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Inquiry into Campaign Finance Reform

Introduction

It is gratifying that the legislative assembly is undertaking an inquiry into campaign funding. This gives members of the Legislative Assembly an opportunity to improve the workings of representative government.

Over the last few decades, there has been a growing divide between elected members and the electorate. Whereas past electorates would generally have trusted government to do the "right thing", such faith has been weakened.

It can be argued that greater scrutiny of governments has led to this reduced credence in government. This loss of faith might have arisen partly because voters perceive that the first priority of governments - and oppositions - is to win and hold on to power for its own sake.

Part of this increasing cynicism can be attributed to the increasing role of political donations. If this committee can effectively mitigate this problem, it will have done democracy a service.

The Motivation for Donations

Some companies and proprietors have asserted that they give political parties donations in order to assist the workings of democracy. These are often the same companies which distinguish between parties, providing less or no grants to those parties not in government. There appears to be no major contributor which provides donations to parties in proportion to their votes or their representation in legislative assemblies.

If, however, this claimed altruism were seen as an important motive, the committee might consider establishing a government administered trust

fund which would forward anonymous donations to parties according to the unpublished direction of the donor.

But it is safer to suggest that donors make political contributions in order to advance their own interests, whether or not those interests coincide with the public interest. This has been accepted as the principle or sole motivation for donations by many past politicians who have commented on political donations.

If the committee agrees that self-interest is the main or sole motivator, it would be bound to recommend mitigating steps. Either the donation failed to achieve the intended purpose or was irrelevant to the outcome, in which case the donation was received with bad intent, or the donation succeeded, in which case the public interest has been over-ridden.

Instances of Political Concern

We have seen in recent years that many politicians have decried the role of political donations in the work of government. Paul Keating publicly recommended that developer donations be banned. Bob Carr recommended that the Council of Australian Governments consider the banning or control of political donations. The former Premier of NSW, Nathan Rees, was working towards a ban on political donations before he was replaced. (Nathan Rees' successor seems not to have adopted this goal.) The Queensland Government supports a ban or a cap at a low level on political donations because of the harm they do to Australia's democratic institutions. The Commonwealth Government's green paper on electoral reform includes the banning of political donations as an option.

The former Hawke Minister, Graham Richardson, did not believe that political donations corrupted governments. He specifically said in his book, "Whatever it Takes" that such donations do not change outcomes, they only provided donors with access. But as argued below, the grant of access for a fee or a donation constitutes corruption because of its partiality. It

can also be argued that access leads to influence and influence leads to results.

Other Concerns

NSW's Independent Commission Against Corruption has in the past identified the possibility that political donations can constitute corruption. It has not recently re-enforced this view and it has chosen not to investigate instances of political donations per se. But it is at least arguable that some forms of political donation constitute corruption.

The clearest example of corruption occurs when public officers allow their time to be sold in exchange for political donations. This occurs at functions where donors pay sometimes considerable monies to the relevant political party in order to dine or meet ministers. Such sales of access mean that donors receive what a benefit which is not generally available to those seeking access. That grant of access - because of its partiality - constitutes corruption. The ICAC by way of exculpation has noted that such practices are widespread. However, that does not alter the character of the practice.

It is clear that ministers may not obtain a private benefit from the exercise of their office (other than wages etc paid pursuant to law). It is also clear that ministers' families are not to obtain a private benefit from the exercise of ministers' public office. It is also unlawful for a minister to direct such private benefits to charities. Why then, when a minister dines with a person, is it acceptable that the person be charged a fee payable to a political party? When it is realised that ministers supports the party and the party supports ministers (that is, that there is a symbiotic relationship between a minister and his or her political party that is beneficial to each) the practice should be regarded as indelibly corrupt.

If there is a doubt about this proposition, the committee might consider the duty of an appointed official who is not elected. It is unlawful for that official to charge for the performance of his or her duty (for example, to give a speech) if the payment is directed to the person's partner or to a

designated charity or to a body with which the official has a beneficial relationship. It is expected that the official direct to the revenue any payment or benefit (other than a trivial benefit).

Ministers used to distance themselves from donations by asserting that such matters were not an issue for parliamentarians but for the relevant party's appointed officials. Some ministers claimed not to know the identity of donors. This line of argument has fallen into disuse in modern times, perhaps because the names of major donors are published by the media and because ministers might be assumed to know the names of donors who have paid to meet them.

Perceptions

Even if it is not accepted that political donations involve corruption, it might be accepted that the reliance of the major political parties on political donations is such as to bring the political process into disrepute.

Cures

The simplest cure is to ban donations (in money or in kind) from non-natural persons (that is from companies, associations, unions etc). These organisations are the largest source of sizeable donations, if not the largest source by value of all political donations. There should be no constitutional issues because non-persons have no political rights.

It would also be prudent to require all persons to advise the electoral office of all donations in money or kind which together exceeds a modest sum, say, \$2,000. The specified amount needs to be large enough to avoid administrative difficulties and small enough to provide adequate transparency.

Problems

Incumbency has its own rewards, for all elected members and especially for government members. The banning or restriction of political donations could thus have great impact on new or emerging parties. To

accommodate that concern, ex post public funding of political parties and of all individual contenders should be allowed. Such funding should be on a per vote basis, with no minimum number of votes required for eligibility. The total provided should not exceed declared expenditure by the party or individual during the period between the calling of an election (the issue of writs, for example) and election day. This appears to be similar to the policy adopted by the Queensland Government.

Third Party Advertising

In the last federal election, the union movement undertook extensive and aggressive advertising opposing the then government's industrial relations policy, Work Choices. Business organisations also advertised their support of that policy.

This submission makes no recommendation about this activity. It ought to be a right of individuals to promulgate their views publicly. Indeed, there might be constitutional problems if governments try to stem such advertising.

Final Thoughts

Public funding of political candidates and parties was introduced to solve the financial problems then facing major political parties. Unfortunately, it also led to engorged advertising sprees by those parties in all subsequent elections. The major parties already have significant advantages because of the incumbency of their members. It would thus be unnecessary to increase public funding by any great margin to accommodate the banning of institutional donations.

The Australian Labor Party has a special relationship with the union movement, much of which is formally associated with the ALP. Although the banning of institutional donations might have a larger impact on the ALP than on the Australian Liberal Party and its coalition party, that is not a reason to abandon the recommendation. Union donations have their own problems. A Labor government might be tempted to make decisions which

are not in the public interest but in the union movement's interest. (It cannot be reasonably claimed that there is an identity between those interests.) Abolishing donations from unions - even if the source of contributions comes directly or indirectly from union members - has additional benefits which justify that recommendation.

Tony Harris

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