising in 1991, but this was struck down by a ruling of the full bench of the High Court when it was found to be constitutionally invalid due to implied freedom of political communication in relation to political matters inherent in the Constitution.[55]

An over-all cap on expenditure would be more effective and would probably result in a decrease in advertising anyway. PIAC is supportive of free broadcast time being provided to all candidates and believes that the commercial media have a responsibility to provide at least some free or subsidised air-time, as well. Such a public service could be included in license agreements.

In Canada, there is limit on the amount spent as well as the time period during which advertisements can be broadcast. A candidate's election expenses limit will vary from one electoral district to another, based on a formula set out in the *Canada Elections Act*. Under that Act, an election expense includes any cost incurred or in kind contribution received by a registered party or a candidate which is used ' to promote or oppose a registered party, its leader or a candidate during an election period'.[56]

While there are certainly challenges in implementing expenditure limits, the purpose of creating a fairer political environment is important enough to warrant taking on that challenge. While there may be an 'enforcement gap' in any political finance regulation system other countries such as Canada and the United Kingdom have shown that it is a workable system. Public funding should be made dependent on compliance with expenditure reporting requirements and limits being met.

Third parties and associated entities

As already discussed there are concerns that if expenditure is regulated for political parties and associated entities, third parties will then become the focus of political activity. Regulatory frameworks therefore must capture such third parties. As already discussed the *Canada Elections Act* covers registration, financial and reporting requirements for third parties. Third party is defined as a person or a group, other than a candidate, registered party or electoral district association of a registered party. Since third party election advertising expenses are limited, every election advertising expense incurred on behalf of a third party must be authorised by its financial agent. A financial agent may authorise, in writing, other persons to incur election-advertising expenses, but that authorisation does not limit the responsibility of the financial agent.

Public funds

To successfully introduce limits on election expenditure in an equitable manner, measures must be introduced to prevent or at least minimise the misuse of public funds by governments and incumbents. (See recommendations made in response to (a) above.)

Current public election funding is also inherently inequitable in two ways. Firstly, because it is a retrospective payment, therefore disadvantaging new entrants, and secondly because the payment is calculated in a way that favors the major parties. If the rationale for public funding is to assist political parties and candidates to participate in the democratic system then there is no justification for such a wide disparity in remuneration. A solution to this disparity in funding would be to create a sliding scale of payment per vote, with a higher payment for the first bracket of votes won and then progressively decreasing. Such a measure would contribute to financial equivalency between parties and candidates.

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55 Australian Capital Television Pty Ltd and New South Wales v Commonwealth [1992] HCA 45; (1992) 177 CLR 106 (30 September 1992).

56 *Canada Elections Act*, SC 2000, c 9, s 407

Recommendations

That limits on expenditure in election campaigns be introduced for parties, candidates, third parties, influential associated entities.

That public funding be conditional on compliance with expenditure disclosure requirements and set expenditure limits.

That consideration be given to introducing a sliding scale of public election funding.

That greater provision of free or fixed (low) fee broadcast time be considered, including for new contestants.

Response to Term of Reference (d): the impact of political donations on the democratic process

While PIAC acknowledges that assessing the health of our democracy is a most inexact science, we are confident that there is reasonable agreement on the basics of a healthy democracy. The Democratic Audit of Australia is informed by an understanding of democracy constituted by four principles:

- popular control over public decision-making;
- political equality in exercising that control;
- the principle of deliberative democracy;
- the principle of human rights and civil liberties .

If the current financing arrangements are assessed against these principles it is clear that radical reform of both public and private political financing is necessary. Spiraling costs of political activity, reliance on large corporate donations by the major parties, the purchase of access to political representatives, the misuse of public funds for partisan purposes by incumbents, relaxing of disclosure provisions, inadequate independent scrutiny of political financial arrangements all make for a very unequal and unaccountable political playing field threatening the fundamental representative role of parties. A lack of transparency and the perception/reality of situations of conflict of interest and corrupt practice create distrust in the community and loss of confidence in our democratic system.

Some argue that civil liberties are impinged upon by the imposition of bans or limits on donations or expenditure. However PIAC is of the view to create a healthy representative democracy equity must be seen as the essential underpinning principle.

In Canada there was a constitutional decision in 2004, Supreme Court of Canada[57], which distinguished between two models of the electoral system, the egalitarian and the libertarian. The egalitarian approach privileges the principle of equality of various participants in election campaigns while the libertarian stresses the freedom of the participants to use their own resources.

In Canada the Royal Commission on Electoral Reform and Party Financing in 1991 argued that the inequality of resources inherent in a market economy should not extend into the electoral arena, where equality should be the guiding principle.[58] The Commission also stressed that the right to vote included the right to an informed vote, which required that political discourse not be dominated by the most affluent groups.[59]

The Canadian limits on advertising that were initially struck down by lower courts were finally found by the Supreme Court of Canada, in a 2004 decision to be 'reasonable limit … prescribed by law and demonstrably justified in a free and democratic society', and thus not in violation of the Charter of Rights and Freedoms, by a vote of 6-3.[60]

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57 Harper v Canada (Attorney General), [2004] 1 SCR 827, 2004 SCC 33.

58 Canada, Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, *Volume 1* (1991) 207.

59 Ibid.

60 *Harper v Canada*, cited by Dr Fred Fletcher, 'Free and Fair Elections: regulations that ensure a "fair go"', (Paper presented to the Parliament of Victoria, Melbourne, 20 June 2007) 5.

Democracy is a complex notion and there can be endless debates about what exactly is good democratic practice. However, we cannot be distracted by these debates when problems are evident. If a democratic system is weakened due to lax electoral laws and low standards of public administration, citizens become disenfranchised and are less inclined to engage in the democratic processes. This in turn further weakens the democracy.

PIAC trusts that the recommendations made in this submission, and the recommendations of the various reports referred to in it, will assist the committee in its deliberations on this important matter. It is quite possible that there is no perfect system, but the NSW Parliament can certainly attempt to make it less imperfect, and has a responsibility to do so.