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**POLITICAL FINANCE & GOVERNMENT ADVERTISING  
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**Political finance in Australia:  
A skewed and secret system?**

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## Chapter 1 – Money, Politics and the Law: Questions for Australian Democracy

Money plays a controversial role in Australian politics. Political donations often spark claims of secret contributions leading to corruption. These claims are occasionally accompanied by allegations that corporations and trade unions have undue influence over political parties through the funds they provide. Public funding of political parties also attracts its share of criticism. Parliamentary entitlements have been condemned as rorts allowing politicians to feather their nests while government advertising has been portrayed as wasteful and unfair. At the base of these concerns appears to be a common fear that Australian politics has the trappings of a democracy that mask an oligarchy where political power rests with only a few, richer and more powerful citizens.

It is these concerns that form the focus of this report. It directly addresses them by asking the question:

*How democratic is the way political parties are funded in Australia?*

The answer to this question will, of course, depend on what is meant by ‘democratic’. To complicate matters, the meaning of democracy is highly contested with no single ‘correct’ conception of democracy. While not oblivious to such disagreements, this report will draw on the understanding of democracy that informs the Democratic Audit of Australia. This understanding is constituted by four principles:

- popular control over public decision-making;
- political equality in exercising that control;
- the principle of deliberative democracy; and
- the principle of human rights and civil liberties.<sup>1</sup>

Each of these principles gives rise to complex questions concerning the role of money in politics. At the outset, they imply that political parties have key democratic

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<sup>1</sup> These principles are stated in Sawyer, *Audit Values: Reflecting the complexity of representative democracy*. The principles of popular control over public decision-making and political equality in exercising that control are drawn from the IDEA audit framework, see Beetham et al, *The International IDEA Handbook on Democracy Assessment*.

functions. Foremost, they play a *representative* function. A healthy party-system should represent the diverse strands of opinion existing in Australia. Such a system would offer genuine electoral choice in the sense that the party platforms cater to the different preferences of Australian voters. Second, parties perform an *agenda-setting* function in stimulating and generating ideas for Australian politics. The richness of ideas informing Australian politics will depend heavily on how vigorous the parties are in promoting new ideas and, in particular, the priority they place on policy development and research. Third, parties perform a *participation* function as they offer a vehicle for political participation through membership, meetings and promoting public discourse. Fourth, parties perform a *governance* function. This function largely relates to parties who succeed in having elected representatives. The party elected to government clearly performs a governance function but other parliamentary parties also participate in governance through the legislative process, scrutiny of the executive government and general public debate.<sup>2</sup>

The representative and governance functions of political parties can be traced to the principles of *popular control over public decision-making* and *political equality in exercising that control*. The agenda-setting function of parties flows naturally from the principle of deliberative democracy. The *participation function*, on the other hand, is most connected with the principles of *civil liberties and human rights*, most notably, the freedom of political association. In order to perform these functions effectively, political parties must be properly funded. Democratic principles therefore mandate the adequate funding of political parties.

This, however, is not the only implication of such principles. The very necessity of funding poses serious dangers from a democratic perspective. Take, firstly, popular control over public decision-making; a principle for structuring the relationship between citizens and their public officials. It requires, for instance, elections that result in government being formed by a party (or parties) that enjoy majority voter support.

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<sup>2</sup> For similar functions ascribed to political parties, see Nassmacher, 'Introduction: Political Parties, Funding and Democracy', p. 2.

The principle of popular control, however, goes beyond such electoral majoritarianism. With the representative form of government, not only should government be elected through majority support of the citizens but the exercise of governmental powers *in between elections* ought also be responsive to the views of citizenry. In short, there needs to be *accountability* on the part of the government to the citizenry *through* and *between* elections. This was recognised by Mason CJ in *Australian Capital Television Pty Ltd v Cth*:

the representatives who are members of Parliament and Ministers of State are *not only chosen by the people but exercise their legislative and executive powers as representatives of the people*. And in the exercise of these powers the representatives of necessity are *accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act*.<sup>3</sup>

The principle of popular control also means that citizens should have adequate electoral choice. This must include a proper choice between the political parties and their platforms. It is the discipline provided by such choice that ensures that the governing parties are accountable and responsive to the citizens in between elections. Such choice is also necessary for elections to properly reflect the popular will. This requirement of choice, in turn, points to the democratic imperative of *pluralistic* and *competitive* politics especially amongst the parties.

In brief, the principle of popular control over public decision-making implies *electoral majoritarianism*, *continuous governmental accountability* as well as *pluralistic and competitive politics*. It is the last two sub-principles that have particular relevance in the area of political finance.

Both raise key questions concerning the use of public funds. Does public funding of parties entrench the interests of the dominant parties to the disadvantage of their competitors? In particular, have parties holding government misused public resources to unfairly advantage their parties? Has there been, in other words, *corruption as partisan abuse*? These principles also implicate two other notions of corruption: *corruption as rorts*, namely, the misuse public resources for personal gain and

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<sup>3</sup> *Australian Capital Television Pty Ltd v Cth* (1992) 177 CLR 106, p. 138 (emphasis added).

*corruption as cronyism*, that is, the improper appointment of partisan allies to public positions.

In measuring whether government is accountable to the citizenry, a crucial issue arises in relation to the private funding of political parties: has receipt of such funds meant that political power is being improperly exercised in favour of donors? In other words, does receipt of private funds by parties lead to *corruption as graft*?

Governmental accountability is necessarily bound up with transparency: citizens can hardly be in a position to hold their representatives accountable if secrecy prevails. Deliberative democracy also requires transparency as there cannot be proper deliberation if there is an absence of information about the exercise of governmental power.

It follows that both the principles of popular control and deliberative democracy require—in relation to the funding of parties—that there be adequate disclosure of the sources of such funds and also the uses to which they are put. The questions that arise on this count include: are parties being funded in a clandestine manner thereby hindering proper accountability and deliberation? Are the uses of party funds sufficiently transparent that citizens are able to hold them accountable for such expenditure and to debate the propriety or otherwise of such spending?

The principle of deliberative democracy has significance beyond requiring transparency. If the present funding of parties has led to a situation where the major parties have an unequal advantage over other political participants, there is the question of whether such ossification of Australia's political system has impoverished the quality of political discussion by narrowing the parameters of debate. Further, as will be seen later in this report, much of party funds are devoted to political advertising whether it be through radio, television or more novel means such as direct-mail. This raises the issue of whether such advertising has promoted or reduced the quality of public debate, especially during elections.

As with the principle of human rights and civil liberties, the key freedoms at play would appear to be the freedoms of political association and communication. Freedom

of political association has significance because the private funding of a political party, like membership of a party, is clearly a form of political association. Moreover, different party structures reflect the various ways of associating politically. A key question in regulating such funding must then be the impact of any regulation on the freedom of political association whether through its effect upon political donations or party structures.

As with freedom of political communication, several questions arise. For instance, has the use of funds for political advertising by major parties resulted in a situation whereby the freedom to politically communicate held by others is largely hollow because of the prohibitive costs of effective communication? Freedom of political communication is also relevant in terms of regulatory responses. Certain regulatory methods, most notably, a ban on political advertising, clearly infringe this freedom. The question then is whether such an infringement can be properly justified; a question that is important both from the point of principle as well as constitutional validity.<sup>4</sup>

It remains to canvass some of the questions raised by what is perhaps the central democratic principle in the area of party finance—political equality in exercising popular control over public decision-making. This principle embraces both the vertical and horizontal dimensions<sup>5</sup> of political power: it structures the relationship between citizens and public officials by stipulating popular control but it also addresses the relationship amongst citizens by requiring that they exercise such control as equals.

This principle of political equality perhaps can be best traced to what Dworkin described as ‘the sovereign virtue of political community’, the principle of equal concern for citizens.<sup>6</sup> It insists that all citizens have ‘a fair opportunity to hold public office and to influence the outcome of political decisions’.<sup>7</sup> In other words, citizens must have equal opportunity to participate in the political process.

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<sup>4</sup> *Lange v Australian Broadcasting Corporation* (1997) 145 ALR 96.

<sup>5</sup> Dworkin, *Sovereign Virtue*, pp. 190-1.

<sup>6</sup> *Ibid.*, p. 1.

In an electoral system dominated by parties, fair opportunity to hold public office requires that there be ‘fair rivalry’<sup>8</sup> and, specifically, ‘equality of arms’ amongst the competing parties. ‘Fair rivalry’ and ‘equality of arms’ do not relate only to the principle of political equality. They promote competitive and pluralistic politics and, therefore, facilitate popular control over public decision-making. By ensuring that citizens have a fair opportunity through political parties to express their views in electoral contests, they should enrich the political debate and, therefore, serve the goal of deliberative democracy.

The principles of ‘fair rivalry’ and ‘equality of arms’ raise key questions in relation to political finance: does the current funding of political parties mean that some parties vying in elections are unfairly advantaged? Especially, has governmental funding meant that incumbent parties enjoy an improper advantage over their competitors? A theme running through these issues is whether the major parties have colluded, implicitly or explicitly, in creating and maintaining a political finance system that operates in their mutual interest. There is, in other words, the question of *cartelisation* through political finance.

By requiring that citizens have a fair opportunity to influence political outcomes, political equality in exercising popular control also gives rise to other issues. In the area of political finance, there is the question of whether political contributions have led to *corruption as undue influence*. Such corruption occurs when political contributions undermine the ability of citizens to have a fair opportunity to influence political outcomes.

There is another form of corruption as undue influence that is less about political equality in exercising popular control over public decision-making and, indeed, may contradict such a principle. It can, however, be traced back to the principle of equal concern for citizens. Such corruption, best described as *Burkean undue influence* (after Edmund Burke’s injunction to elected representatives to act independently of their constituents), occurs when political contributions divert public officials, parties and candidates from independent judgments of the public interest because they are

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<sup>7</sup> Rawls, *Political Liberalism*, p. 327.

<sup>8</sup> Ewing, *The Funding of Political Parties in Britain*, p. 182.

tailoring their judgments according to the wishes of their financiers. When political contributions place such persons in a position of ‘conflict of interest’,<sup>9</sup> undue influence can be said to occur because there has been a failure to independently consider the public interest and simultaneously, a refusal to show equal concern for all citizens.

This conception of corruption, Burkean undue influence, is perhaps much more controversial than the other forms of corruption previously described. The source of such controversy lies in the fact that there is a clear tension between the injunction that representatives exercise independent judgment and the principle that they be subject to the control of the citizens. This tension comes to the fore when politics is dominated by interest groups. The responsiveness of parties to such interest groups can be said to be democratic in the sense that the parties are performing their representative function and being subject to popular control. On the other hand, there is the danger of ‘too much’ responsiveness under the Burkean conception of undue influence with politicians risking their independent judgments.

It should be clear by now that there is a paradoxical relationship between democratic principles and the funding of political parties: such principles dictate and yet distrust such funding. It is this relationship that forms the focus of this report.

The question of whether the funding of Australian political parties and its legal regulation are democratic can, therefore, be broken down to two major issues: to what extent do the current funding practices and their regulation facilitate the parties in performing their proper functions; and what dangers do they pose to the health of Australia’s democracy? The latter raises more specific issues including:

- the extent to which public funds has led to corruption as partisan abuse, rorts and cronyism;
- whether political donations have led to corruption as graft and undue influence;
- the degree of transparency surrounding the funding and expenditure of parties;
- the impact of political advertising upon the quality of public debate;

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<sup>9</sup> Lowenstein, ‘On Campaign Finance Reform’, p. 326.

- the impact of party finance and its regulation, including possible regulatory responses, on the freedoms of political association and communication; and
- whether current funding patterns and their regulation arm the dominant parties with an unfair advantage.

These questions will be investigated in the following manner. The following chapter, Chapter Two, will examine the private funding of parties and its regulation. Chapter Three does the same in relation to public funding of parties. Chapter Four focuses on funds and resources specifically available to parties in government. Chapter Five switches attention to the other side of the ledger by considering the expenditure of parties. Finally, Chapter Six considers the democratic deficiencies of Australian political finance and make recommendations for change drawing upon overseas practice.

## Chapter 2 – Private funding of political parties

The promise of democracy is that each citizen will share equally in political power. However, in the context of a liberal capitalist democracy and its attendant economic inequalities, wealthy individuals and businesses are able to translate their economic power into political power because ‘(s)ome moneyed people will always attempt to speak louder and will often succeed as a result’.<sup>10</sup>

The louder voice of money in liberal capitalist societies means that there is a constant risk that democratic forms conceal a plutocratic reality of government by the wealthy. In its more egregious forms, the influence of money on politics raises the spectre of ‘money politics’ which insinuates itself into the democratic polity in various ways but a key artery is the private financing of political campaigns.

### **Newspaper headlines on political donations**

#### **‘Largesse means access’**

*The Australian*, 16 August 2003.

#### **‘Democracy for sale’**

*The Weekend Australian Financial Review*, 20-1 March 2004.

#### **‘Business coy about political pay-offs’**

*Canberra Times*, 7 January 2005.

#### **‘MP backs curb on donations’**

*The Age*, 13 June 2005.

#### **‘The bottom line? Big business should fork out for Liberals, say PM’**

*The Age*, 26 June 2005.

#### **‘Fire site pair gave cash to Labor’**

*The Sunday Age*, 24 July 2005.

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<sup>10</sup> Murray and Rock, ‘The Dangerous Art of Giving’, p. 29.

## Federal regulation of private funding

At the Federal level in Australia, the only *source restriction*, that is, restriction on contributions coming from particular sources, is a prohibition on parties, their *associated entities*, *third parties* and candidates from receiving anonymous *gifts* (see box headed ‘Definition of key terms’). There are no *amount restrictions*, that is, controls on the amount of political contributions made.

The key source of Federal regulation of private funding stems from disclosure obligations imposed upon parties, their associated entities, third parties, candidates and donors.

Political parties and their associated entities are obliged to submit annual disclosure returns. Virtually identical disclosure requirements apply to political parties and associated entities. The returns submitted are required to be in a form approved by the Australian Electoral Commission (AEC) and must disclose the total amount received by, or on behalf of, the political party or associated entity for the financial year. In addition to disclosing this total, political parties and associated entities are required to make further disclosure if they have received from, or owe, a particular person or organisation a sum amounting to \$1,500 or more for that financial year. In calculating whether this sum has been reached for payments made to the party, amounts less than \$1,500 can be disregarded. Once this threshold of \$1,500 has been reached, political parties and associated entities must disclose certain particulars, namely, the amount of the sum or debt and the name and address of the person (or organisation) who paid or is owed the sum.

Persons who donate \$1,500 or more in a year to a political party are also subject to annual disclosure obligations in that they must lodge a statement disclosing all such gifts to the AEC.

Candidates, Senate groups, certain donors and third parties are subject to post-election disclosure obligations. Candidates and Senate groups are required, after every

election, to provide to the AEC with a statement disclosing details of gifts received during the period between elections that exceed certain thresholds. The respective thresholds for candidates and Senate groups are \$200 and \$1,000.

Persons who have donated \$200 or more to candidates must also disclose details of such gifts to the AEC after the relevant election. Further, third parties that have incurred more than \$200 in electoral expenditure must disclose to the AEC details of gifts received which equal or exceed \$1,000 that were used for such spending.

All these returns must eventually be made available for public inspection. The AEC also publishes a report on the operation of these provisions after each Federal election. These statements and returns gain further publicity via media reporting and their posting on the AEC's website.

#### **Definition of key terms**

##### *Associated entities*

Disclosure schemes generally define an *associated entity* is an entity that is either controlled by one or more political parties or operates wholly or to a significant extent for the benefit of one or more political parties.

##### *Gifts*

Under disclosure schemes, a *gift* is defined as any disposition of property made with inadequate or no consideration.

##### *Third parties*

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

## Regulation at State and Territory level

There are prohibitions against parties, groups or candidates receiving anonymous gifts in five of the eight States and Territories, namely, the Australian Capital Territory, the Northern Territory, New South Wales, Queensland and Western Australia.

The only State or Territory to have an amount restriction is Victoria. Under the *Electoral Act 2002* (Vic), holders of casino and gambling licences and their related companies are prohibited from making political donations exceeding \$50,000 in a financial year to *each* registered political party.

Five of the eight States and Territories have their own disclosure schemes under their electoral statutes. While the Victorian electoral statute does not enact a separate disclosure scheme, it requires Victorian parties and other political participants to comply with the Federal disclosure obligations. The ACT, NT and Western Australian schemes allow compliance by parties and ‘associated entities’ through provision of returns lodged under the Federal scheme. Two States, South Australia and Tasmania, do not impose disclosure obligations on political participants. Table 2.1 below sets out the key features of these disclosure schemes.

**Table 2.1: State and Territory disclosure schemes**

| Jurisdiction       | ACT   | NT  | NSW  | Qld   | WA   |
|--------------------|---|---|--|---|--|
| Registered parties | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year | Post-election returns disclosing details of gifts received during period between elections totalling \$1,500 or more with returns accompanied by auditor’s certificate | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year | Annual return disclosing details of gifts received totalling \$1,500 (indexed) or more in the financial year |

|                      |  |   |   |   |   |
|----------------------|--|---|---|---|---|
| Associated entities  | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year            | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year | None  | Annual returns disclosing total amounts received and details of amounts received from a person or organisation of \$1,500 or more in a financial year | Annual return disclosing details of gifts received totalling \$1,500 (indexed) or more in the financial year                          |
| Candidates           | Post-election return disclosing total of gifts received and details of gifts (or aggregate of gifts) of \$1,500 or more received during period between elections | Post-election return disclosing details of gifts (or aggregate of gifts) of \$200 or more received during period between elections                    | Post-election return disclosing details of gifts (or aggregate of gifts) received during period between elections of \$200 or more accompanied by auditor's certificate | Post-election return disclosing details of gifts (or aggregate of gifts) of \$200 or more   | Post-election return disclosing details of gifts (or aggregate of gifts) of \$1,500 (indexed) or more in the period between elections |
| Groups of candidates | Post-election return disclosing details of gifts (or aggregate of gifts) of \$200 or more received during period between elections                               | None  | Post-election return disclosing details of gifts (or aggregate of gifts) received during election period of \$1,000 or more accompanied by auditor's certificate        | None  | Post-election return disclosing details of gifts (or aggregate of gifts) of \$1,500 (indexed) or more in the period between elections |

|               |   |   |  |   |  |
|---------------|---|---|--|---|--|
| Donors        | <p>If gifts to a candidate or non-party group total \$1,500 or more in period between elections then post-election return disclosing details of such gifts</p> <p>If gifts to a political party in a financial year total \$1,500 or more and receives amounts of \$1,000 or more for such gifts then annual returns disclosing details of such gifts</p> | <p>If gifts to a candidate totals \$200 or more in period between elections then post-election return disclosing details of such gifts</p> <p>If gifts to a party totals \$1,500 or more in a financial year and received gifts of \$1,000 or more to make gift/s to party then annual return to disclose details of received gifts</p> | None   | <p>If gifts to a candidate totals \$200 or more in period between elections then post-election return disclosing details of such gifts</p> <p>If gifts to a party totals \$1,500 or more in a financial year and received gifts of \$1,000 or more to make gift/s to party then annual return to disclose details of received gifts</p> | None   |
| Third parties | <p>If incurred \$1,000 or more in electoral expenditure and receives gifts for such expenditure totalling \$1,000 or more then post-election return disclosing details of such gifts</p>  | <p>If incurred \$1,000 or more in electoral expenditure and receives gifts for such expenditure totalling \$1,000 or more then post-election return disclosing details of such gifts</p>  | <p>If incurred \$1,500 or more in electoral expenditure and receives gifts for such expenditure totalling \$1,000 or more then post-election return disclosing details of such gifts</p> | <p>If incurred \$1,000 or more in electoral expenditure and receives gifts for such expenditure totalling \$1,000 or more then post-election return disclosing details of such gifts</p>  | <p>If incurred \$1,500 (indexed) or more in electoral expenditure and receives gifts for such expenditure totalling \$1,500 or more then post-election return disclosing details of such gifts</p> |

### Is the private funding of parties democratic?

The importance of the private funding to parties is underlined by Table 2.2. This table, which draws on data for an electoral cycle of three financial years, 1999/2000 to 2001/2002, indicates that all the parties are significantly reliant on private funding with more than half of their budgets privately financed. The extent of such reliance varies with the ALP, Liberal Party and National Party heavily dependent on private

monies. More than 80 per cent of their funding comes from this source. The Greens, on the other hand, are slightly less dependent with nearly three-quarters of its budget derived from private funding. The Democrats stand out with slightly over half of their funding from private sources. A more recent figure confirms the reliance of the main parties on private funding: in the financial year 2002/2003, 83 per cent of their funding came from private sources.<sup>11</sup>

**Table 2.2: Private and public funding of main parties**

| Party                | Total receipts (\$) | Private funding<br>(% of total) | Public funding<br>(% of total) |
|----------------------|---------------------|---------------------------------|--------------------------------|
| ALP                  | 117, 273, 999       | 81.85                           | 18.15                          |
| Liberal Party        | 95, 542, 648        | 83.61                           | 16.39                          |
| National Party       | 21, 725, 957        | 84.89                           | 15.11                          |
| Australian Democrats | 6, 667, 728         | 56.90                           | 43.10                          |
| Greens               | 6, 495, 651         | 74.56                           | 25.44                          |

Source: Annual returns for financial years, 1999/2000-2001/2002 (as calculated in Joo-Cheong Tham and David Grove (2004) 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections' (2004) 32 *Federal Law Review* 387, 401).

### **Enabling parties to perform their democratic functions?**

The private funds received by parties are essentially at their disposal. Whether these funds assist the parties to perform their democratic functions, firstly, depends on how they are used. There is, however, very little public information on how the parties spend their monies.

The limited evidence suggests that the bulk of spending is devoted towards electioneering and, in particular, election advertising (see Chapter Five). Such activity can, of course, reflect the parties discharging their functions. In seeking election, party candidates may represent the views of citizens as well as set new agendas for Australian politics. Electioneering is also a form of political participation by citizens and elections form a crucial means of holding elected representatives accountable.

<sup>11</sup> Jaensch, Brent and Bowden, *Australian Political Parties in the Spotlight: Democratic Audit of Australia Report No 4*.

At the same time, electioneering is only one way and, for that matter, a limited means, of parties performing their democratic functions. It is limited simply because it focuses on election campaigns. With such a focus, important party activity in between elections runs the risk of being relegated to the sidelines. Such neglected activity might include parties reaching out to the various communities to ensure that their positions properly reflect the views of Australian citizens; policy development and research and spending to increase levels of membership participation.

Besides the focus on electioneering, the pre-occupation parties have with fund-raising may divert them from such activity. Federal Human Services Minister Joe Hockey, for instance, is reported to have complained in the Liberal Party room about the constant pressure to attend fund-raisers.<sup>12</sup> There is a danger that raising private funds compromises the ability of parties to perform their democratic functions.

### **Lack of transparency**

Popular control over public decision-making and deliberative democracy requires transparency in relation to the funding of parties (see Chapter One). It is such transparency that forms a key aim of the various disclosure schemes.

While these schemes achieve some degree of transparency, there are serious limitations to the disclosure schemes. The schemes, firstly, fail to provide adequate information relating to political donations. Parties are not legally required to accurately categorise a receipt as a ‘donation’ or otherwise. As a consequence, the voluntary system of self-declaration is a recipe for errors and under-reporting. Moreover, a breakdown of donations received from particular types of donors, for instance, companies and trade unions, can only be extricated with a great deal of effort. This fact has been learnt the hard way by academics, political researchers and activists seeking to distil such information.

Further, certain transactions that would commonly be presumed to be donations fail to be declared as such because they are not ‘gifts’. Arguably, the most controversial

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<sup>12</sup> Grattan, ‘Our political guns for hire’, *The Age*, 25 May 2005, p. 21.

transactions involve the purchase of political access (see box entitled ‘How the Liberal Party and Labor Party sell political access’).

**How the Liberal Party and Labor Party sell political access**

Of all the parties, the Liberal Party and Labor Party are the most practised at selling political access. Such sales take various forms. At times, specific events are organised with the aim of fund-raising through the sale of political access. In the lead up to the 2004 Federal election, for instance, the Liberal Party charged \$11,000 for seats at John Howard’s table as part of a fundraiser at Sydney’s Wentworth Hotel that included 10-minute briefings with ministers. During the same time, Mark Latham, then Federal Labor Party leader, hosted an ‘It’s Time’ dinner at Sydney’s Westin Hotel with \$10,000 charged per table. In June 2005, 100 business representatives paid \$7,500 each in exchange for 15-minute tete-a-tete with Liberal Party ministers and ministerial chiefs of staff.

The sale of political access also occurs through fund-raising organisations. For example, the New South Wales branch of the Liberal Party has an outfit named the ‘Millennium Forum’. A message from John Howard, the Prime Minister on its website, states that ‘(t)he Millennium Forum provides a wealth of opportunities for the business community and politicians at Federal and State levels to meet and discuss key issues within an informal framework’. Companies can join this forum by becoming sponsors. While the costs of sponsorship is not publicly disclosed on its website, it was reported in 2001 to range between \$10,000 and \$19,999 per annum. Sponsorship can entitle a company to invitations to boardroom lunches, places at VIP drinks and ‘off the record’ briefings.

The Victorian branch of the Labor Party, on the other hand, runs an organisation by the name of ‘Progressive Business’. According to its website, its ‘primary objective is to build relationships between business community and the Australian Labor Party’ and ‘(j)oining this influential group allows you to participate in the decision making progress (sic)’. It offers three levels of membership: corporate, business and individual respectively priced at \$1,400, \$880 and \$295 per annum. Each type of membership entitles the company or individual to a set number of breakfast and twilight ministerial briefings.

A party can sell political access in two ways: either directly or through an intermediary. Both methods can result in inadequate disclosure of political contributions. Examples of parties directly selling political access include dinner fund-raisers and fund-raising through organisations like the Victorian ALP's Progressive Business and the New South Wales Liberal Party's Millennium Forum. In such situations, while the amount received should be documented in the parties' annual returns, it is unlikely to be identified as a 'gift' because the contribution being made in exchange of value is not a 'gift' under electoral law.

With the market for the sale of political access giving rise to middle-men, another scenario involves the sale of political access through an intermediary. For instance, the ALP has, on several occasions, engaged Markson Sparks, a professional fund-raising firm, to organise fund-raising dinners. In such situations, contributors make their payments to the intermediary who, in turn, hands over profits of the fund-raising as a whole to the party, which is then declared as a single amount coming from the fund-raising firm. Information as to the specific amounts of the individual transactions and the identities of the contributors is not, then, disclosed in the annual return. Further, the obligations on donors to disclose 'gifts' are unlikely to apply where there is a purchase of political access. The effect of this lacuna is that selling political access through professional fund-raisers becomes a method 'to launder a donation to a political party'.<sup>13</sup> Paradoxically this occurs precisely with those payments where disclosure is vital because they raise concerns about undue influence. Further, the loopholes afforded to indirect sales of political access are likely to benefit more well off parties; parties that are in a stronger financial position to 'outsource' their fundraising activities or to provide donors with reassuring legal advice.

Another problem with the disclosure schemes concerns the timeliness of disclosure. Such timeliness is key to transparency promoting popular control and deliberative democracy. However, by requiring, at the most, annual disclosure, the various schemes do not provide timely disclosure. Speaking of the Federal scheme, the AEC

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<sup>13</sup> Australian Electoral Commission, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure,' para. 8.5.

has argued that ‘(t)his form of . . . reporting and release can result in delays that can discount the relevance of making the information public.’<sup>14</sup>

What is perhaps the most serious limitation of disclosure schemes is the lack of compliance. Such non-compliance, of course, cannot be definitively identified. There is, at the same time, good evidence that the parties are not treating their disclosure obligations under the Federal scheme seriously. The AEC has recently observed:

The legislation’s history to date can be characterised as one of only partial success. Provisions have been, and remain, such that full disclosure can be legally avoided. In short, the legislation has failed to meet its objective of full disclosure to the Australian public of the material financial transactions of political parties, candidates and others.<sup>15</sup>

Much of the AEC’s cause for complaint is based on its view that a culture of evasion existed in some quarters. It has previously stated that:

there has been an unwillingness by some to comply with disclosure; some have sought to circumvent its intent by applying the narrowest possible interpretation of the legislation.<sup>16</sup>

It is true that parties are staffed by volunteers which may render the task of complying with disclosure obligations more difficult. Yet this is hardly a reason for non-compliance: the parties, especially the major ones, are simultaneously professional outfits with million dollar budgets. Much more plausible than explanations invoking the volunteer elements of parties is, as the AEC says, ‘political parties in particular are not always according sufficient priority to the task of disclosure’.<sup>17</sup>

If the AEC’s observations are true, they identify an extraordinary situation. Two decades after the disclosure scheme was introduced, and nearly ten years after annual returns were introduced, some Australian political parties are flouting their disclosure obligations under the Federal scheme.

Arguably, evasion of disclosure obligations is facilitated by the enormous amount of monies being channeled through ‘associated entities’ of the major parties. Table 2.3 reveals in the aggregate the revenue of such entities as a proportion of the revenue

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<sup>14</sup> *Ibid*, para. 2.10.

<sup>15</sup> *Ibid*, para. 2.9.

<sup>16</sup> Australian Electoral Commission, *Funding and Disclosure Report Following the Federal Election Held on 3 October 1998*, para. 2.

received by the parties. While this proportion fluctuates according to the electoral cycle, the figures demonstrate the popular use of ‘associated entities’. The lowest proportion, for the financial year 2001/2002, is still close to half of the parties’ revenue.

**Table 2.3: Revenue of parties compared with revenue received by associated entities**

|   | Federal election year, 2001-02 (\$m) | Federal non-election year, 2002-03 (\$m) | Federal non-election year, 2003-04 (\$m) |
|---|--------------------------------------|--|--|
| Revenue received by political parties (‘RPP’)   | 147.24                               | 91.14                                    | 91.93                                    |
| Revenue received by associated entities (‘RAE’) | 63.59                                | 80.12                                    | 72.60                                    |
| RAE/RPP x 100 (%)                               | 43.19                                | 87.91                                    | 78.97                                    |

Source: Australian Electoral Commission, 2005, *Funding and Disclosure Report: Election 2004*, p. 19.

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<sup>17</sup> Ibid, para. 6.8.

Such use of ‘associated entities’ is not necessarily motivated by an attempt to evade disclosure. For instance, parties might be using an ‘associated entity’ as a vehicle for investment purposes. The benefits of investing through an ‘associated entity’ might include the limited liability of such an entity, if incorporated, and the opportunity to have directors that have stronger investment expertise. Also, there may be a perception that donors are more willing to contribute to an organisation that is at ‘arms-length’ from the party.

On the other hand, the use of an ‘associated entity’ might be aimed at compromising transparency. Party officials may wish to avoid the formal decision-making processes of the party. While most disclosure schemes subject ‘associated entities’ to obligations identical to those that apply to registered parties, money received by such entities might not be as well scrutinised by the media or other organisations compared to those funds directly received by the parties.

Party officials might also suspect that the electoral commissions themselves face greater difficulties in enforcing the law against ‘associated entities’. The case of the Greenfields Foundation is perhaps instructive. In 1996, the foundation was assigned a loan of \$4.45 million to the Liberal Party after Mr Ron Walker discharged the guarantee of an existing debt of the party. In 1998, the AEC required the trustees of the foundation to lodge ‘associated entities’ returns of which it refused. The *Commonwealth Electoral Act* was then amended to confer upon the AEC the power to inspect records of an organisation for the purpose of determining whether it was an ‘associated entity’. After exercising this power, the AEC formed the view that the foundation was an ‘associated entity’ and required it again to lodge ‘associated entity’ returns. Under protest, the foundation eventually lodged such returns in September 1999.

What the Greenfields Foundation episode demonstrates is that when an organisation resists its obligations as an ‘associated entity’, the AEC has to redouble its efforts and, in some situations, secure legislative amendment, before successfully enforcing the law against such an organisation.

It is clear then that disclosure schemes are limited by the inadequate disclosure of the nature of contributions and delays in disclosure. There also seems to be a culture of non-compliance: the inevitable attempt by parties to exploit loopholes appears not to be sufficiently counteracted by robust enforcement and regulation. In short, such schemes are leaky sieves that permit evasion of adequate disclosure.

The problems with the disclosure schemes are compounded by the reluctance of parties to voluntarily disclose details of their income. In September 2004, the authors sent letters to Federal and State branches of the main parties seeking information regarding their finances and also sent follow-up letters posted in January 2006. As Table 2.4 demonstrates, most of these branches did not provide a response. Moreover, those who responded overwhelmingly referred us to returns lodged with the AEC.

The Federal Labor Party was most forthcoming in its response and provided general information as to the sources of its income which was said to include ‘membership and affiliation dues from State branches, public electoral funding, private donations and investments’. It also advised of its policy on not receiving donations from the tobacco industry and its Code of Conduct for Fundraising.<sup>18</sup>

While the Greens have yet to provide a response, its policy include ‘making public within three months all donations greater than \$1,500, in accordance with Australian Electoral Commission’.<sup>19</sup> It appears that such disclosure is made through *democracy4sale* website, a website maintained by the NSW Greens.<sup>20</sup> In addition to listing the donations to the Greens, this website also provides further information regarding the donors including whether they are individuals, unions or corporations. With corporate donors, information is also provided as to the type of company and, at times, the reasons for the donations.

**Table 2.4: Responses to requests for information on party income**

| Letter sent to (party) | Provided a response | Response referred us to AEC | Provided additional information |
|------------------------|---------------------|-----------------------------|---------------------------------|
| ALP – ACT              | X                   | NA                          | NA                              |

<sup>18</sup> Letter from Tim Gartrell, National Secretary, Australian Labor Party, dated 8 November 2005.

<sup>19</sup> The Australian Greens, *Donations to the Australian Greens*.

<sup>20</sup> The website address is <<http://www.democracy4sale.org>>

|                      |   |    |    |
|----------------------|---|----|----|
| ALP – National       | √ | √  | √  |
| ALP – NSW            | X | NA | NA |
| ALP – NT             | X | NA | NA |
| ALP – QLD            | X | NA | NA |
| ALP – SA             | X | NA | NA |
| ALP – TAS            | X | NA | NA |
| ALP – VIC            | X | NA | NA |
| ALP – WA             | X | NA | NA |
| Democrats - National | √ | X  | X  |
| Greens – National    | X | NA | NA |
| Liberal – ACT        | X | NA | NA |
| Liberal - National   | X | NA | NA |
| Liberal - NSW        | X | NA | NA |
| Liberal – QLD        | √ | √  | X  |
| Liberal - SA         | X | NA | NA |
| Liberal - TAS        | X | NA | NA |
| Liberal – VIC        | √ | √  | X  |
| Liberal - WA         | X | NA | NA |
| CLP - NT             | X | NA | NA |
| Nationals – National | X | NA | NA |
| Nationals - NSW      | X | NA | NA |
| Nationals - QLD      | √ | √  | X  |
| Nationals - SA       | √ | X  | X  |
| Nationals - VIC      | √ | √  | X  |
| Nationals - WA       | X | NA | NA |

### **The problem of proving corruption as graft**

Chapter One defined corruption as graft as the improper exercise of political power in favour of donors because of the contributions they made. Only one jurisdiction seeks to prevent such corruption by limiting the amount of contributions that can be made to parties. As noted earlier, in Victoria, holders of casino and gambling licences and their related companies are prohibited from making political donations exceeding \$50,000 in a financial year to each registered political party.

For other jurisdictions, the prevention of corruption as graft rests mainly on the disclosure schemes. These schemes rely upon ‘letting the sunshine in’ by making public various details of donations made, for example, the date of the donation, the identity of the donor and the amount of the donation. It is then hoped that such

exposure would prevent graft in two ways: by exposing it and deterring large donations.

The fact that only one Federal Parliamentarian, Dr Andrew Theophanous, has been jailed for corruption<sup>21</sup> might suggest that the disclosure schemes are reasonably effective in preventing corruption as graft. But such evidence does not mean that disclosure schemes are efficacious on their own. Indeed, such schemes face a formidable problem of proof. As the Royal Commission on WA Inc noted, it is generally difficult to establish a causal link between donations and particular government actions. Disclosure regimes do very little to erode this difficulty. Indeed, they *cannot* expel this difficulty. All they do is put into the public realm various details of donations. The effect of this, together with government actions which benefit donors, might give rise to suspicion of impropriety. But without more, this can only be a suspicion. Short of a full-scale police investigation, citizens would not know whether these suspicious circumstances in fact were based on impropriety or were only an innocent coincidence. Moreover, this fog of inconclusiveness is all the more effective when political donations are the norm for corporations. (Refer to box entitled ‘A case-study on the problem of dis/proving corruption as graft: ‘Cash-for-visas’ controversy’).

Put briefly, disclosure schemes seek to prevent such corruption indirectly and, in doing so, lack the advantages of more direct regulation such as a prohibition on ‘strings attached’ donations or amount restrictions that limit contributions that carry with them a heightened risk of graft. From the perspective of preventing corruption as graft, there is much to be said for the view that such schemes are ‘ineffectual by design’.<sup>22</sup>

**A case-study on the problem of dis/proving corruption as graft: ‘Cash-for-visas’ controversy**

<sup>21</sup> See Hindess, *Corruption and Democracy in Australia: Democratic Audit of Australia Report No 3*, p. 16. For a local government example of corruption as graft, see *Tweed Shire Council Public Inquiry: Inquiry’s Commissioner’s First and Second Reports* (2005).

In 2003, former Labor Party Minister, Senator Nick Bolkus, found himself at the centre of a ‘cash-for-visas’ controversy. In 2001, while Federal Immigration Minister, Senator Bolkus had received a donation of nearly \$10,000 from Mr Dante Tan. Senator Bolkus then transferred the money to the Labor Party declaring it as a donation from himself to the party. Around the same time, Bolkus provided Tan, who was wanted by Filipino authorities for alleged fraud, advice on how to proceed with an immigration application. When Dante’s donation was revealed, Senator Bolkus initially claimed that the donation was for the purchase of raffle tickets. When it was then shown that no such raffle existed, Bolkus then formally declared the donation and no legal action was taken.

In the same year, a controversy erupted over donations received by then Immigration Minister, Philip Ruddock’s election campaign, from Mr Karim KISRwani, including an alleged sum of \$10,000 from Dante Tan. KISRwani, a long-time financial supporter of Ruddock and the Liberal Party, also regularly requested Ruddock to exercise his powers as Immigration Minister to intervene in unsuccessful visa applications with nearly half of these requests successful in attracting ministerial intervention. A Senate inquiry into the matter handed down a report criticising the Immigration Department and the Minister’s refusal to allow the inquiry access to the relevant case-files and ministerial note-books and concluded that it was unable, for lack of information, to conclusively determine the connection between KISRwani’s donations and Ruddock’s exercise of powers. Any connection, according to the report, was ‘open to speculation’.<sup>23</sup> No further legal action was taken in relation to this matter.

These ‘cash-for-visas’ episodes demonstrate that disclosure schemes do serve an important purpose of publicising the details of political donations. However, their utility is limited in preventing corruption as graft because of the problem of proof. Short of a Royal Commission with powers to compel the production of information, the connection, if any, between a donation and favourable governmental action will be, as the Senate report puts it, open to speculation.

### **The danger of corruption as undue influence**

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<sup>22</sup> Tham, ‘Legal Regulation of Political Donations in Australia’, p. 72.

<sup>23</sup> Senate Select Committee on Ministerial Discretion in Migration Matters, *Report*, para. 6.51.

Corruption as undue influence occurs when contributions undermine the ability of citizens to have a fair opportunity to influence political outcomes. It results in part from the fact that contributions are arguably being made by actors who do not have a claim to democratic representation in Australia. As stated by Chief Justice Mason, ‘the concept of representative government and representative democracy signifies government by the *people* through their representatives’.<sup>24</sup> The *Commonwealth Constitution* also stipulates that members of the House of Representatives are ‘chosen by the *people of the Commonwealth*’.<sup>25</sup> The fundamental point is that it is Australian citizens who are entitled to democratic representation in Australia.

From this premise, it might naturally follow that foreign actors do not have any entitlement to democratic representation and that their financial contribution to Australian parties might be seen as a form of corruption as undue influence. This premise, on the hand, implies that democratic politics is bounded by national boundaries and, arguably, does not take sufficient account of legitimate efforts to support democratic movements overseas.

The position is perhaps clearly with commercial corporations, corporations formed with the principal purpose of making profit. They do not have a direct claim to democratic representation, as they are not citizens—the ultimate bearers of political power in a representative democracy. More than this, these corporations do not even have a derivative claim to political representation. This is because they are inherently undemocratic in their decision-making structure. Shareholder control must necessarily mean that power in a business is parcelled out according to the criterion of wealth. The plutocratic nature of corporations can be clearly contrasted to organisations like trade unions which are legally required to have majoritarian decision-making.<sup>26</sup>

Several objections may be made to this argument. It may, firstly, be said that a legal requirement to have majoritarian decision-making does not necessarily mean that organisations are democratic. There is force to this point: there is more to democracy than majoritarian decision-making and the law may not translate into practice. For

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<sup>24</sup> *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 137 (emphasis added).

<sup>25</sup> *Commonwealth Constitution* s 24 (emphasis added).

instance, some trade unions are not fully functioning democratic organisations. Nevertheless, all this does not detract from the fact that corporations, by virtue of share-holder control, are fundamentally undemocratic.

The argument implies that trade unions have a *prima facie* claim to democratic representation while denying commercial corporations any such right. Is this not counter to the principle of political equality especially when trade unions funds go overwhelmingly to a single party, the Labor Party? Such concern, however, seems to misconceive the principle of political equality. Resting upon equal concern and respect for *citizens*, it does not require that all political participants be treated as equals. It is citizens who must be treated as equals. From this perspective, it is quite legitimate to distinguish between commercial corporations that treat citizens unequally by calibrating decision-making power according to units of capital and trade unions that are required by law to accord each member a single vote.

Also, it might be argued that even if foreign actors and commercial corporations are not entitled to democratic representation, it does not lead to a conclusion that their political contributions are necessarily undemocratic. It justifies denying them voting rights but nothing more. It might be said that foreign actors, for instance, the US government, and commercial corporations like Publishing and Broadcasting Limited inevitably have influence over Australian politicians. If so, what then is the difference between such influence and that mediated through a political contribution?

Whatever the democratic merits of influence directly resulting from Australia's foreign relations and capitalist system, influence facilitated by a political contribution is *quantitatively* and *qualitatively* different from such influence. It is quantitatively different because the contribution is likely to increase the level of influence. It is qualitatively different because the contribution changes the character of the influence. The influence wielded by foreign actors and commercial corporations, when unmediated by political contributions, occurs because the parties apprehend their impact on Australian citizens. Put differently, it is the interests of Australian citizens that give rise to such influence. When political contributions enter the mix, the nature

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<sup>26</sup> Federally registered trade unions, for one, are *legally* required to have majoritarian structures: *Workplace Relations Act 1996* (Cth) Registration and Accountability of Organisations Schedule.

of the influence changes. The calculus of the recipient party is then centered on receiving the contribution with the interests of the foreign actor or commercial corporation naturally coming to the fore. The quantitative difference means that there is an increased risk of corruption as undue influence. The qualitative difference heightens the danger of Burkean undue influence.

Contributions from commercial corporations and foreign donations are then, arguably, a form of corruption as undue influence. At the very least, it can be said that such contributions pose a serious danger of such corruption. How grave then is this danger?

The risk of corruption due to foreign contributions is currently minimal with parties receiving limited foreign funding. Table 2.5 provides the amounts received by parties from contributors with an overseas address for five financial years, 1998/1999 to 2002/2003.

**Table 2.5: Foreign contributions to parties**

| <b>Party</b>         | <b>Amount from overseas addresses (\$)</b> |
|----------------------|--|
| ALP                  | 82,529.76                                  |
| Liberal Party        | 41,609.05                                  |
| National Party       | Nil  |
| Australian Democrats | 2,200                                      |
| Greens               | 31,573.57                                  |

Source: Calculated from Australian Electoral Commission, April 2004, *Submission to the Joint Standing Committee on Electoral Matters' Inquiry into Disclosure of Donations to Political Parties and Candidates*, p. 26.

The position is different, however, in relation to corporate funding. Table 2.6 sets out the amounts of total, trade union and corporate funding received by the parties and their respective proportions for the financial year 2001/2002, a Federal election year (during which the parties received election funding).

**Table 2.6: Corporate and trade union funding of parties**

| Party                | Total funding (\$) | Corporate funding (\$) | Corporate funding (% of total funding) | Trade union funding (\$) | Trade union funding (% of total funding) |
|----------------------|--------------------|------------------------|--|--------------------------|--|
| ALP                  | 47,848,146         | 14,098,827             | 29.47                                  | 5,671,348                | 11.85                                    |
| Liberal Party        | 37,885,990         | 16,264,264             | 42.93                                  | 3,660                    | 0.01                                     |
| National Party       | 6,540,131          | 2,530,266              | 38.69                                  | 0                        | 0  |
| Australian Democrats | 4,995,638          | 828,745                | 16.59                                  | 6,000                    | 0.32                                     |
| Greens               | 2,504,981          | 422,256                | 16.86                                  | 15,000                   | 0.6                                      |

Source: Dean Jaensch, Peter Brent and Brett Bowden, 2004, *Australian Political Parties in the Spotlight: Democratic Audit of Australia Report No 4*, unpublished data.

This table shows there is a serious danger of corruption as undue influence due to the parties' reliance on corporate funding. This is most apparent with the Coalition parties. In the financial year 2001/2002, more than a third and, in the case of the Liberal Party, nearly half, of their funds, came from corporations. The Labor Party was not far behind with nearly thirty per cent of its funds coming from corporate sources. The minor parties, the Australian Democrats and Greens, are also reliant on corporate money albeit to a lesser degree.

Finally, it is clear that the reliance of the parties on corporate contributions has flourished in a regulatory context that adopts a laissez-faire attitude towards such contributions with no bans or amount limits. While ostensibly aimed at preventing undue influence, the disclosure schemes do nothing to combat such dependence. Indeed, by publicising the reliance of the major parties on corporate money, they may have perversely assisted the normalisation of corporate contributions.

### **Is institutional dependence on particular contributors a form of corruption?**

The dependence of the major parties on corporate money, and the Labor Party on trade union funds, as shown by the above table, raises an important question: is dependence of a party on a particular class of contributors, most notably, business and trade unions, a form of corruption as undue influence?

Such dependence, often described as *institutional dependence* in the literature, has been criticised on democratic grounds. For instance, distinguishing between *grass-roots* and *plutocratic financing* of parties, Nassmacher has argued that funds from organisations with specific interests, ‘interested money’, is tantamount to plutocratic financing.<sup>27</sup>

Labelling funding from ‘interested money’ as *necessarily* plutocratic is, however, problematic. Funding through ‘interested money’ can, at times, be a form of grass-roots financing. Democratically-organised organisations, for instance, can act as conduits for the funds of Australian citizens who are their members. The mere fact that funding is received from organisations should not be condemned as being ‘plutocratic’: there is a need to further inquire into the internal structures and practices of the contributing organisation.

With such a focus, it is quite apt to label money from commercial corporations as ‘plutocratic financing’. Share-holder control plainly institutes a decision-making structure that fundamentally allocates power according to wealth. That said, a plutocratic structure can have democratic elements. Much will depend on the degree of institutional accountability, accountability of the organisation to its members.<sup>28</sup> As it stands, directors and senior executives of Australian corporations can authorise political donations without the need to seek prior approval of their share-holders nor the need to specifically bring such donations to the attention of the share-holders.<sup>29</sup> Such a situation not only cloaks corporate donations in secrecy but also risks a lack of share-holder accountability.

There is then a need for greater accountability of commercial corporations to their share-holders in relation to political donations. What about trade union donations? It was said earlier that Australian trade unions can be distinguished from commercial corporations because they are legally required to have majoritarian decision-making. Under industrial statutes, trade union office-bearers must be elected through a secret ballot with each union member having a single vote. These office-bearers then form a

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<sup>27</sup> Nassmacher, ‘Introduction: Political Parties, Funding and Democracy’, pp. 7-8.

<sup>28</sup> Ewing, *The Funding of Political Parties in Britain*, pp. 177-8.

<sup>29</sup> See generally Ramsay, Stapledon and Vernon, ‘Political Donations by Australian Companies’, p 177.

committee of management which generally has authority over the disbursement of funds. For instance, a union's committee of management can decide that the union affiliate to the ALP with its affiliation fees paid out of membership dues.

Is this process sufficient to stamp trade union donations as democratic? On one hand, a process of representative democracy is legally required. Also, most members when joining a union would know that trade unions engage in political activity with many of them affiliated to the ALP. On the other hand, formal requirements of representative government might mask oligopolies of union officials. Further, most union members are not members of the ALP and many of them do not even vote for the ALP. For instance, a study of Federal elections conducted between 1966 and 2004 has found that on average only 63% of union members vote for the ALP.<sup>30</sup>

The last two points raise the danger of ambitious union officials contributing to the ALP more to further their careers than to protect their members' interests. Both point to the need for greater accountability of union officials to their members in relation to the political contributions.

There is still another problem to be grappled with. Assuming that organisations have adequate institutional accountability, does dependence of a party on classes of these organisations constitute or lead to a form of corruption? There is no corruption as undue influence by virtue of the internal structures and practices of the organisation. There might, however, be such corruption because of the comparative wealth of the organisation. Take the hypothetical example of an organisation of millionaires that accorded each member one vote and operated democratically in practice. If this 'Millionaires Club' were to seek to control a party by flooding it with funds, there would a serious question as to whether this was a form of corruption as undue influence.

When a party is financially dependent on particular sections of Australian society, there is, however, an invariable risk of Burkean undue influence. With such dependence, there is clearly a danger that party officials and representatives will not

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<sup>30</sup> Leigh, *How do Union Members Vote?*

form independent judgments of the public interest but shape their positions according to the interests of their financiers. These observations, of course, apply with particular force to the Labor Party because of its reliance on trade union money with more than one-tenth of its funding for 2001/2002 coming from trade unions.

But whether this is generally undesirable from a democratic point of view is an open question. As noted in Chapter One, the Burkean notion of undue influence contradicts the principle of popular control especially in the context of interest-group politics. It also runs counter to the principle of freedom of political association by being hostile towards parties being organised on the basis of the interests of particular groups. Such hostility fits uneasily with the freedom of citizens to organise parties in whatever manner they see fit. In particular, it undermines the freedom of citizens to associate in intermediate parties, that is, parties like the Labor Party that are organised on the basis of member bodies themselves being organisations of citizens.<sup>31</sup>

To sum up, whether dependence of a party on particular type of organisations gives rise to corruption as undue influence depends on the type of contributing organisation and the nature of the contribution it makes. Such dependence, however, heightens the risk of Burkean undue influence but whether such a risk is counter to democratic principles is debatable.

### **Institutionalising corruption as undue influence through sale of political access**

The Liberal and Labor parties regularly raise funds by selling political access. We can object to such practices on the basis that the secret discussions they entail, for instance, ‘off the record’ briefings, and the amounts spent on purchasing political access, increase the risk of corruption as graft.

Even if the sale of political access does not lead to corruption as graft, it will likely involve corruption as undue influence. Political access is mainly purchased by commercial corporations. Indeed, the key target of organisations like Millennium Forum and Progressive Business are businesses. As argued above, business

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<sup>31</sup> Ewing, *Trade Unions, the Labour Party and Political Funding*, pp. 16-8.

contributions pose a serious danger of corruption as undue influence. The established practice of selling political access institutionalises this risk of corruption.

The steep fees involved in purchasing political access also mean that ordinary citizens are not in a position to buy such access. It is far-fetched to imagine an ordinary citizen being able to spend \$1,000 for a dinner with John Howard. Such prohibitive costs provide a further reason why the sale of political access constitutes corruption as undue influence: its price denies citizens a fair opportunity to influence the exercise of political power.

Regulation through disclosure schemes does little to prevent the sale of political access. Indeed, it could be said that it encourages such sale because it allows parties to legally limit their disclosure of contributions when they sell political access. As noted earlier, parties directly selling political access do not have to declare them as ‘gifts’. Moreover, when access is sold through an intermediary, the details of the purchaser do not have to be disclosed.

### **Undermining political equality**

An important aspect of political equality is fair rivalry amongst the parties. Table 2.7 attempts to determine whether private funding promotes such rivalry by gauging how the amount of private funding received by a party compares with its electoral support. In essence, the amount of private funding received by a party was divided by the number of first preference votes the party received in the 2001 Federal election. Being derived on a vote-basis, these figures are not affected by the different levels of electoral support enjoyed by the parties and hence, give a much better picture as to their private fund-raising abilities.

**Table 2.7 : Private funding per vote of parties**

| <b>Party</b>  | <b>First preference votes,<br/>2001 Federal election</b> | <b>Private funding<br/>(\$ per vote</b> |
|---------------|--|---|
| ALP           | 4, 341, 419  | 22.14                                   |
| Liberal Party | 4, 291, 033  | 18.62                                   |

|                |          |       |
|----------------|----------|-------|
| National Party | 643, 924 | 28.64 |
| Democrats      | 620, 248 | 6.12  |
| Greens         | 569, 075 | 8.51  |

Source: Annual returns for financial years, 1999/2000-2001/2002 (as calculated in Joo-Cheong Tham and David Grove (2004) 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections' (2004) 32 *Federal Law Review* 387, 404).

This table reveals a dramatic funding inequality between the ALP, Liberal Party and National Party, on one hand, and the Democrats and the Greens, on the other. For example, for each dollar of private money received per vote by the Democrats, more than three dollars was received by the ALP. And for each dollar of private money received per vote by the Greens, the Liberal Party received two dollars. These figures underline how the private funding of parties presently undermines fair rivalry amongst the parties: not only do the major parties enjoy a disproportionate amount of private funds, the disproportion is so profound that there is a risk that the minor parties are drowned out.

Table 2.6 points to a different kind of political inequality: inequality between important social interests. That table demonstrated how the main parties are reliant on corporate money. Even for the ALP, the party of 'labour', corporate funding, for the financial year 2001/2002, was nearly three times the amount of trade union funding. If funding roughly tracks influence, it is clear then that business has far greater influence over the parties than the labour movement.

This is another possible source of political inequality that favours established parties. It was argued earlier that the disclosure schemes are riddled with serious loopholes and quite possibly face a culture of non-compliance. These circumstances benefit 'repeat players' that are familiar with exploiting the loopholes and have the resources to protract enforcement efforts. New or poorly resourced parties, on the other hand, are much less in a position to take advantage of these inadequacies.

### **Free to donate**

The foremost democratic virtue of funding of Australian political parties and its regulation is, perhaps, the fact that citizens, companies and trade unions are legally

free to politically contribute in whatever manner they like and parties are free to receive any contribution. Insofar as political contributions are a form of political expression, freedom of political speech is then preserved. Moreover, the ability of parties to receive whatever contributions they see fit buttresses the freedom of political association.

Disclosure schemes do, however, impinge on the right to privacy and might, therefore, deter political contributions.<sup>32</sup> Is such a breach of privacy justified?

It is important to underline that, in general, the right to privacy only applies to natural persons. Commercial corporations or other corporate entities such as trade unions have no independent claim to the privacy of their affairs.<sup>33</sup> Further, the disclosure schemes only make public selected details regarding political contributions. Such a limited incursion into the privacy of individuals can be easily justified on the grounds of preventing corruption and promoting political equality.

The claim that such disclosure deters political contributions, on the other hand, must be evaluated in the context that disclosure schemes are, in fact, aimed at discouraging particular types of contributions. Because they are expressly aimed at preventing contributions that involve corruption, the mere claim that disclosure deters *all* political contributions carries very little weight. So far, there is very little evidence of possible donors being intimidated by the prospect of disclosure with evidence supporting this claim largely based on anecdotes.<sup>34</sup> With such paucity of evidence, there is little reason to give much credence to claims of intimidation due to disclosure.

## **Conclusion**

We can now answer the key question set for this chapter: *how democratic is the private funding of political parties in Australia?*

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<sup>32</sup> Both concerns were raised by the majority report of the Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, paras. 13.78-13.79.

<sup>33</sup> *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199.

<sup>34</sup> See majority report of the Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, para. 13.79 quoting Liberal Senator Warwick Parer.

The answer is a qualified ‘yes’ in the sense that a ‘lackadaisical’<sup>35</sup> regulatory framework preserves the formal freedom of citizens, companies and trade unions to politically participate through money. Unencumbered by regulation, parties are also free to receive whatever contributions they like.

The private funding of Australian parties is, however, democratically ambiguous on two counts. It is unclear whether such funding assists the parties in performing their functions. Indeed, the focus on electioneering and the pre-occupation with fund-raising might divert parties from such activity. Further, while disclosure schemes assist in preventing corruption as graft, they are hampered by a serious problem of proof.

Importantly, the private funding of Australian parties is clearly tainted by undemocratic elements. There is inadequate transparency of such funding. Moreover, there is a grave risk of corruption as undue influence due to corporate contributions and the sale of political access (and to a much lesser extent, foreign donations). To compound the situation, private funding undermines political equality: the Coalition and Labor parties are financed by private funds in a manner disproportionate to their electoral support and the regulatory loop-holes, arguably, benefit more-established parties.

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<sup>35</sup> Orr, ‘Political Disclosure Regulation in Australia’.

## Chapter 3 – Public funding of political parties

In many countries, it is now widely accepted that some public funding should be paid to political parties to support their activities. However, political parties were not always so popular. In historical terms, parties are only a very recent development and originally, they were viewed with suspicion. There were fears that parties would pose a threat to the general public interest and override the interests of individuals.

In the American *Federalist Papers*, written in the 1780s and generally considered to be one of the most important contributions to political thought, James Madison talked about the need ‘to break and control the violence of faction’, by which he meant political parties, and which he regarded as the greatest danger to popular government. Madison (later the fourth president of the United States) worried ‘that the public good is disregarded in the conflicts of rival parties . . .’

But with the development of the mass franchise, there were more voters to be won over and a need for more sophisticated organisations which could conduct election campaigns, attract votes and represent large numbers of constituents in a coherent manner. Political parties began to combine coalitions of interests and develop policies, they also regulated the number and type of people seeking public office and, once in government, were able to maintain the majorities needed to implement policies and accomplish goals.

As parties played these roles, there was growing recognition of the positive benefits they could deliver including the way in which they acted as a link between individual citizens and the state. This developed into a general popular acceptance, especially in the post-WWII era, that parties were necessary institutions for democracy. While parties still have their critics today, it is now generally held, as political scientist E. E. Schattschneider famously said, that ‘modern democracy is unthinkable save in terms of political parties’.<sup>36</sup>

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<sup>36</sup> Schattschneider, *Party Government*, p.1.

Once political parties came to be seen in this light—as an integral and beneficial part of democratic politics—it paved the way for greater state support including the state providing parties with financial assistance. This was defended on the basis that it was actually a contribution to the broader public good and, in return, the state could justifiably ask to involve itself in the parties’ affairs including requiring financial reporting and disclosure requirements.

There are four major kinds of state support provided to political parties:

- direct funding in the form of cash paid to the parties;
- indirect support via tax concessions;
- when the state provides goods and services without charge such as free mail and free broadcast time; and
- indirect support via parliamentary entitlements for MPs which represent a considerable form of financial support for parties with multiple members in parliament.

In Australia, we might also add as a fifth category of support, compulsory voting because this system means that the state takes responsibility for the preparation of electoral rolls and voter registration freeing the Australian parties from responsibilities that their counterparts in voluntary voting systems elsewhere have to bear.

It is appropriate to begin by considering the most bountiful type of largesse—the state provision of cash paid directly to the parties through election funding.

### State funding of election campaigns

The idea that political parties are a ‘public good’ is now so widely accepted that almost all western democracies have adopted a system of direct election funding. This is usually focused on the state providing money to help the parties campaign and to support their electioneering costs.

**Arguments in favour of election funding:**

- it removes the necessity or temptation to seek funds that may come with conditions imposed or implied;
- it helps parties to meet the increasing cost of election campaigning;
- it helps new parties or interest groups compete effectively in elections;
- it may relieve parties from the ‘constant round of fund raising’ so that they can concentrate on policy problems and solutions; and
- it ensures that no participant in the political process is ‘hindered in its appeal to electors nor influenced in its subsequent actions by lack of access to adequate funds’.

Source: Joint Select Committee on Electoral Reform [JSCER], *First Report*, September 1983, Canberra, Parliament of the Commonwealth of Australia, pp. 153–155.

In Australia, it has been the Labor Party which has initiated funding for election campaigns in each of the five jurisdictions which now have this system (see Table 3.1). While the conservative parties initially voiced strong opposition to the state funding of political parties, once in office, no Coalition government has yet repealed it. This accords with international experience also suggests that once public funding is in place, it is highly unlikely to be abolished.

There are organisational reasons which make public funding particularly appealing for parties. In their famous analysis of political party behaviour, Richard Katz and Peter Mair, describe how modern parties operate as ‘cartel parties’ which, although they appear to be opponents, actually collude on matters of common interest. Katz and Mair argue that state funding for parties is one of these shared interests as it protects the parties from the organisational consequences of phenomena such as declining memberships and rising media costs.

According to this argument, parties are especially likely to recognise and act on a shared interest in creating a political finance scheme that favours them, when their party is staffed with those who, in German political economist and sociologist Max Weber’s terms, ‘live from politics’ and have a personal stake in centralising party organisation and maximising party revenue and organisational resources.

When election funding was introduced in Australia in the 1980s, the parties faced rising campaign costs, declining private contributions, electoral volatility and declining party memberships. This made some form of state subsidy particularly appealing and especially for labour parties which historically, have received less financial support from wealthy individuals and corporate donors.

In Australia, NSW was the first jurisdiction to introduce public funding in 1981, a Federal Labor government adopted it for the Federal level in 1984 and, ten years later, it was introduced in Queensland. Since then, it has also been adopted in Victoria and the ACT (Table 3.1).

**Table 3.1: Election funding in Australia**

| Jurisdiction      | Election funding | Introduced | Threshold  | Entitlement                  | Amount paid per eligible vote  | Paid          |
|-------------------|------------------|------------|--|------------------------------|--|---------------|
| <b>Federal</b>    | Yes              | 1984       | 4%   | As of right                  | 198.893 cents  | Post election |
| <b>NSW</b>        | Yes              | 1981       | 4%<br>(does not apply to a candidate who is elected) | Capped by actual expenditure | Determined by formula according to amounts in a predetermined central fund | Post election |
| <b>Victoria</b>   | Yes              | 2002       | 4%   | Capped by actual expenditure | 126.1 cents  | Post election |
| <b>Queensland</b> | Yes              | 1994       | 4%   | Capped by actual expenditure | 135.862 cents  | Post election |
| <b>ACT</b>        | Yes              | 1992       | 4%   | As of right                  | 134.333 cents  | Post election |
| <b>NT</b>         | No               |            |  |                              |  |               |
| <b>WA</b>         | No               |            |  |                              |  |               |
| <b>SA</b>         | No               |            |  |                              |  |               |
| <b>Tasmania</b>   | No               |            |  |                              |  |               |

When the election funding system was introduced at the Federal level in 1984, it was originally proposed that no candidate should receive any money unless they gained more than ten per cent of the first preference vote at the election. This would have prevented most, if not all, minor parties from receiving any funding. The Australian Democrats argued strongly against any threshold at all as a way of encouraging new entrants but, in the end, a four per cent threshold was introduced.

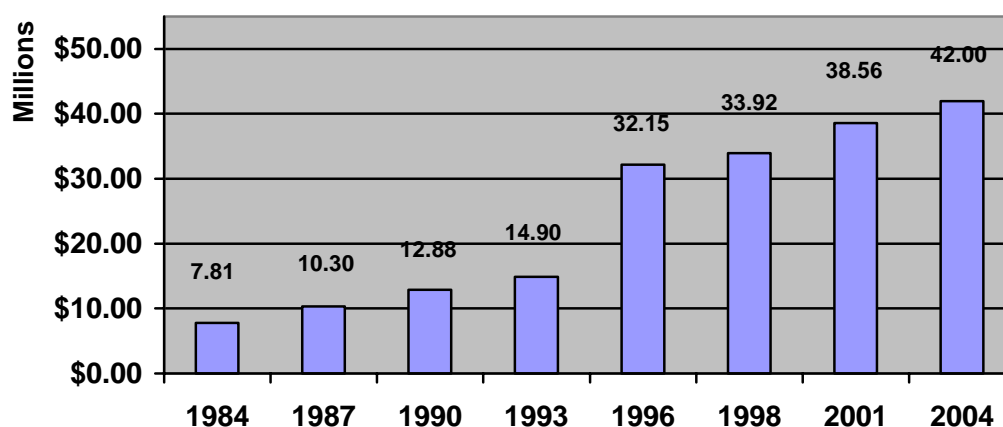
At the Federal level, the funding scheme began as a strict reimbursement scheme (only reimbursing candidates for expenditure they had incurred during the election and could document) but, in 1995, the legislation was amended so that eligible candidates and parties would receive their full entitlement, regardless of their election expenditure. It was argued that this change would reduce the administrative burden on participants as well as speed up the payments process for the AEC. However, three States—NSW, Victoria and Queensland—still cap public funding to candidates' and parties' actual expenditure and therefore still manage to bear what was described, at the Federal level, as an intolerable burden of administration.

**Common features of the election funding schemes in Australia:**

- political parties, non-party groups and candidates qualify for election funding on receiving 4 per cent of the first preference votes in an electorate;
- election funding is then paid in proportion to the number of formal first preference votes received (but is capped by the candidate/party's actual expenditure in NSW, Queensland and Victoria);
- total funding is based on the number of eligible formal first preference votes obtained multiplied by the rate of election funding applicable for that election (rates vary from election to election as they are adjusted in relation to the Consumer Price Index (CPI));
- in return, registered parties are required to lodge financial returns disclosing the total amount of receipts, expenditure and debts (the precise timing and requirements of disclosure varies between States).

At the Federal level, the rate of election funding is automatically indexed every six months to increases in the CPI. Between 1984 and 1993, these automatic increases were resulting in a rise of about \$2 million each election cycle. But in 1995, the Labor government introduced legislation to raise the rate of public funding. The effect of this was dramatic—the amount of public funding rose by \$17 million between the 1993 and 1996 elections (Figure 3.1).

**Figure 3.1: Rise in total election funding payments at Federal elections, 1984-2004**



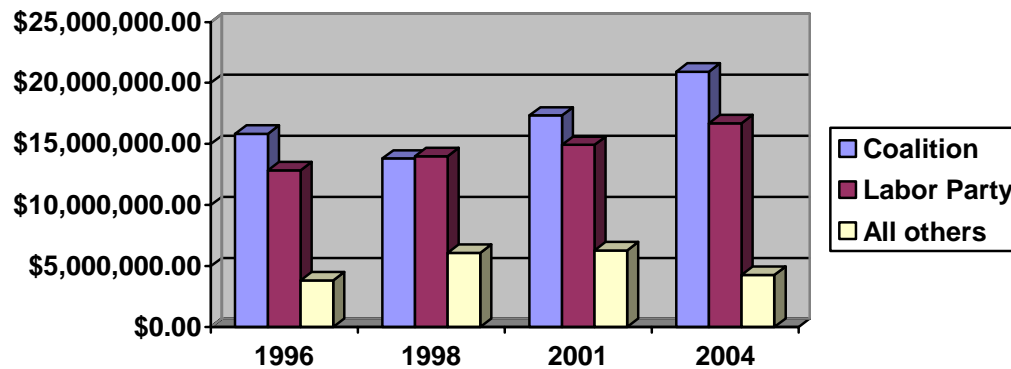
When the scheme was established in 1983, the amount of election funding per formal first-preference vote was based on the annual primary postage rate (30 cents in 1983), with 60 cents to be paid per House of Representatives vote and 30 cents per Senate vote. In 1995, the argument that it took ‘as much effort to win a Senate vote as one for the House of Representatives’<sup>37</sup> was accepted and the distinction was abolished.

One of the central arguments proposed in favour of election funding was that it would help newer and smaller parties compete on a more equal footing with the older, larger and much wealthier parties. While election funding does provide much needed

<sup>37</sup> The Hon. F Walker, Minister for Administrative Services, House of Representatives, *Hansard*, 9 March 1995, p. 1950.

funding to those parties which are able to reach the 4 per cent threshold, as Figure 3.2 shows for the Federal level, because the formula for allocating funding is based on past success in attracting votes, its allocation still favours the established major parties.<sup>38</sup> All other candidates and parties received only a tenth (\$4.29 million) of the amount received by the Coalition and Labor parties combined.

**Figure 3.2: Election funding payments for Federal elections, 1996-2004**



### **(Un)democratic effects of election funding**

The major parties would argue that it is appropriate they receive more funding as a reward for their success in interpreting the popular will of the electorate. Others might argue that, because the election funding system allocates money retrospectively, it favours the established parties who are already in a better position to interpret the popular will and indeed, to pay for research to do so. As political scientist Jonathon Hopkin points out, ‘state funding provides a level playing field, but only to those who have already played before. Challenger parties are at a disadvantage...’<sup>39</sup>

Because funding is allocated retrospectively, smaller parties and independent candidates must risk spending money on a campaign in the hope of recouping it after

<sup>38</sup> In NSW, funding is split between the Central Fund and the Constituency Fund and entitlements are capped so that a party or candidate cannot receive more than half of a fund.

<sup>39</sup> Hopkin, ‘The problem with party finance’, p. 645

the election. For many, this is too large a risk to bear and especially in view of the disparities in funds received by different parties and candidates shown in Figure 3.2. Such issues mean that the Federal election funding scheme does not necessarily promote equality between candidates as intended.

One of the other key arguments for introducing election funding in Australia was that it would address the high costs of election campaigning but, unlike the systems in place in some other countries, it did not require the parties to actually limit their spending (the only jurisdiction with expenditure limits in Australia is the Tasmanian Legislative Council as discussed in Chapter Five). The election funding system also did not require that the parties face any limit on private donations. As a result, it failed to break the nexus between parties and their corporate backers as described in Chapter Two.

In these two key areas—halting the rising cost of elections and stopping the flow of money from wealthy, private interests—the election funding system in Australia has not lived up to the rhetoric which accompanied its introduction.

In Australia, the parties are provided with election funding for their campaigns and are free to spend this as they choose. This is similar to many other countries which usually provide public funding for general party administration and/or election campaign activities. However, there are a few countries which require that the parties actually do something specific to earn their public funding and often these are activities which are judged to be beneficial to the broader community.

Table 3.2 shows that some countries require their parties to conduct socio-political research, promote the participation of young people or train party members. However, some categories of required activity are so broad as to be quite indistinguishable from normal party activity such as the categories of ‘public opinion-making’ and ‘influencing political trends’ in South Africa.

**Table 3.2: The basis for direct public funding to political parties, select countries**

| Country            | Purpose of public funding  |
|--------------------|--|
| Australia          | Non-earmarked  |
| Bolivia            | Programs for the education of the citizenry  |
| Canada             | General party administration and election campaign activities.   |
| Mexico             | Political education and training, socioeconomic and political research and publishing tasks.   |
| Netherlands        | <ol style="list-style-type: none"> <li>1. socio-political research</li> <li>2. to provide information to party members</li> <li>3. to keep in touch with political sister organisations in foreign countries</li> <li>4. research activities developed by political parties</li> <li>5. activities promoting the participation of youth</li> </ol> |
| New Zealand        | No direct public funding.  |
| Panama             | Training of party members.   |
| Russian Federation | <ol style="list-style-type: none"> <li>1. Support of signature collection</li> <li>2. payment for information and consulting services</li> <li>3. electoral deposits</li> <li>4. election campaign activities</li> </ol>   |
| South Africa       | <ol style="list-style-type: none"> <li>1. public opinion-making</li> <li>2. political education</li> <li>3. promotion of active political participation</li> <li>4. influencing political trends</li> <li>5. providing links between the people and organs of the state</li> </ol>   |
| Switzerland        | Parliamentary Group administration costs only  |
| United Kingdom     | General party administration and policy development purposes.  |

Source: IDEA, pp.211-4.

In some of the European countries, it is argued that state funding has led to ‘an increase in party activities and a greater ability to maintain activities between elections’.<sup>40</sup> In Australia, the most notable effect of such funding is that it has helped the parties to spend more on election advertising (discussed in Chapter Five). It is difficult to see any corresponding rise in activities such as public meetings, party

<sup>40</sup> Fisher and Eisenstadt, ‘Introduction: Comparative party finance’, p. 621.

building activities, political education programs or some of the other elements of party activity which have been measured elsewhere.

There are some effects of election funding which were not necessarily anticipated and are not always desirable. In systems where the funding is calculated on a basis which favours the larger parties, as in Australia, critics argue that it tends to intensify the already disproportionate tendencies at work in the system. This means that it can tend to freeze the party system as it were at the time of allocation and lead to political inertia.

Others argue that election funding, generally, reduces the parties' ability to perform the role of intermediary between the citizenry and the state because it leads the parties to neglect their members (now that they are no longer reliant on their membership dues) but also to neglect the broader community because state money frees them from the need to develop 'roots in civil society' so that they instead 'settle into a tranquil, state-reliant existence'.<sup>41</sup>

**Arguments against state funding:**

- it can undermine the independence of the parties and make them dependent upon the state
- it can lead them to ignore their members and broader civil society
- decisions about the amount and allocation of funding may be unfair to smaller, newer and/or opposition parties
- it can entrench the position of the major parties and ossify the party system
- opinion polls indicate that public funding can be very unpopular with ordinary citizens who may view it as a political hand-out or rort
- citizens may not agree that political parties are a high priority in terms of public expenditure.

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<sup>41</sup> Hopkin, 'The problem with party finance', p. 640.

In Australia, the major impacts of election funding are similar to those experienced as ‘common trends’ in other countries which have state funding:

- the parties receive more income but their electioneering costs have increased by a corresponding degree (see Chapter Five)
- the parties have become highly dependent on state funding
- there has been ‘a general bureaucratization and professionalization’ of party organisations
- centralisation has increased in party bureaucracies
- the importance of party memberships has declined.<sup>42</sup>

Some of these trends may have occurred anyway, independently of election funding, as part of a process of party ‘modernisation’ but others have undoubtedly been exacerbated by the availability of state funding.

To sum up, in theory, the state funding of election campaigns has a number of *possible* advantages. It can help to secure greater equality between citizens by minimising economic inequalities, it can promote freedom of speech by increasing the range of people who have the opportunity to meaningfully exercise that freedom and can relieve politicians from the burden of fundraising and prevent corruption. However, whether these aims are met is dependent upon the type of funding system adopted.

In Australia, there are some significant problems with the election funding system as it currently stands. Because it is proportional and retrospective, it exacerbates political inequality by disadvantaging new and minor parties. Money is provided with no requirement on parties to limit donations or to cap their expenditure. This means that it fails to wean the parties off corporate money or help to rein in escalating political spending. More than this, it does not assist the parties in performing their democratic functions because it does not require the parties to do anything in particular, such as party building activities or political education. As a result, Australian taxpayers now provide more than \$30 million for the major political parties to spend during an

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<sup>42</sup> Fisher and Eisenstadt, ‘Introduction: Comparative party finance’, p. 621.

election as an ‘add-on’ to the tens of millions they receive from private donations. This allows them to spend far more on political advertising than they could normally afford (see Chapter Five).

Aside from the provision of cash paid directly to them by the state, parties also benefit from indirect state funding in a number of other forms including media access, tax deductions and parliamentary entitlements for MPs.

### Equalising through free time on public broadcasters

The major political parties in Australia receive free broadcast time on the ABC and SBS during Federal elections. For the ABC, these free slots have been in place since 1932 and were introduced to educate the public and provide fair and equal access to the major parties.

The government and official opposition parties are given equal amounts of time to present their policies on the public network. They receive one hour of free time on ABC radio and television which consists of a thirty minute slot on their election launch and six five-minute ‘policy announcement’ slots for each party. Minor or new parties may also be eligible for free time if they are able to meet certain criteria.

For SBS, during a Federal election, free airtime is provided on television and radio to political parties for their policy speeches and statements on election issues. Free airtime is also available on radio for State election campaigns.

Although such broadcasts reach a relatively small viewing audience compared to the commercial television channels—never more than than 20 per cent of viewing audience at any one time—the provision of free broadcasting time remains an important principle of political speech and some time is provided free of charge in at least 79 other countries including all the established democracies except the US.

### Tax deductions

Australian political parties are *not* granted special taxation status or exempt from income, property, sales or inheritance taxes. In this respect, the Australian parties are treated similarly for taxation purposes as those in Canada, New Zealand, the UK and US. However, there are still two other types of tax deductions that the parties benefit from: 1) tax deductions for donors and; 2) tax deductions for party MPs.

### **Donors**

Individual donors to the Australian political parties are entitled to tax relief in the form of tax deductions which means that the donor can subtract the amount of the donation from his/her taxable income. At present, donors can only receive tax deductions for a maximum of \$100 in an income year with plans to increase this amount and extend it to corporate donors (see Chapter Six).

Tax relief can play a role in encouraging political participation through contributions. However, it can also have regressive effects and hence, undermine political equality. The present system of tax relief, for instance, favours the wealthy because, having more disposable income, they are more able to take advantage of the subsidy. Further, for the same amount of political donation, the wealthy, being subjected to higher income tax rates, receive a greater amount of public subsidy. At the same time, with tax-deductibility capped at one hundred dollars and confined to individual donors, such iniquity, while troubling, might not be too objectionable.

### **MPs**

In 1907, Australian parliamentarians made themselves liable to the payment of state income taxes but, from 1925, were allowed tax concessions for electorate expenses.

There have been reports that MPs use these concessions to ‘double-dip’ into public funds by claiming generous electorate allowances (see below) and then also lodging separate personal income tax deduction claims with the ATO for electioneering expenses such as campaign posters, opinion polls, afternoon teas and sausage sizzles.

Individual MPs can make a number of personal income tax claims which critics claim are unfair because other Australians do not receive such generous deductibility provisions. On average, MPs claimed around \$28,500 in tax deductions after the 2001 Federal election. Unlike the average Australian worker, MPs can claim for airport lounge memberships, buying birthday cards, flowers for funerals, light refreshments for staff and visitors, costs related to work travel such as car washes, auto membership fees and tolls and parking fees.

MPs can also claim generous self education expenses with one in three MPs claiming self education expenses for study such as Masters and MBAs. They do not have to count their travel entitlements as income and, if an MP has a property in Canberra, they can claim 'lease payments, rent, interest or borrowings, rates, taxes, insurance, general maintenance of building, plant and grounds'.<sup>43</sup>

Aside from these personal income tax deductions, MPs also receive a range of parliamentary entitlements which—when added together for the major parties' MPs in particular—represent a significant public subsidy of the parties' operations.

### Parliamentary entitlements

Parliamentarians receive a number of support services to help them perform their duties including salaries and allowances, support staff, an office, equipment, postage, printing costs and travel entitlements. Whether a party holds formal parliamentary party status plays a key role in determining the value of entitlements. As Norm Kelly has pointed out; 'Some of the benefits of having party status include additional resources, such as extra research and media staff...and increased salaries, travel and postage allowances for party leaders'.<sup>44</sup> Current requirements for determining parliamentary party status differ between jurisdictions and, Kelly argues, often 'highlight the ability of Labor and Liberal to work together to limit the effectiveness of minor parties...'<sup>45</sup>

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<sup>43</sup> Maiden, 'MPs take double-dip of poll cash', *Weekend Australian*, 17 July 2004, p. 3.

<sup>44</sup> Kelly, 'Determining parliamentary parties: A real status symbol', December 2004, p. 1.

<sup>45</sup> *ibid.*, p. 3.

## Annual allowance

All parliamentarians receive an annual allowance (or salary) with ministers and office holders—such as the Prime Minister, Deputy Prime Minister, Treasurer, Opposition Leader and President of the Senate—receiving higher pay. Table 3.3 shows current salaries paid to backbench MPs and Table 3.4 salaries for office holders.

**Table 3.3: Salaries of MPs as at 1 July 2005**

| Jurisdiction       | Current basic annual salary |
|--------------------|-----------------------------|
| Federal            | \$111,150                   |
| New South Wales    | \$110,650                   |
| Queensland         | \$110,650                   |
| Western Australia  | \$109,816                   |
| Victoria           | \$109,708                   |
| South Australia    | \$109,150                   |
| Northern Territory | \$108,150                   |
| ACT                | \$99,937                    |
| Tasmania           | \$90,957                    |

**Table 3.4: Salaries of selected office holders, 2005**

| Office holder                       | Current salary |
|-------------------------------------|----------------|
| <b>Federal</b>                      |                |
| Prime Minister                      | \$288,990      |
| Deputy PM                           | \$227,858      |
| Treasurer                           | \$208,858      |
| Opposition Leader                   | \$205,630      |
| Minister                            | \$191,734      |
| <b>Premiers and Chief Ministers</b> |                |
| WA                                  | \$263,944      |
| Qld                                 | \$226,399      |
| Vic                                 | \$219,416      |
| SA                                  | \$218,300      |

|     |           |
|-----|-----------|
| NSW | \$215,768 |
| NT  | \$211,572 |
| ACT | \$209,868 |
| Tas | \$195,558 |

There are a number of competing principles involved when determining appropriate salaries for MPs. It is important that parliamentarians are recompensed for their hard work and rewarded for a commitment to civil service, that the salary is generous enough to attract talented people and allow men and women of limited means to represent their electorates as a full-time occupation and that MPs are paid enough so that they will not be too easily tempted by bribes. Yet it is also important that MPs are paid at a rate which is judged to be reasonable and is acceptable to the general community.

Politicians often argue that they are paid significantly less than they could earn in the private sector. A prime minister or premier, for example, earns far less in salary than a CEO of a large corporation. While this is an important consideration, salary is not the only factor at play. MPs also receive an Electorate Allowance, transport, travel and superannuation benefits. Many former MPs now become highly paid consultants upon leaving office. There are also non-monetary rewards of office such as power, status and influence. A Federal backbencher currently earns more than double the weekly earnings of an average Australian worker. However, there will always be debate about what rate of pay is appropriate and will balance the need to attract quality representatives with the need to consider community expectations and the ‘real’ rate of recompense when pay and other benefits of service are combined.

As with salary and wages, the rules for other parliamentary entitlements may differ between jurisdictions. In order to consider particular issues in more depth, the following section examines some of the most important Federal parliamentary entitlements. It outlines the benefits available and then draws out distinctions between those benefits which tend to aid an MP personally (such as superannuation and travel) and those which are beneficial in a broader sense to the MP’s party and which are, in

practice, frequently pooled and redistributed for partisan purposes (such as printing and communications allowances).

### **Superannuation**

Previously, there was a perception that a lower salary in politics (as compared to the private sector) was balanced out by a generous superannuation scheme for MPs. Unlike other workers, MPs were able to access their superannuation at any age and amounts paid were significantly higher than that received by ordinary workers. In 2001, the government changed the scheme so that MPs had to wait until aged 55 years before they could touch their super payouts, however the system was still regarded as one of the world's most generous with almost 70 per cent of contributions provided by taxpayers, compared with a 9 per cent government contribution for other Australians.

In 2004, ALP leader, Mark Latham, successfully pressured John Howard to cut parliamentary super arguing that it was too generous and should be brought into line with community standards. Some politicians have argued that the resulting changes to the superannuation rules mean that there is now less incentive for people to go into politics. There have been reports in 2005 of a plan for 'a big jump in superannuation contributions for new MPs' to 'ease the financial pain' caused by the Latham-forced changes along with 'a new system of redundancy payments for those who lose their seat after one or two terms'.<sup>46</sup>

### **Electorate allowance**

Since 1952, Federal Senators and Members have been provided with an Electorate Allowance 'for costs necessarily incurred in providing services to their constituents'. The fixed annual allowance starts at \$27,300 and rises to \$39,600 for MPs representing larger electorates. In the past, the Federal Remuneration Tribunal defined how the allowance should be used but, in 1992, its use became self-regulated with MPs now determining how they spend the allowance.

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<sup>46</sup> Metherell, 'MPs out to refeather their retirement nests', *Sydney Morning Herald*, 9 December 2005, p. 1.

### **Travel allowance**

Known affectionately by politicians and their staffers as ‘TA’, travel allowance is paid daily to MPs who stay away overnight from their nominated home base. The amount paid is based on the cost of a four-star hotel in major cities and towns, along with meals and incidentals. For example, MPs visiting Canberra receive \$175 a day while those visiting Sydney or Melbourne receive \$402 per day.

### **Overseas travel**

Funding for overseas travel for MPs is justified on the basis that politicians need to have a broad view of society and global affairs, keep up-to-date with international trends and study conditions abroad that may be relevant to the passing of legislation in Australia. However, media attention often focuses on how these taxpayer-funded trips can also be used for politicians’ leisure. The tabloid press in particular often features stories claiming excess use of overseas travel entitlements.

#### **Newspaper headlines on politicians’ travel**

##### **‘Globetrotting MPs are taking voters for a ride’**

*Daily Telegraph*, 7 October 2005.

##### **‘You won’t believe what our MPs earn’**

‘CHEAP meals, cars and alcohol, free trips on The Ghan and even a digital camera - is your politician earning their keep?’

*Sunday Mail*, 11 December 2005.

##### **‘Politicians’ ticket to ride – Huge taxpayer-funded travel bills’**

*Daily Telegraph*, 9 December 2005.

##### **‘Jetset MPs beat winter chill flying north for the winter’**

*The West Australian*, 18 June 2005.

**‘\$16m bill for high flying MPs’**

‘Travel-addicted MPs ran up \$16 million on airfares and hotel bills in the six months to December 2004’.

*Daily Telegraph*, 24 June 2005.

There is also provision for MPs’ spouses and dependents to accompany them on their overseas travels. However, of all the single parliamentary benefits, one of the best known is the Life Gold passes for free domestic travel which entitle eligible former prime ministers and MPs to 25 return trips a year.

**Transport**

As part of their remuneration, Federal MPs each pay \$14.80 per week for a four-door Australian-made car. Ministers are entitled to use car transport for official purposes anywhere in Australia and have access to COMCAR, chauffeur-driven hire cars or taxis, short-term self-drive hire cars and may elect to have a private plated vehicle on long-term hire in Canberra.

**Staff and office support**

From 1984, each Federal MP has been entitled to employ a minimum of three people. At least two full-time staff must be located in the employing MP’s electorate office, with the third able to be located in either the electorate office or in Canberra. Office holders such as the Prime Minister and Ministers are entitled to hire more staff.

In 2001-02, the average cost of staff for each MP was \$448,584.<sup>47</sup> Just as there is travel allowance for MPs, their staff can also access TA.

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<sup>47</sup> This figure was calculated by dividing the total cost of MP staff for 2001-02 by the number of MPs to give an average (Australian National Audit Office (‘ANAO’), *The Auditor-General Audit Report No.15 2003-04: Administration of Staff Employed Under the Members of Parliament (Staff) Act 1984*,

Members' offices are provided with four computers, two printers, a photocopier, fax, laptop, a machine for folding and stuffing envelopes and a letter franking machine. Just prior to the election in 2001, the Howard government arranged for an expensive refit of electorate offices which included new laptops, palm pilots, colour laser printers, scanners, label printers and new software including web page authoring software. While ostensibly about better communicating parliamentary business to constituents, such equipment also increases sitting members' capacity to campaign by giving them the ability to design, print and post more glossy and eye-catching pamphlets, postcards and letters.

Members also receive communication equipment including three phones at Parliament House, four in the electorate office, two mobiles and a telecard. There is no financial limit on calls.

### **Printing entitlements**

In 2001, a National Audit Office report on parliamentarians' entitlements was leaked just a few months before the Federal election. Bob Horne, the Labor Member for Paterson was revealed to have spent \$219,004 on printing in 1999-2000. This was more than six times the average amount spent by other MPs and the next closest MP spent no more than \$124,999. Dubbed 'Bob the Printer' by the local media, Horne lost his seat at the 2001 election.

The Audit Office report concluded that the 'uncapped nature' of many parliamentary entitlements left them open to abuse. In response, the Prime Minister initiated a cap on printing entitlements. While this seemed to be a step in the right direction, the Audit Office report showed that 113 out of 147 parliamentarians spent less than \$50,000 on printing but the new cap that the government placed on spending was \$125,000 per annum. The only politician who spent this much in 1999-2000 was Bob Horne so the new cap effectively encouraged MPs to spend up to six times more than they had normally been spending.

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available at:

<http://www.anao.gov.au/WebSite.nsf/Publications/10081F02CB573363CA256DEF000FED18>>

In 2003, then Special Minister of State, Senator Eric Abetz, tried to increase the printing allowance further to \$150,000 but this motion was defeated in the Senate when Labor and the minor parties combined to defeat the plan arguing that the amount was excessive and encouraged MPs to send out party-political propaganda at taxpayer expense.

### **Communications allowance**

Boosts to printing entitlements have also been accompanied by other changes which also open the public purse wider. In 2001, the government increased the amount of Communications Allowance which is provided to Federal MPs for delivery of their letters, newsletters and even Internet material. The Allowance was previously set at \$25,000 for a House of Representatives electorate of less than 50,000 kms but the government changed the rules so that MPs could call forward up to twenty-five per cent of their next years' entitlement—giving them an extra \$6250 during an election year.

In 2005, the government again changed the entitlements so that, as of 1 July 2005, communications allowance would no longer be based on the size of electorates for Members of the House of Representatives, but would now be based on the number of electors in each electorate multiplied by 50 cents per elector. It may sound very reasonable to allow each MP 50 cents for each voter in an MP's electorate, but this allocation represents a major increase. The money also needs to be viewed as a total amount available to parties with multiple members. This is particularly so given that unspent portions can be rolled over into subsequent years so that any accumulated windfall can be spent during election periods and given ongoing claims that—although it is illegal and there has never been a *proven* case of it occurring—members in safe seats use their entitlements to aid fellow party candidates in marginal electorates.

As Senator Andrew Murray of the Australian Democrats has pointed out, the 2005 change increased the maximum possible expenditure from an aggregate \$4,171,200 per annum for all members of the House of Representatives to \$6,606,413—an increase of 58 per cent and an extra \$2,435,213 per year on postage. Murray noted

that ‘(a)ccording to Parliamentary Library calculations, the Labor Party may benefit by an additional \$997,769 per annum. But the big winner is the Coalition: because it has more seats, it will benefit by an additional \$1,392,949 per annum.’<sup>48</sup>

### **How-to-vote cards paid for by taxpayers**

In the past, parliamentarians had always been directed to use their printing and mail entitlements only for parliamentary or electorate business and not for party politics or electioneering. But the recent increases in parliamentary entitlements for printing and communications allowances have been accompanied by a changing attitude to the use of state resources.

Three days after John Howard called the 2004 election, Senator Eric Abetz announced that MPs were now allowed to use their printing entitlements to print and send how-to-vote cards and postal vote applications to constituents. This was a major change in policy.

Printing is a very important element of publicity in local electorates. While it was often alleged in the past that MPs surreptitiously used their printing entitlements for partisan material, recent changes both sanction and encourage greater public spending on MPs’ local campaigns which rely heavily on letters to voters, postcards, newsletters and telephone canvassing.

### **Stretching the rules and the ‘creative’ use of resources**

Aside from changes which now allow MPs to legitimately use higher printing and communications allowances, carry over funding to stockpile entitlements for elections and print how-to-vote cards printed at taxpayers’ expense, there are also ‘tricks-of-the-trade’ which the parties and their MPs allegedly use to get the maximum benefit out of their entitlements by either stretching the rules or blatantly disregarding them.

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<sup>48</sup> Senator Andrew Murray, ‘Remuneration Tribunal Act Determination - Motion for disapproval’, *Senate Hansard*, 21 June 2005, p. 78.

Even after an election is announced, MPs can continue to claim travel allowance but, by convention, Ministers forgo TA until their party's formal election campaign launch. After this point, the parties must foot the bill. This, sceptics suggest, is one of the reasons why campaign launches are scheduled so late during the election. For example, in the six week Federal campaign of 2004, the major parties' election launches were not held until the last two weeks before polling day giving the parties access to around four weeks of taxpayer-funded TA.

Reportedly, other ploys include using State government resources such as staff, office space and equipment to help Federal election candidates from the same party minimise their campaign costs. This could include a State MP allowing a Federal candidate to use photocopiers or other equipment to prepare direct mail letters. When an allegation of this nature was raised in South Australia in 2004, the parliament's Speaker conceded it was inappropriate but 'had been going on for 100 years.'<sup>49</sup>

Other tactics that are reportedly widespread include using safe seat parliamentary entitlements to help out marginal seats and using public servants to assist with political activities. Political scientists, Peter van Onselen and Wayne Errington, have pointed out that the offices, staff and resources of major party Senators are increasingly being used for House of Representatives campaigns including Senators' offices being deliberately and strategically located within marginal seats to aid the siphoning of resources.<sup>50</sup>

### Adding up incumbency benefits for MPs

Leaving aside the 'tricks of the trade' which we can not quantify, Table 3.5 adds up the value of key parliamentary entitlements per year for an average Federal MP.

**Table 3.5: Key incumbency benefits for MPs at the Federal level**

| Type of benefit | Average value (per year) |
|-----------------|--------------------------|
|-----------------|--------------------------|

<sup>49</sup> Bockmann, 'State resources used in federal campaign', *Weekend Australian*, 11 September 2004, p. 12.

<sup>50</sup> van Onselen and Errington, 'Shock troops', pp. 357-71

|  |                          |
|--|--------------------------|
| Annual allowance (basic salary)  | At least \$111,150       |
| Printing allowance   | \$125,000                |
| Communications allowance <sup>a</sup>                                      | \$43,660                 |
| Electorate allowance   | \$27,300-\$39,600        |
| *Electorate office requisites  | \$8,278                  |
| *Photocopy paper   | \$3,971                  |
| *Telephone services – electorate offices, mobile and residential           | \$15,758                 |
| *Photographic services   | \$812                    |
| *Constituents request Program – flags                                      | \$2,444                  |
| *Travel within Australia for overnight stays away from nominated home base | \$17,497                 |
| *Spouse and dependent travel   | \$6,774                  |
| **Staff  | \$448,584                |
| **Travel by MP staff   | \$75,796                 |
| <b>Difficult to quantify the value of:</b>                                 |                          |
| Office accommodation and equipment   |                          |
| Transport  |                          |
| Parliamentary library services and research                                |                          |
| Electoral databases  |                          |
| Overseas study trips   |                          |
| <b>Total available per MP annually</b>                                     | <b>\$887 024-899 324</b> |

<sup>a</sup> Calculated on the basis of the number of electors in each electorate multiplied by 50c per elector for an average electorate.

\* As these benefits are uncapped and unreported, the figure listed is the *average* cost spent on this item by MPs in 1999-2000 as reported in the ANAO *Report No. 5*.

\*\* Calculated by dividing the total cost of MP staff for 2001-02 as outlined in ANAO *Report No. 15* by the number of MPs to give an average for each MP

Table 3.5 draws heavily on data contained in the ANAO's report into how MPs used their parliamentary entitlements in 1999/2000 because there is little other information available on actual spending by MPs. There are no concise annual reports, for example. Few other MPs have followed NSW Greens' parliamentarian Lee Rhiannon's initiative to publicly and voluntarily detail how she spends her parliamentary entitlements by drawing up annual financial reports and making them

available on her website.<sup>51</sup> While the ANAO report showed that there was real variation in how MPs used their entitlements, given that the report examined spending five years ago and that the value of many entitlements are too difficult to quantify or to average out per MP, the figure arrived at, which suggests an MP is able to access up to \$899,324 per year in entitlements, is likely to understate the actual amount.

## Conclusion

This chapter has considered several major kinds of state support for parties: indirect support via tax concessions, when the state provides goods and services without charge such as free mail and free broadcast time, and direct funding in the form of cash. Of these, state-provided election funding is usually considered the most crucial and the largest form of largesse. However, parliamentary entitlements paid to individual MPs also represent a considerable form of financial support for parties, especially where those parties have many members and are able to ‘stockpile’ these entitlements, pool them and/or redistribute them between State and Federal levels to coincide with election periods.

It therefore no longer makes sense to view benefits to MPs as only individual benefits. While some parliamentary entitlements are directed to, and used by, the individual MP alone, for parties with multiple members—particularly the two major parties—these benefits still have a broader, partisan benefit. Printing and communication allowances in particular must be viewed as another form of state support because, in practice, these entitlements are used to benefit the party as a whole.

Currently, parliamentary benefits are a complicated mix of allowances and entitlements—some are capped, some not, some determined by Cabinet, others by legislation. The questions which usually concern commentators, particularly media outlets, are whether parliamentary entitlements are out of kilter with community standards and expectations or are being abused by politicians who are on the ‘grave train’ or overseas junkets. In other words, the focus is on *corruption as rorts*.

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<sup>51</sup> Lee Rhiannon, ‘Financial Reports’ on *Lee Rhiannon: NSW Greens parliamentary website*,

However, more worrying than perceptions of individual personal private profit—although this is always of concern—are the systemic, institutional benefits to incumbency, a form of *corruption as partisan abuse*. Rather than the glamorous overseas travel, it is actually the more mundane provisions such as free mail and printing which add up to a significant incumbency benefit and especially in terms of election competition. This is because travel ‘junkets’ are unlikely to increase the candidate’s popularity (and would be more likely to have the opposite effect), whereas sending material such as letters, pamphlets and postcards buys an incumbent favourable publicity which may boost their profile and popularity or, at the very least, give them greater name recognition in the community compared to their opponents.

Because the two major parties have the most MPs and are able to pool and redistribute funds, concerns over excesses of parliamentary entitlements are similar to those relating to public funding, where the major parties also reap the vast majority of state funds for electioneering. Both undermine political equality by unfairly advantaging these parties in comparison to their competitors and threaten to ossify Australian politics.

However, while the two major parties in Australia both do well out of both public funding and parliamentary entitlements (and are significantly advantaged compared to minor parties and independents), there are growing differences between them in terms of the public benefits available to the government as compared to the Opposition and other parties. This is true at both the State and Federal levels. Because a government party usually wins more first preference votes, it usually receives more public funding and because it has more members than other parties in Parliament, it also benefits more from parliamentary entitlements. However, parliamentary entitlements and public funding are not exclusive government benefits—other parties can obtain public funding if they meet the required criteria and other non-government parties’ MPs will receive parliamentary entitlements if they are voted into office. The next chapter deals with a series of publicly funded benefits which are available exclusively to the government and, if abused, therefore represent a more extreme threat to fair electoral competition.

## Chapter 4 – Government and the advantages of office

Once a political party is successful in securing the election of its candidates as members of the national or a State government, it is then in a position to benefit from access to an enormous pool of public funds. At the Federal level, in 2004-05 for example, government revenue was \$206.2 billion. Preventing incumbents from abusing access to these resources of state is one of the biggest challenges for twenty-first century political finance regulation.

At stake is the issue of how to prevent parties and their members, once in government—who then legitimately have control of budgets and the ability to change laws and regulations—from exploiting the financial assets of government to their own partisan advantage. In other words, how to prevent those in public office from dipping into government coffers as a way of ensuring their financial superiority over all other rivals and from using those assets to give them a political advantage, finance their election campaigns and ensure their re-election.

Perhaps the most well-known historical example of such corruption is Tammany Hall—the popular name for the Democratic political machine in New York which held power from the 1850s to the 1930s and engaged in fraudulent election practices, graft and corruption. Tammany Hall built its power base by focusing on immigrant arrivals and using the resources of the state to secure their support by giving them coal and food, getting the sick into hospitals, gaining leniency for those arrested or going through the courts, and securing government jobs and other work for the unemployed. By presenting excessively large bills for state works and pocketing left-over money, leaders such as William Macy Tweed also built up enormous personal fortunes and it is estimated that hundreds of millions of dollars went missing from New York's government coffers during this period.

This sort of historical corruption is marked by the way in which it personally enriched those politicians involved and by the way government largesse was distributed through personal contact with voters at the local level to secure their vote.

Today, in an era of mass franchise and electioneering reliant on the media, incumbency abuse is less about personal contacts and individual MPs profiteering from government money and more about using the resources of government to build up the power of the party machine and buy public relations services to win political support via the media. Some of the key ways in which this is achieved are through building up the institutions of government which perform research, media management and PR functions as well as spending massive amounts on government advertising.

This sort of incumbency abuse is not as easy to label as ‘corruption’ in the way that Tweed’s personal financial benefits were so blatantly illegal and fraudulent. Nevertheless, such actions can have far-reaching political effects such as institutionalising a ‘PR state’ focused on media relations, controlling and stifling public debate, disadvantaging non-government opponents and entrenching incumbency.

However, before turning to some of these more modern incumbency abuses, it is still the case that being in government gives a particular party (or multiple parties if they are in coalition) access to some of the more ‘old-fashioned’ Tammany-Hall style resources of patronage.

### The ‘spoils of office’

It was during a Congressional debate in 1831 that New York Senator, William L. Marcy, coined the phrase ‘to the victor belong the spoils.’ While the saying can generally apply to the use of any of the assets of government to obtain a political advantage, at the time, Marcy was using it to describe the system of appointing government workers because every time a new administration came into power, thousands of public servants were discharged and replaced by members or supporters of the victorious political party.

As a result, in the US, it was reportedly ‘common’ for public servants who wanted to keep their jobs or promote their careers to ‘mace’, that is, to make periodic donations

to the party in power. Changes to civil service recruiting practices seem to have halted this process.<sup>52</sup>

In Australia, while this practice has not been seen on such a large scale, accusations of ‘jobs for mates’ or ‘jobs for the boys and girls’ have frequently been directed at governments who are alleged to have awarded jobs or lucrative government contracts to their friends and supporters.

### Corruption as cronyism: ‘Jobs for the boys and girls’

One of the many resources of office is that governments can provide public employment to political supporters. When the government shows this kind of partiality to long-standing friends or supporters, it is called political cronyism. Such *corruption as cronyism* can occur not only in the public service but also potentially in parliamentary offices, electorate offices, boards, statutory authorities and consultancies. It has been alleged for example, that both Coalition and ALP government have appointed supporters to key positions such as on the ABC board.

Political leaders also frequently have an influence over which companies will be granted public contracts. It is a form of corruption when campaign funds are raised by making promises of illegal benefits such as favourable government contracts as payoffs to donors. This is an issue of particular relevance at the State and local levels of government where land development is concentrated and there is ample opportunity for the awarding of contracts to provide basic state services.

It can be difficult to determine with any certainty whether the awarding of a contract or job is a payback for a government mate as governments invariably argue that the decision was based on merit, that the person or company appointed was the best for the job and that, just because they have been associated with a political party in the past, they should be discriminated against due to their political beliefs or banished forever from government work.

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<sup>52</sup> Nassmacher, ‘The funding of political parties in the Anglo-Saxon orbit’, p. 40.

However, this does not prevent opposition parties or the media from trying to detect examples of ‘jobs for mates’ and two elements which particularly arouse suspicion are when there is a pattern of contracts being awarded to particular companies or individuals and/or when proper tendering processes have not been followed.

Newspaper headlines run in *The Age* over the past two years highlight the paper’s investigation into whether the Bracks Labor government in Victoria has favoured the advertising firm Shannon’s Way for government advertising contracts. Shannon’s Way was founded by State Labor’s former chief fund-raiser Bill Shannon and has worked on for Victorian Labor’s election advertising campaigns.

**Case study: Advertising agents, ‘Labor mates’ and the Victorian government**

**‘Why do ‘mates’ get jobs, Labor asked’**

*The Age*, 23 January 2004 by Richard Baker, State Political Reporter

‘Three companies with strong Labor Party links have been awarded more than \$1.3 million worth of Government contracts over 16 months by one department, prompting accusations of “jobs for mates”.’

**‘ALP accused over ‘favoured’ ad firm’**

*The Age*, 5 March 2004 by Richard Baker

‘The Bracks Government faces new ‘jobs for mates’ accusations after it paid an advertising firm with strong ALP links nearly \$16,000 to give a presentation to two ministers and the board of the Royal Agricultural Society of Victoria.’

**‘Fresh ‘mate’ claim over ad contract’**

*The Age*, 25 August 2004 by Richard Baker

‘The Bracks Government is facing new jobs-for-mates allegations after an advertising firm with strong ALP links was awarded a \$788,000 contract without a public tender process.’

**‘New contract for Bracks’ \$9m man’**

*The Age*, 29 September 2004 by Richard Baker

‘The company headed by the man running Federal Labor’s election advertising campaign has

been awarded a \$1 million contract by the Bracks Government without a public tender process, prompting fresh jobs-for-mates allegations by the Opposition.’

**‘Discontent grows as \$9 million goes Shannon's Way’**

*The Age*, 2 October 2004 by Richard Baker

‘Even Labor insiders are troubled by the steady flow of Government contracts to Bill Shannon's advertising company, writes Richard Baker.’

**‘Save-water ad contract hits \$3m’**

*The Age*, 5 October 2005 by Farrah Tomazin

‘The Bracks Government has been accused of quietly inflating a multimillion-dollar contract awarded to a so-called "Labor mate" without proper explanation.’

Similar accusations relating to government advertising contracts have been made in other States, at the Federal level, and directed at other parties. It is particularly interesting that these accusations increasingly occur in the area of government advertising which is one of the areas of government business which has grown exponentially in recent years and where there is a strong link between political (partisan) work and lucrative government contracts (as discussed in a later section in this chapter).

In his 2004 submission to a Senate Inquiry into Government Advertising, the Clerk of the Senate, Harry Evans, stated:

(i)t is suspected that advertising firms accept lower fees for advertisements paid for by the party in power with an assurance that more lucrative government advertising contracts will fall their way. In effect, the expenditure on the government advertising project subsidises the party-political advertising of the government party. This is tantamount to corruption.<sup>53</sup>

At the Federal level, the Liberal Party has, since 1995, used a handpicked team of advertising and marketing experts—dubbed ‘The Team’—to conduct its election

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<sup>53</sup> Evans, ‘Submission to the Senate Finance and Public Administration Committee Inquiry into Government Advertising and Accountability.’

advertising. Several individual members of The Team (or their companies) have also been subsequently awarded government advertising contracts. For example, in 2005, the agent approved to produce the politically sensitive ‘Workchoices’ industrial relation ad campaign was the firm Dewey Horton whose principal is Ted Horton, a long-standing member of ‘The Team’. It was also revealed that Mark Pearson (another member of The Team) was working on the IR campaign ‘as a contractor to Dewey Horton’ prompting ALP Senator Chris Evans to declare that it was ‘the same circle of [Liberal Party] mates getting paid with taxpayer’s money all the time’.<sup>54</sup>

### Corruption as partisan abuse: Pork barrelling

Aside from using government resources to advantage friends and supporters (or, allegedly, to obtain cheaper service rates for party election work), there is also the possibility of using public funds to gain electoral advantage by rewarding particular geographic areas. Such *corruption as partisan abuse* is more commonly labeled ‘pork barrelling’.

The term ‘pork barrelling’ again comes from US political history where it referred to the slicing up of a carcass of salted pork which was kept in a barrel and allocating the meat to friends and supporters rather than equally among the community. In the political context, it is ‘the selective geographical allocation of publicly-controlled funds and resources for the purposes of gaining votes from electors in locations so advantaged’.<sup>55</sup>

In the US, individual electorate pork-barrelling is reputed to be common with new projects alleged to frequently end up in the electorates represented by the most powerful individual members of Congress. By contrast, in Australia, where there is stronger party discipline and the government is formed by winning a majority of seats in the House of Representatives, pork-barrelling tends to occur in the form of directing funding to marginal seats because these seats are crucial to the fortunes of the government. If the government is unable to hold on to (or win over) key marginal

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<sup>54</sup> Senate Finance and Public Administration Committee (FPAC), ‘Estimates (Supplementary Budget Estimates): Department of the Prime Minister and Cabinet Discussion’, p. 80 available at: <<http://parlinfoweb.aph.gov.au/piweb/Repository/Committee/Estimate/Linked/4318-3.PDF>>

seats, it will not retain office. This leads to a more party-based system of pork barrelling designed to target key electorates and thereby ensure the collective return of the government to office.

Pork-barrelling in this way—using taxpayer-funded projects to funnel money to marginal seats—leads to an unfair provision of services with those citizens who live in areas of high strategic value advantaged compared to those who have the misfortune of living in safe seats. This breaches the key democratic principle of *political equality amongst citizens*. But pork-barrelling also distorts the democratic process by giving the government an unfair advantage over opponents who cannot hand out such largesse to win over votes and, thereby, undermining *'equality of arms'* among the competing parties. And, because it is roundly condemned, the practice is usually hidden so that the allocation of public money through pork-barrelling is neither transparent nor accountable and is often difficult to expose.

**Case study: The 'sports rorts' affair, 1994**

Federal Labor minister Ros Kelly was caught up in the \$30 million 'sports rorts' affair in 1994. Kelly was accused of directing the bulk of sporting and cultural community grants to vulnerable Labor-held seats just before the 1993 election.

An auditor general report criticised Kelly's failure to document the decision-making processes properly. The report found that Kelly gave at least twice as much money for sports facilities to marginal Labor seats as she gave to marginal seats held by the opponent Coalition parties.

There was an absence of clear criteria used in selecting the grant recipients.

A report was tabled in parliament that strongly condemned Kelly's handling of the grants after she said that she had assessed 2,800 submissions for funding on the basis of only verbal advice from her staff.

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<sup>55</sup> Hoare quoted in Gaunt, 'Sports Grants and the Political Pork Barrel', pp. 63-74.

Kelly stunned MPs and ensured a series of unflattering media headlines when she told an inquiry that she had made her decisions by writing the short-listed applications on ‘a great big whiteboard’ in her office, after which her staff rubbed them out.

Kelly also conceded that she had approved sporting grants in at least one marginal Labor seat after advice from her own department ruled that the organisations were ineligible.

Kelly resigned shortly after the parliamentary report was published.

While the ‘sports rorts’ affair is probably the most infamous of all pork-barrelling cases in recent Australian political history, allegations continue to surface periodically and are a bi-partisan phenomenon. For example, in recent years, there have been a series of allegations against the Federal Coalition government.

### **Allegations of pork-barrelling at the Federal level**

#### **The Federation Fund**

The Federation Fund was a \$1 billion program announced in 1997 ‘to finance major projects of national significance to mark the centenary of Federation (in 2001) and contribute to the building of the infrastructure Australia needs for the coming century’. Much of the funding was allocated in 1998 just prior to the Federal election. It was alleged to have been distributed in a way which ignored public service advice and benefited sensitive seats. Three quarters of successful projects were approved only four days before the election was called, half were announced during the election and unsuccessful applicants were not notified until five months later. An Audit Office report was critical about the lack of documentation relating to decisions.

#### **The Regional Partnerships Scheme**

An inquiry heard that ministers frequently ignored the recommendations and advice of senior bureaucrats relating to funding under the \$300 million Regional Partnerships Scheme. Several

projects were questioned including a \$6 million allocation to the equine and livestock centre in the NSW electorate of Independent Tony Windsor; \$1.2 million for an ethanol plant in Deputy Prime Minister John Anderson's home town of Gunnedah and a \$1.3 million grant for A2 Dairy Marketers Pty Ltd – a company which later went into liquidation. The opponent Labor Party claimed the scheme was designed to favour Nationals-held seats and those targeted by the party in Queensland, NSW and Tasmania.

**An updated 'sports rorts' affair**

Sixteen of 27 sports grants pledged during the 2004 election and funded in the 2005 budget went to a single electorate—the marginal Liberal seat of McEwen. The seat received more grants than all the other 149 electorates combined.

**Corruption as partisan abuse: Selling access to government**

As noted in Chapter Two, the Liberal Party and Labor Party regularly sell political access. The point here is that such access is far more valuable when a party is in office. Once in government, party politicians have power and decision-making ability which is a natural asset of government but also one that can be used as a commodity to sell. This is especially the case for Ministers who have power over policy making in their portfolios. While shadow ministers can also auction their time, it is worth less as a commodity because they do not have direct decision-making capacity. This makes Ministers' time particularly valuable as an asset of government if it is auctioned off to the highest bidder. For instance, Peter van Onselen and Wayne Errington wrote in 2005 of ministers 'auctioning' their time to raise funds for their party and used the examples of a 45 minute walk or jog with the Attorney-General and the Health Minister fetching bids of thousands of dollars. In these sorts of ways, incumbents can engage in corruption as partisan abuse by trading on the power of government decision-making to raise party funds.

**Corruption as partisan abuse: Boosting the institutional resources of government**

A government party can also build up particular branches of the executive which may politically advantage it—especially those which perform public relations, advertising and media management services—to ensure that it gets its message out more effectively than its opponents who lack such resources.

Some of the key ways this sort of corruption as partisan abuse can occur is through governments setting up specific, dedicated media units, hiring more media relations staff and paying external consultants to do expensive research (including polling and focus groups) to test the mood of the electorate and design advertising to try to win them over. It has even been alleged that some of the dedicated ‘communications’ or ‘secretariat’ units in government are used to ‘dig up dirt’ on political opponents as part of their ‘research’.

Governments are provided with a major political advantage if they boost these institutional advantages of government in a way that facilitates the siphoning of public money into polling, marketing, advertising and media monitoring to benefit the ruling party and aid its reelection prospects.

### **Media units**

Ian Ward has noted the rise of a ‘PR state’ in Australia which has been accompanied by massive expansion in the areas of media advisers and media units.<sup>56</sup> Notably, even those parties which express an ideological aversion to ‘big government’—and have, once in office, overseen the retrenchment of public service workers and the ‘streamlining’ of government departments—have demonstrated a willingness to boost government resources in this area.

At the Federal level, this dates back to 1972 when the Whitlam government set a precedent by supplying all Ministers with a press secretary. It also created the Department of the Media (later disbanded by the Fraser government). In 1975, the Coombs Royal Commission on Australian Government Administration found that

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<sup>56</sup> Ward, ‘An Australian PR state?’, pp. 25-42.

more than 800 public servants were engaged in PR work for the Federal government. There are now estimates that over 4000 journalists work for State governments or the Commonwealth in a public relations capacity.

At the Federal level, the constant restructuring and accompanying name changes of various units demonstrate the government's focus on this area. In 1982, the Information Coordination Branch (ICB) was created, followed by the Hawke government creating the National Media Liaison Service (NMLS) in 1983 (dubbed the 'aNiMaLS' by journalists for its aggressive media management tactics); a unit which was later disbanded by the Howard government. In 1989, the Office of Government Information and Advertising (OGIA) was created. In 1998, after a restructure, this office was replaced by the Government Communications Unit (GCU) which was made responsible for government advertising. Ministers also have media advisers in their own offices.

Media advisers and media units liaise with journalists, editors and reporters to gain media access and promote or defend the government. They also conduct extensive media monitoring at taxpayer expense which allows the government to keep track of what its opponents are saying and doing. Such research is of major benefit to the party in power as it can use this material to draw journalists' attention to anything the opposition has said which may be embarrassing, incorrect or inconsistent.

At the Federal level, a separate unit which has attracted scrutiny is the Government Members' Secretariat (GMS). Errington and van Onselen have argued that the functions performed by the GMS blur the lines between government and party-political activities because the GMS focuses on government MPs and plays a role in training them to use the Liberal Party database called 'Feedback' as well as helping to keep the software and its information up to date. 'Feedback' (and the Labor Party's counterpart software called 'Electrac') are key elements in the direct mail campaigns that the parties conduct during elections and contain voter details such as names and addresses but also any additional information the parties can obtain which helps them to personalise the letters they sent to each voter.

At the State level, media advisers are often centrally located within specific sections in Departments of Premier and Cabinet—where they are close to the executive. Staffing and resources in these areas continue to attract attention. It was noted in 2002, for example, that Bob Carr’s Cabinet had only 19 ministers but at least 29 press secretaries.

**Table 4.1: Key government media and information units**

| Jurisdiction      | Name of unit  |
|-------------------|---|
| <b>Federal</b>    | Government Communications Unit (GCU)<br>Government Members’ Secretariat (GMS)   |
| <b>NSW</b>        | Government Advertising and Information (GAI)<br>Government Advertising Agency (GAA)<br>Ministerial and Parliamentary Services (MaPS), Department of Premier and Cabinet |
| <b>Victoria</b>   | Strategic Communications, Department of Premier and Cabinet   |
| <b>Queensland</b> | Communication Services, Department of Premier and Cabinet   |
| <b>WA</b>         | Government Media Office, Department of Premier and Cabinet  |
| <b>SA</b>         | Strategic Communications Unit, Department of Premier and Cabinet  |
| <b>Tasmania</b>   | Communications and Marketing, Department of Premier and Cabinet   |

Communication with citizens is a key function of government and a highly valued democratic principle. However, there are increasing suspicions that, in the name of communication, governments may be boosting resources in ways that politically advantage incumbent MPs and the governing party.

Aside from boosting resources, there is also the possibility of *denying funding* to particular branches of government as an incumbency perk. For example, if an opponent party has greater popularity among voters from a non-English speaking background, the government could starve the electoral commission of funds for voter education and outreach services to explain voting procedures. This would disadvantage its opponents as such voters are more likely to return invalid votes if not properly advised on the electoral process. This can also extend to the disbanding (or minimising funding for) offices and agencies devoted to the interests of other groups

such as women, ethnic communities or indigenous Australians. In this way, denying funding can be another way of using government financial resources for political advantage.

### **Consultants**

One area that governments have boosted significantly, and one of the most telling signs of institutional advantage, is the use of government consultants. Consultants are employed by many government department agencies and their work can vary but the work which draws the most accusations of incumbency abuse—for the same reasons as discussed above—are those consultants hired to perform work related to media management, media monitoring, opinion polling, research and advertising.

For example, in 2004, the Federal government spent \$165,000 for the design of a new government logo, over \$27,000 to develop a new media management system and paid \$440,000 to News Ltd for its involvement in the Prime Minister's awards for excellence.<sup>57</sup>

It can be very difficult to access details about government expenditure on consultants as governments can (and often do) argue that contracts are 'commercial-in-confidence' and refuse to release details. This makes government less accountable than if it were using public servants or other more open public processes for obtaining advice.

Where governments pay consultants to perform research on public opinion—for example, to find out how citizens view their police force or crime rates—this sort of information can also be very beneficial in developing broader political strategies. While government research should, in theory, not be used to benefit the ruling party, in practice, it is unlikely Ministers can 'forget' research gleaned from government business and keep this quarantined from the development of election strategies or policies and how to present them to the electorate. In this sense, information gained

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<sup>57</sup> Secombe, 'Governing by consultants', *Sydney Morning Herald*, 7 February 2005, p. 4.

from government research can be very valuable and used to supplement party research.

According to information compiled by the Parliamentary Library and Senate Estimates Committee evidence, the Federal government has spent over \$2.3 billion on consultants since it came to power in 1996 and has employed over 26,000 consultants (see Table 4.2).

**Table 4.2: Federal government spending on consultants, 1997-2004**

| <b>Year</b>  | <b>Number of consultants</b> | <b>Cost of consultants</b> |
|--------------|------------------------------|----------------------------|
| 1997-98      | 4,561                        | \$367,261,414              |
| 1998-99      | 3,914                        | \$248,411,916              |
| 1999-00      | 3,979                        | \$367,681,216              |
| 2000-01      | 3,434                        | \$282,790,724              |
| 2001-02      | 3,094                        | \$313,796,399              |
| 2002-03      | 3,286                        | \$513,670,842              |
| 2003-04      | 3,898                        | \$299,648,307              |
| <b>Total</b> | <b>26,166</b>                | <b>\$2,393,260,818</b>     |

Source: Parliamentary Library, 2005.

In 2001, an Audit Office inquiry into the procurement of consultants found that ‘in the selection process, [government] agencies were not consistently complying with established guidelines.... Nor were they adequately documenting the reasons for not complying with those guidelines...’<sup>58</sup>

At the Federal level, government departments outline their spending on consultants in their annual reports but are not required to detail amounts under \$10,000. It is more difficult to find out details for the States where departments are not required to specifically outline their spending on consultants. There have also been allegations

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<sup>58</sup> ANAO, ‘Engagement of consultants: Audit report’.

that governments hide the details of their spending on consultancies by shifting some spending into other categories of spending which do not receive such scrutiny.

Comparing Victoria with the Federal level is instructive both in terms of comparative spending and the lack of accurate information available. From departmental reports and Senate Estimates responses, we know that the Howard government spent over \$2 billion on consultancies in four years from 2000 to 2004. This equals around \$57,000 every hour. In Victoria, media reports suggested the Bracks government reportedly spent \$162 million on consultants over four years—around \$4,600 every hour.<sup>59</sup> However, the Victorian government disputed this reported figure and said it ‘approved’ costs—which relate to consultants engaged by the Government but do not reflect payments made to them—had been mistaken for actual expenditure. Nevertheless, the State Opposition later claimed that the Victorian government actually spent over \$500 million on consultants over five years.

The lack of transparency regarding government spending on consultants (especially at the state levels) is of serious concern. Nevertheless, it is clear that, across Australia, governments are paying billions of dollars for consultants. We do not know enough about the cost of these consultants, how they are selected, what they actually do and to what extent their work may represent a public subsidising of the PR and research functions of the governing party.

We do know however, that some of these consultants are employed in designing, researching and testing government advertisements and this is the final element of government resources we need to examine. Like consultants, government advertising also costs taxpayers billions of dollars but gives governments a very prominent public relations advantage.

## Government advertising

Government advertising is an important avenue of political communication which is open only to governments. Next to the hiring of consultants, it has become one of the

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<sup>59</sup> Tomazin, ‘\$4600 an hour for state advice’, *The Age*, 10 February 2005.

greatest benefits of incumbency as both Federal and State governments conduct massive, publicly-funded ‘government information’ campaigns.

There are a number of points of contention. In terms of cost and financial advantage over opponents, in recent years, the Federal government has become the biggest advertiser in the country out-spending commercial giants such as Coles-Myer, Holden, McDonalds and Coca-Cola. The NSW, Victorian and Queensland State governments are also frequently in the top 50 highest-spending advertisers. This government preference for mass advertising as a way of communicating with citizens is controversial given that there are other cheaper, and possibly more effective, methods available.

In terms of timing, spending on government advertising rises suspiciously in the months before an election and there are increasingly noticeable spikes in pre-election government advertising.<sup>60</sup> In 2004, for example, the Federal government spent up to \$40 million between May and June alone. This is double the amount that either party could then afford to spend individually during the official campaign. This has led to concerns that advertising is being used to advantage the government by enabling it to get its message out at taxpayer expense before the formal campaign begins.

In terms of regulation, there is a lack of accountability and explicit guidelines for government advertising and a seeming lack of will to devise such accountability mechanisms even though there has been concern about government advertising for at least ten years.

In recent years, we have seen Australian government advertising which challenges the previously accepted bi-partisan convention that government advertising should be used only for essential communication between governments and citizens and not for partisan purposes. In terms of content, government advertising campaigns increasingly feature material which critics say is calculated to obtain political benefit and designed to persuade rather than inform. Since the mid 1990s in particular, governments began to produce more controversial advertisements which seemed to

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<sup>60</sup> Grant, *Research Note no.62*.

carry a more partisan message. These ads were not about social marketing such the anti-smoking, anti-drink driving or even AIDs awareness advertisements which began in the 1970s and 1980s. Instead, they seemed to be focused on promoting the government and its policies in a manner which would provide it with a partisan advantage.

At the federal level, the campaigns which have been most criticised in this respect include the Keating government's 'Working Nation' advertisements in 1995-96 and the Howard government's advertising on the GST (1998-2000), 'Strengthening Medicare' (2004) and the 'Workchoices' industrial relations campaign in 2005.

At the State level, there are also ongoing criticisms of ad campaigns which are run to promote government 'achievements' and claim credit for lower crime rates, more teachers and police recruits, infrastructure works, and transport safety. Critics argue that such ads appear to have a promotional purpose designed to placate concerned citizens and assure them that there are no problems with crime, transport, public hospitals or state schools.

## **Spending**

As with spending on consultants, there is a lack of transparency and accountability in relation to government advertising. Unlike Canada, for example, there is no requirement for governments in Australia to provide a specific annual report detailing their total advertising spending.

The Special Minister of State, Senator Eric Abetz has argued that federal government spending on advertising is information which is on the public record via departmental Annual Reports and the Senate Estimates process. However, the Senate Estimates process is cumbersome and unwieldy. It puts the onus on external figures to ask relevant questions about government spending and the questions and answers occur in an ad hoc fashion which means we are provided with only some pieces of the puzzle rather than a coherent whole. Moreover, Senate Estimates is an enforced process of scrutiny rather than the government voluntarily reporting its total spending in a concise manner annually.

The other source the Australian public is directed to is federal government department reports where advertising spending is detailed in appendices. However, as with consultants, federal government departments do not have to report advertising amounts where contracts are valued at under \$10,000. Therefore, if there are many contracts falling under the \$10,000 threshold (particularly if work is divided up into smaller parts in order that it does fall under this amount), then figures are likely to be vastly underestimated.

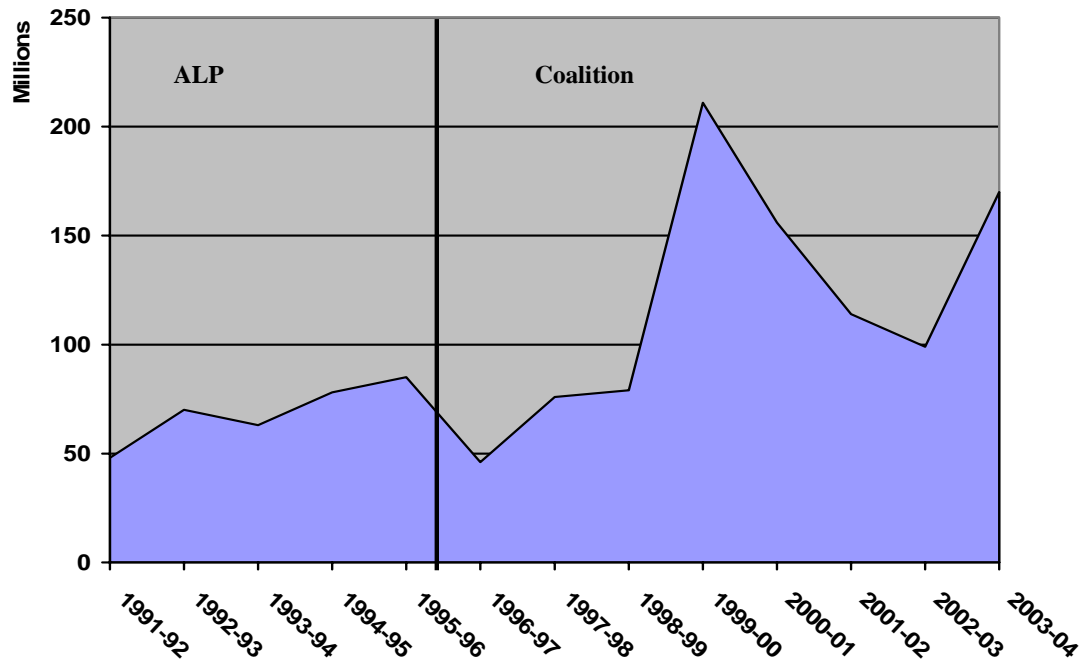
As a result of the incompleteness of department reports and the ad hoc nature of the Senate Estimates process, reported estimates of how much the federal government spent on advertising in 2004, for example, varied from \$90-170 million.<sup>61</sup> This level of imprecision is a major cause for concern in regard to governmental accountability.

Taking the best figures we have available, Figure 4.1 outlines aggregate expenditure on both ‘campaign’ and ‘non-campaign’ federal government advertising. ‘Non-campaign’ advertising is the more routine ‘no-frills’ government advertising such as public service job advertisements, tenders and general notices while campaign advertising is when governments choose to also run more expensive advertising campaigns which centre on a particular theme and require specific funding allocations. Non-campaign advertisements tend to have bi-partisan support as necessary basic functions of government. It is the ‘campaign’ ads which attract the most criticism of partisan benefit.

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<sup>61</sup> Young, ‘Second submission to the Senate Finance and Public Administration Committee Inquiry into Government Advertising and Accountability’.

**Figure 4.1: Federal government advertising expenditure, 1991-2004**



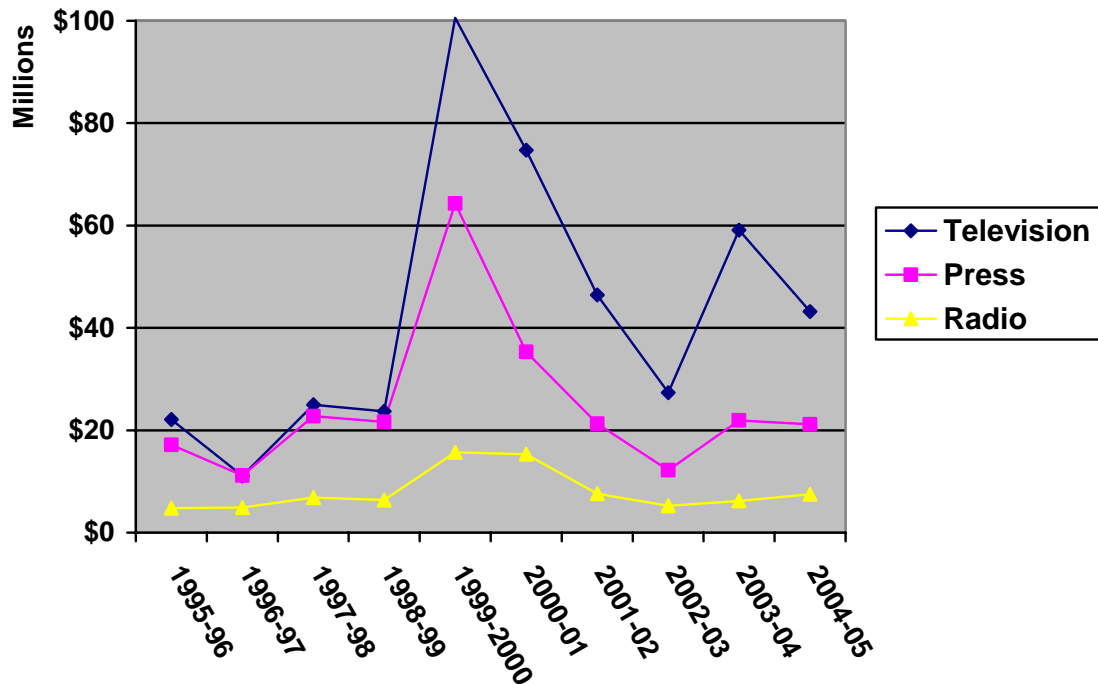
Sources: Grant, *Research Note no.62*, p.2, information provided by the Parliamentary Library and the Senate Finance and Public Administration Reference Committee, *Report*.

Figure 4.1 shows how advertising increased in 1995 and 1996 after the Keating government’s ‘Working Nation’ advertising campaign on unemployment. Advertising continued to climb after the Howard government came to power in February 1996. Two years later, for the first time, government advertising spending rose to over \$200 million during the period of the GST ‘Unchain my heart’ campaign. This had the effect of normalising high spending so that high-level (\$100 million plus) spending has continued ever since.

Figure 4.2 shows that, until 1998, the Federal government was spending roughly the same amounts on television and press advertising. Ever since 1999 (just after the creation of the GCU and its placement within the Prime Minister’s Department) the

federal government has increasingly chosen television advertising over press. Television advertising reaches a larger audience, allows for more emotive and visual content and is, perhaps not coincidentally, also the medium of choice for election advertising because it reaches swinging voters whose votes are crucial to the election result.

**Figure 4.2: Federal government advertising spending by medium, 1995-2005**



Source: Department of the Prime Minister and Cabinet (2005) ‘Answers to questions on notice’, Senate Finance and Public Administration Committee, Inquiry into government advertising and accountability, p.37.

### International comparisons

According to an international analysis of advertising spending, only 12 countries have their own government listed among their top ten national advertisers (Table 4.3).<sup>62</sup> This base data together with additional information for an analysis of spending by head of population indicates that the Australian Federal government ranks as the 5<sup>th</sup>

<sup>62</sup> Advertising Age, *Global Marketing 2004 edition*, available at: <<http://www.adage.com/>>.

highest spending government worldwide—spending US\$2.07 per head of population (AUD\$2.73).

**Table 4.3 – Worldwide spending on government advertising (countries where the government ranks in the top ten national advertisers), 2003**

| Country          | Govt rank out of top 10 national advertisers | Amount spent (in US\$ million) | Population*       | Spending per head of population (in US\$) |
|------------------|--|--------------------------------|-------------------|---|
| Belgium          | 4  | \$69.7                         | 10,330,824        | \$6.74                                    |
| Ireland          | 2  | \$19.0                         | 3,924,023         | \$4.84                                    |
| United Kingdom   | 3  | \$271.4                        | 60,094,648        | \$4.51                                    |
| Singapore        | 3  | \$13.5                         | 4,276,788         | \$3.15                                    |
| <b>Australia</b> | <b>10</b>                                    | <b>\$41.0</b>                  | <b>19,731,984</b> | <b>\$2.07</b>                             |
| Spain            | 10   | \$58.8                         | 40,217,413        | \$1.46                                    |
| South Africa     | 1  | \$45.9                         | 44,481,901        | \$1.03                                    |
| Mexico           | 4  | \$46.6                         | 103,718,062       | \$0.44                                    |
| Thailand         | 4  | \$27.8                         | 63,271,021        | \$0.43                                    |
| Brazil           | 10   | \$68.1                         | 182,032,604       | \$0.37                                    |
| Peru             | 10   | \$2.3                          | 27,158,869        | \$0.08                                    |
| Paraguay         | 4  | \$0.41                         | 6,036,900         | \$0.06                                    |

\* According to US Census Bureau country statistics.

Source: Advertising Age, *Global Marketing 2004 edition*.

At first glance, spending US\$2.07 per Australian may sound quite reasonable. However, Table 4.3 demonstrates that Australian government spending is extraordinarily high by international standards and is higher than most comparable countries such as Canada, the US and New Zealand (with the exception of the UK).

There are also a number of other points which need to be considered and which suggest that the top five ranking is conservative. Firstly, some of the higher spending countries such as Belgium have to reproduce ads in multiple languages which adds to

their costs. Secondly, 2003 was not a federal election year in Australia and we know that spending in election years tends to be significantly higher.<sup>63</sup>

Finally, and even more significantly, Australia has a federal system of government which is not comparable to the UK, for example, where ad spending includes England, Scotland, and Wales (in addition, the UK also has three language groups: English, Welsh and a Scottish form of Gaelic). Therefore, a much better comparison for Australian spending would be between similar federal systems such as the US and Canada but these countries do not have their governments listed among their top ten national advertisers.

Therefore, in order to compare with a country such as the UK, we would have to include the State governments in Australia as well. This is possible because according to the Department of Prime Minister and Cabinet, from 1996 to 2003, Australian State and Territory governments have spent a combined total of AUD\$2.148 billion on advertising.<sup>64</sup> This means that, over eight years, State and federal governments in Australia spent an average of AUD\$384,625,000 per year. When this is divided by head of population in order to provide a better comparison with countries such as the UK, it indicates spending of AUD\$19.49 per person on government advertising in Australia.

Therefore, reconsidering Australia by including both State and federal government advertising in order to compare it with the UK and other non-federal systems, suggests that Australia spends more than double the amount of other nations on government advertising per head of population (Table 4.4).

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<sup>63</sup> Grant, *Research Note no.62*.

<sup>64</sup> Department of the Prime Minister and Cabinet, 'Submission to the Senate Finance and Public Administration Committee Inquiry into Government Advertising and Accountability,' p. 4.

**Table 4.4: Worldwide spending on government advertising\***

| Country  | Amount spent<br>(in US\$ million) | Population        | Spending per head<br>of population<br>(in US\$) |
|--|-----------------------------------|-------------------|---|
| <b>Australia<br/>(State and Federal govts)</b> | <b>\$294.1</b>                    | <b>19,731,984</b> | <b>\$14.91</b>                                  |
| Belgium  | \$69.7                            | 10,330,824        | \$6.74  |
| Ireland  | \$19.0                            | 3,924,023         | \$4.84  |
| United Kingdom                                 | \$271.4                           | 60,094,648        | \$4.51  |
| Singapore                                      | \$13.5                            | 4,276,788         | \$3.15  |
| Spain  | \$58.8                            | 40,217,413        | \$1.46  |
| South Africa                                   | \$45.9                            | 44,481,901        | \$1.03  |
| Mexico   | \$46.6                            | 103,718,062       | \$0.44  |
| Thailand                                       | \$27.8                            | 63,271,021        | \$0.43  |
| Brazil   | \$68.1                            | 182,032,604       | \$0.37  |
| Peru   | \$2.3                             | 27,158,869        | \$0.08  |
| Paraguay                                       | \$0.41                            | 6,036,900         | \$0.06  |

\* Note: Australian figures are based on an average yearly ad spending for an eight-year period between 1996 to 2003. All other countries ad spending refers to 2003.

Sources: Advertising Age, *Global Marketing 2004 edition*, Department of the Prime Minister and Cabinet, Submission to the Senate FPAC, p.4.

### State spending

It is difficult to obtain breakdowns of State government spending on advertising. Media reports have suggested that between 1995 and 2002, the Carr Government spent more than \$621 million on advertising in seven years including \$104 million in a single year. There have also been reports that the Victorian State government spends up to \$50 million a year on advertising.

The best information we have comes from media monitoring companies such as AC Nielsen Media Research which publishes a list of the top 50 advertisers in Australia each year. Table 4.5 shows the top spending State governments which have appeared on this list in the past few years.

**Table 4.5: Estimated State government advertising spending, 2003-04**

| Jurisdiction | 2003            | 2004            |
|--------------|-----------------|-----------------|
| NSW          | \$55-60 million | \$55-60 million |
| Victoria     | \$40-45 million | \$45-50 million |
| Queensland   | \$40-45 million | \$40-45 million |
| WA           | \$25-30 million | \$30-35 million |

Source: AC Nielsen Media Research

As spending on advertising is now so high in Australia, with the federal government spending over \$100 million per year and many of the bigger States spending over \$40 million per year, the issue of regulation becomes significant. This massive, uncapped and largely unregulated spending is possible because, compared to other countries, Australia has very loose rules.

### **Federal regulation of government advertising**

In opposition in 1995-96, the federal Liberal Party expressed concern about the Keating government's 'Working Nation' advertisements and promised to draw up new guidelines to ensure that all federal government advertising promoting policies or decisions would be scrutinised by the Auditor-General and subject to his/her approval. The plan they proposed was that the Auditor-General would have to approve expenditure before it actually occurred and would have the power to veto ads that did not meet new guidelines. Once in government, this promise was not kept.

Although the Liberal Party had complained about the feebleness of the *Guidelines for Australian Government Information Activities*, which were drawn up under the ALP government, upon taking office in 1996, it retained those same guidelines. These guidelines say nothing at all about the potential for government advertising to be misused for party-political purposes. This is a very curious omission. As we will

discuss in Chapter Six, most other countries have either legislation or far stronger guidelines.

In 1998, the Auditor General's office suggested that guidelines were urgently needed and drew up draft guidelines which included a section stating that '*Material Should Not Be Liable To Misrepresentation As Party-Political*' and recommending several ways to interpret this. Guidelines were also recommended by both the Joint Committee on Public Accounts and Audit (in 2000) and the Senate Finance and Public Administration Reference Committee (2005) but still have not been adopted. The suggested guidelines provide guidance on how to differentiate between advertising which is directed at promoting party political interests.

**Principles for ensuring government advertising is not directed at promoting party political interests**

- Material should be presented in a manner free from partisan promotion of government policy and political argument, and in unbiased and objective language.
- Material should not intentionally promote, or be perceived as promoting, party-political interests. (Party-political actions are defined as promoting activities, programs or initiatives of the Government in a politically partisan or biased manner, which places party advantage above the public interest.) To this end, in addition to ensuring that the content is appropriate, communications planning should consider whether matters such as timing, targeting, and the overall environment in which it is planned to be communicated, could suggest a party-political motive.
- Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.
- Information should avoid party-political slogans or images.
- Material should not be designed to influence public support for a political party, a candidate for election or a member of Parliament.

- Official pronouncements and explanations of government policy should not refer to the name of a political party or to the Government using the Premier's name.

Sources: Auditor General Victoria, *Report on Public Sector Agencies*, June 2002 and Senate Finance and Public Administration Reference Committee, *Report*.

Even though similar guidelines are in place in other countries and even some of the Australian States, the Howard government has called guidelines which seek to distinguish neutral, informative advertising content from that which is designed for partisan benefit, 'unworkable'.

There is one other feature of regulation which is a convention (rather than a law or set of guidelines) that should work to regulate the timing of government advertising. Caretaker conventions—which have no formal legal standing—state that after the writs are issued for an election and the House of Representative dissolved, by convention, the government assumes a caretaker role and this includes the cessation of government advertising which promotes government policies or emphasises its achievements.

In 2004, this caretaker convention was challenged when the Howard government ran an anti-terrorism advertising campaign on TV, radio and in newspapers during the election period. Under the caretaker conventions, this had to be approved by Labor. Reportedly, the ALP begrudgingly agreed to allow the advertisements to be run (fearing that a refusal to allow the advertisements to be run would be represented as 'petty politicking' or, even worse, as endangering Australian lives) and requested the ads be run at a low frequency only. But Labor later argued that this agreement was not kept and the ads were broadcast often during peak television viewing including during major sporting events. A further, separate challenge to caretaker convention in 2004 was Centrelink's decision to continue, through the campaign, a mailout to families providing them with details of the \$600 family tax benefit.

This indicates an increased preparedness to use government advertising not only at the pre-election stage but even during election campaigns. There are also other increasing political connections between election and government advertising.

In 1998, a restructuring relocated the former OGIA (newly badged as the GCU) from the Department of Finance and Administration to the Prime Minister's own department. The Labor Opposition argued that the removal of 'the arms-length supervision' of the Department of Finance would allow the Prime Minister's office to 'seize control of government propaganda' and have 'direct control' over the Commonwealth advertising budget.<sup>65</sup>

Since this restructure, there are now two main bodies responsible for federal government advertising: the Ministerial Committee on Government Communications (MCGC) and the Government Communications Unit (GCU). The MCGC makes the final decisions regarding 'major and/or sensitive' federal government information activities.

As Stephen Bartos points out:

The MCGC does not answer to Parliament for its actions... [and] provides no annual report. It is difficult to find out what its charter is or even who its members are. [It] does not have a website, nor does it provide public statements. Its operations are among the most obscure of any government decision making body.<sup>66</sup>

As at 31 October 2005, when membership details were disclosed to a Senate inquiry, the MCGC's members were Senator Eric Abetz, Tony Nutt (a member of the Prime Minister's staff and a former State director of the New South Wales branch of the Liberal Party), Petro Georgiou (a former secretary of the Victorian branch of the Liberal Party who 'masterminded the Guilty Party attack ads' on the Victorian Cain and Kirner Labor governments), Andrew Robb (a Liberal MP and former federal campaign director of the Liberal Party who helped establish 'The Team' in 1996), Tony Smith (a Liberal MP), and Sussan Ley (a Liberal MP). The MCGC demonstrates the growing links between political and government advertising as it is a

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<sup>65</sup> Taylor, 'Howard's Dept takes on budget for federal ads', *Canberra Times*, 24 October 1998, p. 6.

<sup>66</sup> Bartos, 'Submission to the Senate Finance and Public Administration Committee Inquiry into Government Advertising and Accountability,' pp. 7-8.

partisan body which includes several former officials of the Liberal Party who have had significant involvement in election advertising as campaign directors.

### **State regulation of government advertising**

Broken promises on accountability for government advertising are not confined to the federal level of government. In 1999, the ALP in Victoria promised to ‘introduce strict guidelines to prevent publicly funded advertising being inappropriately used to promote the government’.<sup>67</sup> While the Victorian ALP government *did* draw up new ‘Guidelines for Victorian Government Advertising and Communications’, these are not at all ‘strict’ and allow for advertising to be used to promote the government. They specifically allow government advertising:

To report on performance in relation to Government undertakings and . . . to encourage social cohesion, civic pride, community spirit, tolerance or assist in the achievement of a widely supported public policy outcome.

These categories are so broad that they allow for all manner of advertising which promotes the government and its interests.

However, unlike the Federal government guidelines, the Victorian ones at least mention the potential to misuse public funds and states that advertising should not:

- mention the party in Government by name;
- include content that a reasonable person could misinterpret as being on behalf of a political party or other grouping;
- disparage or ridicule political party or other grouping; or
- name, depict or otherwise promote members of the Government in a manner that a reasonable person would regard as excessive or gratuitous.

In Queensland, an ‘Advertising Code of Conduct’ specifies that:

- advertising must be directed at, and focused on, the sections of community to which it is relevant. It must have an educative or informative role dealing with something that is new or about which the community is unaware; and

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<sup>67</sup> ALP, *Integrity in Public Life*.

- the clear benefit from any Government advertising must be in its information or educative role so that there can be no perception of any party-political benefit.

In South Australia, advertising campaigns valued at \$100,000 or more must be approved by the Premier. Guidelines state that ads ‘must avoid the appearance or public perception of endorsing or providing a marketing subsidy or an unfair competitive advantage to any person, organisation or entity *outside of government*’ and ‘in accordance with the Caretaker Conventions, agencies must carefully consider any “campaign” advertising conducted *during State Government elections* to ensure that it does not contain political content’. The guidelines therefore do not mention the ability to use advertising to gain an unfair advantage *for government* or to contain political content at times *other than elections* and do not mention at all the possibility of *partisan* advantage.

In NSW, when the ALP was in opposition, it too was outraged by abuse of government advertising and promised new regulations. In 1995, Bob Carr told the NSW Labor Council’s annual meeting that a publicity control bill would be introduced by a Labor government to regulate government advertising and forbid politically partisan advertising campaigns paid from government coffers. Carr even drafted a private member’s bill to protect taxpayers’ interests against politically partisan advertising when he was the Opposition Leader. The bill proposed the establishment of a committee comprising the Auditor-General, the Ombudsman and the Electoral Commissioner which would establish guidelines for government advertising and would vet government publicity campaigns. It would also have the power to veto campaigns if they breached the guidelines.

Once in office, the Carr government did not fulfil this promise. In NSW, all advertising activity by NSW government agencies has to be booked through the GAI and any campaigns which are over \$50,000 have to be approved by a Cabinet Sub-Committee on Advertising (which is made up of government ministers). There is no scrutiny by either the Auditor-General or the Electoral Commissioner. The NSW

‘Guidelines for Government Advertising’ (created in 2002) do not even mention the possibility of misuse for partisan purposes.

To date, Victoria, Queensland, Western Australia and South Australia are all jurisdictions which *do* have guidelines that mention the potential for advertising to be used for party-political benefit. However, no State has yet required independent scrutiny by a body such as the Auditor-General or an independent committee before advertisements are broadcast or published.

**Table 4.6: Guidelines on government advertising, States and Federal**

| Jurisdiction      | Name of guidelines   | Mention potential misuse for partisan purposes | Independent scrutiny of ads before broadcast/publication |
|-------------------|--|--|--|
| <b>Federal</b>    | <i>Guidelines for Australian Government Information Activities</i>                   | No   | No   |
| <b>NSW</b>        | <i>Guidelines for Government Advertising</i>   | No   | No   |
| <b>Victoria</b>   | <i>Guidelines for Victorian Government Advertising and Communications</i>            | Yes  | No   |
| <b>Queensland</b> | <i>Queensland Government Advertising Code of Conduct</i>                             | Yes  | No   |
| <b>WA</b>         | <i>Guidelines for Government of Western Australia Advertising and Communications</i> | Yes  | No   |
| <b>SA</b>         | <i>Government of South Australia Advertising Policies and Guidelines</i>             | Yes  | No   |
| <b>Tasmania</b>   | <i>Whole of Government Communications Policy</i>                                     | No   | No   |

Note: Aside from these specific guidelines on government advertising, memoranda issued by the Premier’s Office can also provide direction on matters such as procurement, financing, etc.

## Conclusion

The enormous spending we are now seeing on consultants and government advertising poses a very serious impediment to fair competition at elections. In 2001, political advertising specialist Tom Solender who has worked on advertising and PR for governments in the US, UK, South Africa and Australia, said that ‘use of taxpayer funds to make governments look good was becoming a global phenomenon’. On analysis of spending, Australia seems to be at the forefront of this trend.

At the federal level, the government now frequently spends up to ten times more on government advertising than the major political parties can individually spend on their ads during an election. State governments are also spending vastly increased amounts.

Spending peaks before elections provide a major advantage in this sense and the content and timing of recent campaigns have also drawn concerns. Government advertising enables the ruling party to have an unparalleled impact on public debate through spending which cannot be matched by any other political group (and even most commercial advertisers).

Governments rightly argue that they have a duty to ensure that information about policies, programs, services, new initiatives and other matters which affect the benefits, rights and obligations of its citizens are communicated to them. However, governments already have massive resources to draw upon in order to get such messages out to the community. Up until recent decades, policy implementation was considered a normal function of government and something which would become apparent to citizens via other means—for example, through the results of those policies, or through information provided by the relevant government departments to those concerned by the changes, or through news broadcasts and media commentary. It is now apparent that modern governments are paying far more attention to courting the media and gaining media coverage—including through increased numbers of media advisers, consultants and increased advertising—at taxpayer expense.

These resources—along with the more traditional ‘spoils of office’—are advantaging incumbent governments in ways which lead to a very uneven electoral playing field because all other challengers and non-government parties are severely disadvantaged in their ability to communicate with voters and participate in the public debate through media access. The access governments have to media coverage—both paid (through advertising) and free (through media management techniques and the work of media advisers)—has profound significance for the quality of public debate when others are subsequently unable to similarly express their interests, concerns and viewpoints.

## Chapter 5 – Party expenditure

The previous chapter considered the series of financial benefits which are exclusive to government and indirectly benefit the ruling party. Before this, we examined more direct sources of party funds (private funding in Chapter Two and public funding in Chapter Three). Now, it is important to consider how those funds which end up in party coffers are actually used.

How political parties spend their money is important. In Australia, the parties are still the principal institutions which can organise coalitions of interest, provide a forum for debate and ideas and, once in government, enact policy programs. Therefore, the ways in which these parties are organised and behave—including their expenditure—has a fundamental impact on the nature of democracy.

Political parties are large, complex organisations, often spread over national, State and local levels. Due to the federal system of government, they face two different sets of rules for Federal and State politics. Generally speaking, however, parties incur two major types of expenditure; inter-election and election. On-going, routine, non-election-related expenses include salaries for paid party workers, renting office space, postage costs for sending mail as well as purchasing and maintaining computing and telecommunications equipment and services, office expenses, stationery and travel.

During an election, costs rise as parties need to communicate widely to promote their candidates, ideologies, party platforms and specific policies. In bygone eras, candidates could talk from the hustings or stand on street corners to get their message out. If they could afford it, they might hire a hall or print some posters and leaflets. However, in modern-day politics, many of the ways in which politicians seek to disseminate their messages are media-dependent—for example, advertising on television or radio, printing pamphlets or sending mail to potential voters—and such methods are costly.

Compulsory voting does, however, mean that the parties face one less cost than that incurred by their American counterparts, for example, who have to spend a significant

proportion of their funds on encouraging voters to register and get out to vote. This includes costly voter registration drives and other methods which cost the American parties up to US\$300 per vote gained.<sup>68</sup> In Australia, electoral registration and maintenance of the electoral roll are performed by the AEC,<sup>69</sup> and the Australian parties are freed from having to pay for the sort of large-scale voter mobilisation strategies seen in voluntary voting systems such as the US.

The Australian parties still have to consistently spend money on the maintenance of their party infrastructure though, as well as ongoing research (which is especially important for opposition parties which do not have access to the research obtained by the government, including that used for government advertising). But it is election campaign spending which is the focus of their attention (in particular, spending by federal branches of the parties). This emphasis is also shared by those who regulate party finances as, historically, regulation has been premised on concerns that the election outcome might be ‘bought’ by the candidate with the deepest pockets. Traditionally, this has been associated with concerns about vote buying and electoral bribery.

### Elections, vote-buying and electoral bribery

There are three broad types of vote-buying or electoral bribery: 1) paying cash directly to individual voters in return for the voter’s assurance of a secured vote for that candidate or party; 2) indirect financial support by promising, if elected, to secure benefits for particular groups of voters (such as a tax concession available only for older voters or a ‘baby bonus’ for new mothers); and 3) using the resources of state once in office to deliver benefits to electorally strategic groups, for example, to people living in marginal seats (this is often known as ‘pork-barrelling’ and was considered in Chapter Four).

Of the first two of these types of ‘vote-buying’, the second could be considered, although inequitable, to still be a legitimate attempt to win over electoral support by

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<sup>68</sup> Krueger, ‘What’s the most cost-effective way to encourage people to turn out to vote?’, available at <[http://www.irs.princeton.edu/krueger/10\\_14\\_2004.htm](http://www.irs.princeton.edu/krueger/10_14_2004.htm)>

<sup>69</sup> See Sawyer ‘Enrolling the people’, pp. 52-65, for the epic story of how the roll was created.

anticipating the needs and desires of key groups of constituents and by putting these promises to the electorate before the ballot. So long as such promises are made public this is generally considered acceptable because, if other citizens disapprove of an attempt to financially favour a particular group then the candidate or party may lose voters as a result. Therefore, when parties try to use public policy statements and promises to win over voters—even where those promises appear to be blatant attempts to greed and self-interest—this is usually excluded from laws on bribery on the grounds that providing inducements to win voter support is expected and a legitimate part of the deal-making of practical politics.

The first type of vote-buying is more patently corrupt and it is the one which traditionally concerned regulators in the nineteenth century when there was more direct contact between voters in small electorates and individual election candidates who, unpaid as MPs, were usually independently wealthy. In early elections in the mid 1800s in Australia, for example, candidates would often hold their political meetings in public bars and court voters with free alcohol. Vote-buying is still a major issue in some impoverished countries as studies have shown in Brazil and Mexico, for example.<sup>70</sup>

In the relative wealth of modern-day Australia, with the secret ballot, mass franchise and where compulsory voting leads to a voter turn out of over 95 per cent of registered voters at federal elections, there is less direct contact between candidates and voters and vote-buying of the direct, crude cash-for-votes type is rare.<sup>71</sup>

### No controls over expenditure

Even if direct vote-buying is almost obsolete in many liberal democratic countries today, there are still attempts to control party expenditure. This is done not only to minimise corruption but also to try to lessen inequalities between candidates in order to uphold values of fairness and equal representation. This is achieved principally via regulation of party spending on election campaigns. For example, in Europe,

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<sup>70</sup> Samuels, 'Pork barrelling is not credit claiming or advertising', pp. 845-63; Desposato, 'How informal institutions shape the legislative arena'; and Fox, 'The difficult transition from clientelism to citizenship', pp. 151-84.

Belgium, France, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Russia, Slovakia, Spain, Ukraine and the United Kingdom all limit either party and/or campaign expenditure (see Chapter Six).

**Arguments in favour of election spending limits:**

- limits mean there is no real advantage in one candidate or party having access to greater financial resources as there is a limit on how much they can spend
- they create a level of financial equality between candidates at an election
- limits reduce the level of election finance needed, meaning that more candidates (including less wealthy candidates) may compete at elections
- they help to contain overall election costs which, in turn, reduces reliance on donations and the associated problem of private donors using donations to influence candidates or parties' policies
- many overseas jurisdictions place limits on election expenditure.

Unlike these other countries, there is a very *laissez-faire* approach to controlling party expenditure in Australia. Only in the Tasmanian Legislative Council are there election spending limits. These are currently set at \$10,000 per candidate (to increase by \$500 each year).

At the federal level, and in all other States and Territories, there is no overall limit on parties' or candidates' expenditure. There are also no limits on how much the parties can spend on political advertising and no restrictions on how public funding must be spent (although in NSW, Victoria and Queensland, the amount of public funding is capped to actual expenditure). In practice, this means the Australian parties can effectively raise as much money as they like—in addition to public funding—and then exercise significant autonomy in how they spend all of the money they have at their disposal.

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<sup>71</sup> See Orr, 'Dealing in votes'; and Hughes, 'Electoral bribery', pp. 209-224

This was not always the case. Expenditure limits were a long-standing and once common feature of election finance law in Australia. They were in place at the federal level for 80 years and were also common in other States including Victoria, SA and WA.

At the federal level, in recognition of the need to contain campaign costs, immediately after federation, the 1902 *Commonwealth Electoral Act* set spending limits of £100 for candidates for the House of Representatives and £250 for the Senate. In 1946, the spending limits rose to £250 for the House of Representatives candidates and £500 for the Senate. In 1966, after the introduction of decimal currency, the limits rose to \$500 for the House of Representatives and \$1000 for the Senate.

But these limits were never properly enforced and were widely ignored by candidates—many of whom failed to even submit financial returns. This was possible because, even into the 1960s, ‘by tacit accord of the political parties’, the authorities took ‘no action to prosecute for breaches’.<sup>72</sup>

This is an example of how, despite our assumptions, the existence of competing political parties is not always a guarantee that they will check each other. In this case, electoral opponents colluded in breaking the law through a conspiracy of silence. However, in 1979, the Tasmanian Supreme Court enforced the spending limits in a court case which forced federal politicians to address the issue; they did so by abolishing the expenditure limits in 1980. If the limits were enforced, the parties would no longer have such autonomy over their own spending and, if candidates did not comply with the limits, the successful candidates might, as in Tasmania, face court challenges which resulted in their election being declared void. In changing the law, it was also argued that spending limits did not work effectively in practice as monitoring and policing were too difficult.

Re-introducing a cost cap has been considered at various times in Australia, including in 1991, but critics argue that, even if a cap was re-introduced, parties would just ‘become very astute at hiding spending’.<sup>73</sup> Others respond that the fact that parties

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<sup>72</sup> Crisp, *Australian National Government*, p. 141.

<sup>73</sup> Grattan, ‘With “cap” in hand, the ALP sniffs the breeze’, *The Age*, 28 September 1991.

will inevitably try to find loopholes to get around spending limits is not a sufficient reason *not* to enact them.

The arguments for expenditure limits are strong and suggest that they help control inequalities between parties and between candidates; they also help to prevent excessive and prohibitive increases in the costs of politics; and limit the scope for undue influence and corruption.

However, the administrative difficulties of policing limits can be challenging. Where expenditure limits exist they often distinguish between expenditure directly related to the election campaign and spending on the more routine organisation and activities of parties during the longer periods between elections. However, this can present some difficulties: if expenditure limits only apply to election expenses but not to routine expenses, this raises the question of how a distinction can be made between these categories. There is always the possibility, for example, of parties pre-booking advertising or paying for other services earlier in the year so that expenditure appears to have occurred before the election. There is also the issue of regulating when parties receive non-monetary assistance such as gifts-in-kind (such as office rental, transport, accommodation) and even voluntary labour by campaign workers. Estimating the monetary value of volunteer labour would be extremely difficult and, if there were any attempt to regulate it, could mean, in practice, that less people would participate in elections as volunteers which is not a desirable aim from the point of view of political participation.

Such issues mean that regulating campaign expenditure limits can be administratively difficult. In particular, it may be difficult to distinguish between a routine or a campaign activity or an ‘election’ and a ‘non-election’ expense. This might be especially difficult in Australian federal elections where there is no fixed election date and the parties must be prepared for an election that might be called by the government at short notice. It is also difficult in view of the notion of ‘permanent campaigning’ which is said to occur in countries such as Australia whereby the candidates engage in ongoing electoral preparation.

There is also a problem when spending limits apply solely to parties and it is still possible for non-party organisations to campaign without limit. This means that an opponent issue or third party group can, for example, attack the political party but the party may not be able to respond as it has already reached its campaign spending limit. It could also allow a loophole if a national party organisation started up a third party group which appeared to be separate but was actually a front used for channelling party spending and avoiding the limits. Canada has made the most comprehensive attempts to address such issues of third-party campaign expenditure (as discussed in Chapter Six).

**Arguments against spending limits:**

- expenditure limits are too difficult to enforce
- candidates should be free to campaign in whatever manner they see fit (so long as they comply with bribery and corruption laws)
- modern electioneering practices mean that individual candidate spending is not as relevant as the spending incurred by centralised party organisations
- it is difficult to set realistic spending limits due to the changing costs of media access and electioneering techniques as well as inflation and the need to keep closing administrative loopholes once these are discovered.

While there are certainly difficulties in administering expenditure limits, most comparable countries consider the principle so important that they make the attempt to come up with administrative solutions to such problems. Campaign expenditure limits are an attempt to break the nexus between money and politics which can be extremely damaging to the democratic process.

Failure to set campaign expenditure limits can lead to distortions in the process by allowing the parties with greater resources to gain advantage by spending more on publicity and thus generating greater public awareness. It is also argued that an absence of limits on expenditure means the parties' focus will inevitably be diverted

from the purpose of the election—developing policies for the consideration of the electorate—to fundraising and could even lead to parties changing their policies in order to meet the demands of donors.

Limits are particularly important, and usually go hand-in-hand with, public funding. In the US, for example, there are limits on the spending total of presidential candidates who accept public subsidies. Presidential candidates can spend without limit provided that they forego any entitlement to public funding.

There are also restrictions on how public funding is used in some countries. As discussed in Chapter Three, some countries require that parties are only able to use public funding for purposes such as research, education and training, policy formulation or promotion of participation of women and/or young people.

In Australia, parties which receive public funding are not required to forego other income and face no such restrictions on how it may be spent. The public funding therefore represents a ‘gift’ to the Australian parties, a source of additional revenue without any particular spending conditions attached.

### Political spending and democratic values

Given the lack of expenditure controls in Australia, there are key questions at stake in the distribution of party finances which include issues of:

- Transparency and accountability – do we know how the parties spend their money? Do we hold them to account for the ways in which they spend any money that taxpayers provide for their electoral expenses? Can we be confident that they are following the rules?
- Equality – do parties spend roughly the same amounts or do some have a major advantage over others?
- Deliberative democracy - how does the spending of money impact upon the quality of public debate? Does it enhance deliberation? For example, by allowing the parties to communicate better with the electorate. Or does it stifle

debate as wealthier candidates or parties can afford to drown out the voices of others?

- Democracy through parties – are the democratic functions of parties being performed through party spending? Does such spending assist parties in setting agendas, governing and representing Australian citizens?
- Corruption - do the parties engage in any practices of spending which might be judged to be dishonest or fraudulent, for example, channeling spending to ‘friends’ or friendly-companies (perhaps in return for donations or other sorts of support) or making a private profit from a public subsidy which was supposed to be for reimbursement only?

Yet, to assess such matters we must know *how* the parties spend their money and it is extremely difficult to access precise information about the political parties’ spending habits in Australia.

### **Inadequate disclosure of election expenses**

In countries where candidates must keep their election expenses within set expenditure limits, and there are severe penalties for failure to do so, disclosure of expenses (including trying to demarcate campaign and non-campaign expenses) has to be taken very seriously. By contrast, in Australia, where there are no campaign spending limits except in the Tasmanian Legislative Council, disclosure rules are more lax.

### **Disclosure of State election spending**

Candidates for the Tasmanian Legislative Council, must file an accurate return of their electoral expenditure with the Electoral Commission, within 60 days of the result of the election being declared in order to monitor the spending limits.

The other States which have no spending limits but cap public funding to election expenditure should, in theory, have the most rigorous disclosure regimes in order to document expenditure. However, in Victoria, although the public funding scheme is a

reimbursement one, the parties are only required to lodge a *statement of expenditure* declaring that they have spent more than their public funding entitlement. If they have spent less than their entitlement, they must declare the total spent and they will only be paid up to that amount. Therefore, there is no requirement in Victoria for parties to detail *how* they spend their money.

In Queensland, every candidate must provide a *return of electoral expenditure* after each election. All election returns are available for public inspection at the Commission's office only 24 weeks after polling day.

In NSW, parties detail their election expenditure on advertising (including agency fees and divided into separate categories for radio, TV, newspapers and 'other' advertising) as well as administration and 'other' expenses. NSW also requires the parties to declare which companies were paid and provided the services.

Although WA does not have election funding, it has some of the more stringent disclosure requirements. After an election, all parties and candidates are required to send an election return to the Electoral Commissioner within 15 weeks after polling day. The categories of election expenditure which must be reported are:

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

However, like several of the other States, party election returns are not made available via the internet and instead must be viewed in paper form at the electoral commission head office.

### **Disclosure of federal election spending**

While, at the federal level, the parties in Australia do provide annual disclosure returns to the AEC, these statements certainly do not disclose the full details of the parties' income, assets or spending. Because disclosure is required not in order to permit the policing of legal limits but only as a matter of general principle, these statements are insubstantial and incomplete. This is not only due to the use of various loopholes by the parties (such as associated entities and other methods of hiding private donations, as discussed in earlier chapters), but also because the disclosure process asks very little about party spending.

Up until the 1996 election, the electoral return that each party had to complete required them only to disclose expenditures in six broad categories:

- broadcasting advertisements (including production costs);
- publishing advertisements (including production costs);
- display advertisements at a place of entertainment (including production costs);
- costs of campaign material where the name and address of the author is required (e.g. how-to-vote cards, pamphlets, posters);
- direct mailing; and
- opinion polling or other research related to the election.

However, in 1998, amendments to the *Commonwealth Electoral Act* removed the requirement for political parties to disclose this information. Now, the parties need only provide a total figure indicating their *annual* spending—they no longer have to put it into categories to show us *how* they spend that money. This means that we now know substantially less about party finances than we did a decade ago.

This change in disclosure requirements was particularly worrying because it breached the spirit of the public funding reforms made in 1984. One of the key justifications for the introduction of the public funding system was that, in return for politicians receiving taxpayer funding for their election campaigns, they would open up their books and provide full disclosure of their finances.

While financial reporting was supposed to be a safeguard in relation to party finances in Australia, this only works if the financial reports provided are timely, publicly available, detailed and comprehensive. In comparison to the systems in operation in the UK and Canada, there is a very loose disclosure system in Australia and one which is particularly silent regarding spending.

Sometimes an occasional leak about party spending enters the public domain but these tidbits are speculative and unsubstantiated. For example, after the 2004 election, the internet newsletter Crikey posted an unconfirmed rumour that the ALP had allegedly spent \$35,000 on media monitoring during the election while the same (unnamed) monitoring company also serviced Liberal Party headquarters but at only half the price. Anne Summers, former advisor to ALP Prime Ministers Paul Keating and Bob Hawke, recently wrote that Labor has a \$5 million research budget which, in the aftermath of the 2004 loss, was under review as the party grappled with the question of what proportion to donate to quantitative versus qualitative (focus group) research.<sup>74</sup>

Due to the changes in disclosure requirements in 1998, the parties are no longer required by law to reveal their election spending and they are extremely reluctant to do so voluntarily. Occasional leaks aside, spending is something that the parties seem to view as a private matter. Therefore, given the lack of detail about party spending in disclosure returns since the 1996 election, for this report, the authors attempted to undertake a mixed methodology to locate and analyse information.

We used four major approaches: 1) accessing annual returns and disclosure statements held in electoral commissions; 2) writing letters to each party asking for further

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<sup>74</sup> Summers, 'McPolitics is not a viable future', the *Sydney Morning Herald*, 21 January 2005.

details as these reports are inadequate; 3) asking party members to request details of their party’s finances as a membership ‘right’ and; 4) contacting party accountants and/or treasurers to ask for information.

### Working out party spending

As mentioned in Chapter Two (and shown in Table 2.4), the major strand of our attempt to work out party spending was sending letters in September 2004 requesting information about party expenditure to secretaries of the federal and State branches of the ALP, Liberal Party, Nationals, Greens and Democrats. In a majority of cases, the secretaries did not respond to our requests while those that responded overwhelmingly referred us to the returns lodged with the AEC. Typical of the responses we received were statements such as ‘[this party] does not readily make information of that nature available to the public...’. The federal Labor Party was an exception in providing additional information. According to its response, ‘(t)he ALP is a campaigning political party and a large proportion of our income goes towards contesting elections’.<sup>75</sup>

However, using information from the parties’ annual disclosure returns gave us some broad information as these returns purport to disclose the total payments made by the parties during each financial year.

Table 5.1 shows the amounts the major parties declared for the financial years between 2000-01 to 2003-04 (the party amount is a total that includes payments declared by the national plus State and Territory branches).

**Table 5.1: Spending (payments) disclosed in annual returns to the AEC, 2000-04**

| Party (totals)       | 2000-01          | 2001-02          | 2002-03          | 2003-04          |
|----------------------|------------------|------------------|------------------|------------------|
| <b>ALP</b>           | \$ 30,710,777.42 | \$ 57,225,266.13 | \$ 41,724,219.19 | \$ 40,292,600.14 |
| <b>Liberal Party</b> | \$ 21,522,171.82 | \$ 57,564,933.84 | \$ 36,271,397.23 | \$ 23,277,949.09 |

<sup>75</sup> Letter from Gartrell, National Secretary, Australian Labor Party, dated 8 November 2005.

|                             |                        |                         |                        |                        |
|-----------------------------|------------------------|-------------------------|------------------------|------------------------|
| <b>National Party</b>       | \$ 6,323,024.10        | \$ 9,029,840.35         | \$ 9,484,239.30        | \$ 7,116,734.39        |
| <b>Australian Democrats</b> | \$ 1,275,466.51        | \$ 5,461,940.22         | \$ 1,837,225.40        | \$ 646,787.73          |
| <b>The Greens</b>           | \$ 816,232.74          | \$ 2,049,269.42         | \$ 1,320,803.52        | \$ 1,129,637.00        |
| <b>Total</b>                | <b>\$60,647,672.59</b> | <b>\$131,331,249.96</b> | <b>\$90,637,884.64</b> | <b>\$72,463,708.35</b> |

Table 5.1 shows that, combined, the largest political parties spend over \$50 million per year and up to \$131 million in election years. However, it is the two major parties who spend the overwhelming majority of this. On average, over the four year period, the ALP and Coalition parties were spending 97 per cent of the total party expenditure. The table also shows that, as we would expect, expenditure rises dramatically in election years such as 2001 (the election was held in November of that financial year) so that expenditure was more than double that spent in the previous, non-election year of 2000-01.

Another option we wished to try was to ask a party member from each party to request access to their party's financial statements. However, we quickly discovered that, although party members pay membership fees, the parties do *not* have to disclose their accounts or financial statements to their members. While many non-profit organisations which take membership dues—such as sporting clubs—provide annual financial reports for members and will open their books up for members to inspect on request, the political parties *do not*.

One of the major parties' accountants we contacted revealed that only around five people at the highest echelons of the party ever see the full annual financial statements. As the *Democratic Audit of Australia Report* on political parties pointed out, Australia is not one of the countries where political party registration, or the public funding which follows, requires evidence that the party is internally democratic.<sup>76</sup>

While party membership is generally considered to confer certain membership rights, in Australia, this does not extend to the right to see the party's books. This is another example of the unequal nature of the party-member relationship, which has prompted political scientists to ask, in respect to political finance—and when trying to explain declining membership— 'why should party members pay to be (all but) ignored?'<sup>77</sup>

Most State secretaries and directors chose not to provide any information in their responses to our letters and none of the party accountants or treasurers contacted was willing to provide any information additional to that provided in AEC reports (although some provided general, off-the-record observations). Finally, the option of using party members to request details as a membership 'right' also failed.

However, what we do know, both anecdotally and from spending disclosures up until the 1996 election, is that the single largest item of expenditure for parties is election advertising. Some party's accountants were also willing to confirm this off-the-record and it is a conclusion consistent with the findings of party finance research on Australia and comparable countries. Compared to their massive advertising bills, the parties spend very little on internal organisation, administration (even of many sub-branches), staffing or facilities for members. This last point is something that many party members will attest to after attending meetings in cold, draughty halls.

Political scientists that have studied party organisations, such as Jonathon Hopkin, Joseph Schlesinger and Roberto Michels, explain this neglect and the focus instead on elections by noting how modern parties are organised. The parties have fewer fee-paying members because 'in the long run... [the members] realize how little impact their contribution makes' and that they have been 'suckered' into contributing financially to a party in exchange for a negligible influence over party policy and decision making. Parties therefore tend to be able to retain only those super-keen members who are often themselves seeking political office. Once dominated by such people, party organisations become 'office-seeking, rather than policy-seeking'. They

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<sup>76</sup> Jaensch, Brent and Bowden, *Australian Political Parties in the Spotlight: Democratic Audit of Australia Report No 4*, p. 28.

<sup>77</sup> Hopkin, 'The problem with party finance', p. 639.

adopt organisational strategies consistent with the goal of winning as many elective offices as possible’ and make financial choices accordingly.<sup>78</sup>

## Political advertising

Because political advertising is usually the heaviest campaign cost a party will face in modern elections, not only in Australia but also in many other countries, regulating spending on this particular item is one way of trying to keep campaign costs in check.

New Zealand, Canada and the UK all regulate political advertising as a specific technique of expenditure control. In New Zealand, public funding is divided up among the political parties to spend on buying air time or producing commercials on TV and radio and the parties are not allowed to spend any more than this. In Canada, the parties face a legislative ceiling on the amount they can spend on election campaign ads, and limits on the period during the campaign when ads can be broadcast. In the UK, political parties are prohibited from purchasing airtime for election advertising and are provided with free broadcast time instead (called Party Election Broadcasts or PEBs).

Unlike these countries, in Australia, unlimited paid political advertising is allowed. Therefore, the parties advertise via a range of media—including free-to-air television, pay TV, radio, newspapers and, increasingly, on the internet. However, it is television advertising and direct mail which are the two most costly items. There are other related costs, such as, research, evaluation and advertising agent and consultant fees which are in addition to the media buy element of advertising, however, purchasing TV airtime and paying for direct mail are now the most expensive elements of the parties’ advertising.

While other countries prohibit paid political advertising altogether during elections, in Australia, there is only one major limitation relating to timing; there is a three day ban on electronic advertising, from Wednesday to the end of polling on Saturday.

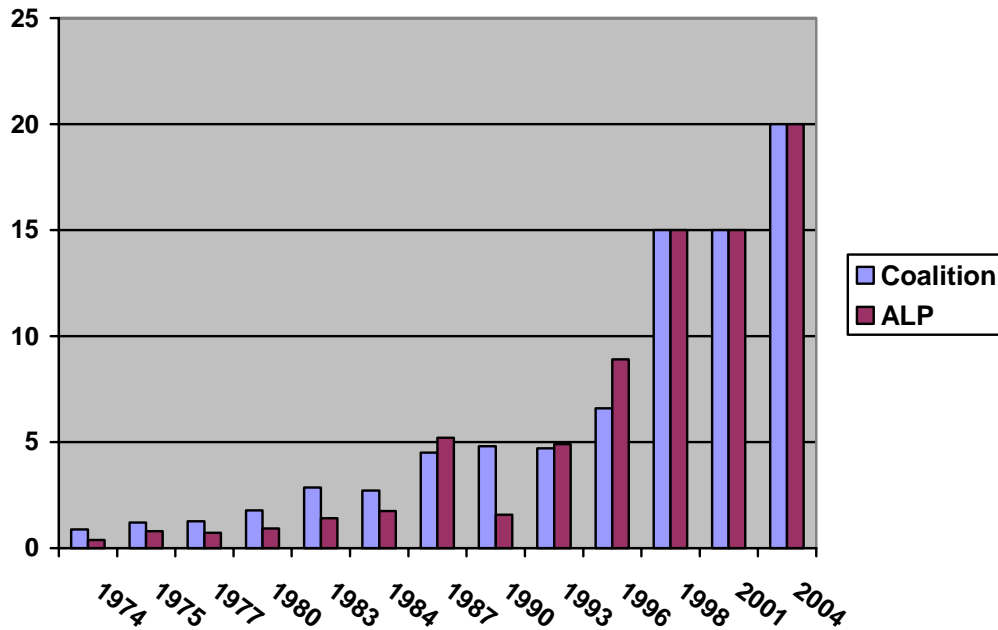
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<sup>78</sup> Ibid pp. 630-1.

Given this minimal time period restriction, that there are no restrictions on expenditure and changes in party organisation, it is not surprising that the Australian parties concentrate their financial resources on election campaigns and, unchecked by spending limits, there has been something of a political advertising arms race occurring in Australia over the past three decades.

Figure 5.1 uses AEC funding and disclosure reports for elections from 1974 until 1996. After 1996, we must rely on media monitoring companies’ estimates of how much the parties are spending during each election. Although these are only estimates and are extremely broad, they are one of the only sources available to determine election advertising spending since the changes to the *Commonwealth Electoral Act* in 1998.

**Figure 5.1: Political (election) advertising in \$ millions, 1974-2004**



One of the only other sources we can use to determine the parties’ spending on political advertising is media company returns to the AEC. At present, media companies—broadcasts and publishers—are supposed to provide details of how much

political advertising they carried during a federal election and how much they charged for it. However, of the 2192 letters sent out by the AEC to media companies only 1240 replied.

To contrast these two sources for the 2004 election provides some indication of the difficulty we now face in determining accurate election advertising spending.

Industry sources and media monitors estimated that, during the 2004 election campaign, the Labor Party and the Liberal-National Coalition both spent around \$20 million on advertising. By contrast, the responses the AEC received from broadcasters indicated the Labor Party spent ‘only’ around \$15 million and the Liberal-National Coalition about \$18 million. Given that the AEC received only a 56 per cent respondent return, as well as the way in which media companies decry the requirement to add up expenditure as administratively onerous, it is therefore likely that the broadcaster returns underestimate election ad spending. So although the industry estimates are broad and imprecise, they are more likely to be closer to the real spending amounts.

Table 5.2 contrasts this with election spending in the UK and New Zealand. The table shows the two top spending parties in Australia, the UK and New Zealand and their top three most expensive items (provided in the country’s own currency).

**Table 5.2: Election spending in recent elections, New Zealand, UK and Australia, 2002-2005**

| <b>Jurisdiction and event</b> | <b>Political party</b> | <b>1<sup>st</sup> most expensive item</b> | <b>2<sup>nd</sup></b>               | <b>3<sup>rd</sup></b>                       | <b>Total spending</b> |
|-------------------------------|------------------------|---|-------------------------------------|---|-----------------------|
| <b>UK 2005</b>                | Labour Party           | £5,286,997 advertising                    | £2,916,969 Rallies and Other Events | £2,698,114 Unsolicited Material to Electors | <b>£17,939,617</b>    |

|  |                    |                           |   |  |                       |
|--|--------------------|---------------------------|---|--|-----------------------|
| <b>general election</b>                  | Conservative Party | £8,175,165 advertising    | £4,493,020 Unsolicited Material to Electors | £1,291,846 Market Research/ Canvassing | <b>£17,852,240</b>    |
| <b>New Zealand 2002 general election</b> | ACT New Zealand    | \$1,275,061 publishing    | \$299,420 advertising                       | \$51,077 broadcasting                  | <b>\$1,625,558</b>    |
|  | Labour Party       | \$755,067 publishing      | \$430,453 advertising                       | \$289,277 broadcasting                 | <b>\$1,474,797</b>    |
| <b>Australia 2004 Federal election</b>   | Labor Party        | \$20,000,000* advertising | n/a   | n/a                                    | <b>\$37,225,266**</b> |
|  | Coalition          | \$20,000,000* advertising | n/a   | n/a                                    | <b>\$46,594,773**</b> |

\* based on industry and media monitoring estimates.

\*\* this is an estimate based on 2001-02 annual disclosure returns and then deducting \$20 million as an estimate of what would normally be spent on routine administration.

Due to the lack of reporting requirements in Australia, we can now only estimate total party spending on elections so, to arrive at such an estimate, we used the parties' total spending during the last financial year when there was last an election—2001-02—and then deducted \$20 million from these annual amounts as an estimate of what would normally be spent on routine non-election expenses. This is probably an over-estimation of annual routine expenses given that party accounts have confirmed that the vast majority of party income is channelled to election campaigns but it does allow us to arrive at an estimate of total election spending. We accept that to provide such an estimate is conjecture and that there are a number of assumptions at play but, due to the lack of official information available this is unavoidable if we are to try to understand party spending and, given that three years later, election spending would undoubtedly have increased, we believe that the estimates provided may be conservative.

Table 5.2 shows that, in the UK, where paid electronic advertising is banned, the parties focus instead on other forms of advertising—particularly billboards, posters and publications but also direct mail (unsolicited material to electors). The Labour Party also spends over £2 million on rallies and other events. In New Zealand, where

advertising spending is limited, two of the top-spending parties spend more on publishing than advertising.

Dividing election advertising expenses by the total population in each country provides some comparison of party spending. The top spending party in the UK (the Labour Party) spends around 0.2 pence per head of population on advertising while the New Zealand ACT party (the biggest spender of the 2002 election) spent 0.4 cents per head. By comparison, the Coalition parties in Australia spent a combined amount of \$2.31 cents per head of population.<sup>79</sup> Even taking into account currency rate differences, this indicates that the major Australian parties are spending vastly more per capita than other parties in comparable countries. It is very likely that this is due primarily to the bans on paid electronic advertising in the UK and the limits on advertising spending in New Zealand work to keep campaign costs under some control.

In Australia, where the parties still enjoy unfettered access to private and public funding and face no spending caps, campaign costs have risen to extraordinary levels so that the major Australian parties now spend even more than parties in voluntary voting systems.

### **Debt and the 1991 paid advertising ban**

The Australian parties are so keen on advertising that they have regularly overspent and ended up in debt. This occurred in the 1980s in particular but continued even after the introduction of public funding. In 1990, for example, the ALP spent seventy per cent of its media budget on television advertising, and even after public funding was provided, the party was still left with a debt of \$7 million.

This precipitated a short-lived attempt to curb the rising costs of elections by banning paid political advertising. In 1991, the then ALP government introduced the *Political Broadcasts and Political Disclosures Act* prohibiting paid broadcast advertising for all State and federal elections. The ALP argued that the legislation was designed to curb

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<sup>79</sup> Population figures for July 2005 taken from the CIA World Fact Book.

the undue influence of private money on political debate and a way to control spiralling election costs. Critics argued the legislation was driven more by a selfish concern about the ALP's own financial crisis following the 1990 election, rather than an altruistic attempt to improve Australian democracy.

Once the Act was in place, it was quickly challenged before the full bench of the High Court of Australia when commercial television interests combined to mount a constitutional challenge to the legislation. In August 1992, in the case *Australian Capital Television Pty Ltd. v Commonwealth*, the High Court ruled that the amended law was constitutionally invalid and found that there was an implied freedom of political communication in relation to political matters inherent in the Constitution. This ruling struck down the government's law restricting political advertising during campaigns and has ensured a political-advertising-centred system has continued ever since.

### **Political advertising and deliberative democracy**

Given the lack of expenditure controls and the generous support of public funding, the major parties in Australia are free to choose how they spend their money and they are clearly choosing to spend it on advertising. But is there anything wrong with spending on advertising? Does it not help to promote public debate and help voters to make an informed choice of candidates?

Political ads do provide voters with some information. At a minimum, they alert voters to the imminence of an election. Some ads (particularly newspaper ads) provide polling details, voting instructions and basic information about the nature of the Australian political system such as the need to number all squares on the ballot paper in order to cast a formal vote, or the existence of the bi-cameral nature of parliament and the need for two separate votes for the House of Representatives and the Senate.

Advertising—and particularly, television advertising—also reaches a very large audience including voters who may not otherwise choose to seek out political information and may not wish to read a policy platform or attend a public meeting.

However, while televised political advertising may be able to be defended on the grounds of its ability to reach a large number of voters, it is more difficult to defend it in terms of content. Analyses of the content of Australian political ads indicate that most election ads on Australian TV are now only 15 or 30 seconds long. The parties usually deal with only a very narrow set of topics in their ads, and none are covered in any great detail or depth. Policy detail is rarely given. There is a trend towards hard-hitting attack-style negative television ads which make personal attacks on opponent party leaders.<sup>80</sup> None of this is very conducive to an educated citizenry or an informed choice of candidates based on policy and a wide-ranging debate.

So, while we might hope that the parties were spending their money on political ads that are informative, engage voters and contribute to public debate, their content indicates instead that ads are far more likely to be short, superficial and increasingly negative.

Ads can also sometimes be dishonest or misleading. There are examples of this from both major parties but a recent example occurred during the 2004 election, when the Liberal Party used advertising which claimed that interest rates would rise under a Latham Labor government. TV advertisements used a graph to show the level of interest rates under previous Labor governments. The advertisements finished on a graphic which showed Latham's face above interest rates of '10.38%', '17%' and '12%'. Critics argued that this graphic was speculative and misleading. It may not have been allowed to air if political advertisements were still scrutinised for accuracy and truth by the Federation of Australian Commercial Television Stations (FACTS) (now called Free TV Australia) but FACTS withdrew from this role in 2002 after legal advice and political pressure.<sup>81</sup>

Rather than opening up debate, political ads may therefore just as likely close it down because they are designed to stay 'on message', focus on only one issue and, increasingly, they are negative and/or focus on image rather than issues or details of policies.

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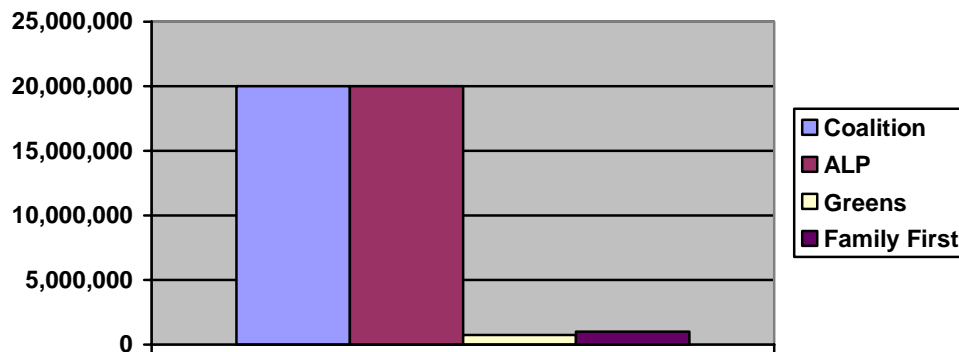
<sup>80</sup> Young, *The Persuaders: Inside the Hidden Machine of Political Advertising*, p. 197-8.

<sup>81</sup> *Ibid.* p. 198.

There are also significant issues of fairness and equality at stake with regard to political advertising as the major parties can afford to spend far more on advertising than minor parties or independents.

During the 2004 Federal election campaign, the Labor Party and the Coalition spent around \$20 million each on advertising. By comparison, the Greens spent around \$750,000 and the Family First party spent around \$1 million. The Democrats could not afford any TV advertising at all and had to rely on radio and cinema ads plus the party's website.<sup>82</sup> As Figure 5.2 shows, minor party spending is dwarfed by that of the major parties.

**Figure 5.2: Reported election advertising spending during the 2004 Federal election**



This demonstrates that there is not a level playing field in regard to election communication as the established major parties can afford to outspend other parties by up to 20 times. This distorts the nature of public debate as it means that, in practice, certain voices are privileged in the public debate over others who have less financial resources.

### The big (money) picture

While the AEC reports do not provide us with all of the detail we need to make sense of party spending, they do provide an indication of the large amounts of money which now flow around Australian politics.

Over the three year period from 2001-02 to 2003-04, the total spending for *all* political parties in Australia combined was \$309.29 million.<sup>83</sup> On average, political party spending is therefore around \$100 million per year but, as we would expect, it is actually significantly higher in election years and the two major parties account for the bulk of this spending.

This tells us that party politics is a big business in Australia; the political parties constitute a major industry and operate as substantial purchasers of goods and services.

We also know that the parties' spending on election advertising tends to match up almost exactly with the amounts of funding they then receive back from public funding. After the 2001 Federal election, the ALP and Coalition parties received just over \$32 million between them when they were reported to have spent about \$30 million combined on advertising. After the 2004 Federal election campaign, the Coalition was reimbursed \$19.8 million from public funding and Labor \$15.8 million when both were reported to have spent around \$20 million each on advertising. This suggests that the parties try to anticipate the share of vote they will obtain and bank on being able to use their public funding to pay off their advertising debts.

Advertising provides a strong financial nexus between political parties and the media owners whose favour they covet. This is of concern generally but is particularly interesting given reports that media companies charge the parties (and, indirectly, the taxpayers who provide public funding) *more* for advertising time and space than they do other (commercial) advertisers. Perhaps media companies also know that the parties can bank on the 'gift' of public funding and indeed can raise the amount anytime through legislative amendment. This underwriting of political advertising

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<sup>82</sup> Young, 'Political advertising: hey big spender!'

costs may go some way to explaining the exponential rise in political advertising costs over the past three decades and particularly since the introduction of public funding in the mid-1980s and the doubling of the public funding rate in 1996.

### The bottom-line: big and secret spending

To sum up our present (and still inadequate) knowledge about the parties' spending, we do know that the major parties hoard their money for election campaigns and try to amass a war chest which will, they hope, give them some competitive advantage over their opponents or, at the very least, allow them to keep up with their opponent's spending. They then spend the vast majority of their funds on political advertising during the campaign period.

'Free speech'—where it relies on television advertising and direct mail—is actually very expensive in Australia and money in politics always has the potential to be a corrupting and negative influence. This is not only in relation to overt corruption but also to more subtle forces of socialisation. When electoral competition is reliant on vast amounts of private funding and electoral communication is premised on the ability to afford very expensive political advertisements, the money chase can drown out the voices of smaller players and discourage potential candidates with limited means.

Spending caps on election expenses are one method by which many other countries seek to control election costs and minimise inequalities. But these are not in place in Australia.

Transparency in party expenditure is important and one way to guard against corruption. However, incumbent governments and legislators can, and do, change electoral rules to their own advantage and electoral administrators answerable to them may find it difficult to maintain their neutrality. Key changes to reporting requirements in recent years, which have meant that the parties effectively do not have to tell us about their spending, are of serious concern because the Australian

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<sup>83</sup> AEC, *Funding and Disclosure Report Election 2004*, p. 19.

public provides public funding to the parties to campaign and therefore has a right to know how that money is spent.

Unfortunately, none of the methods that the authors of this report used to try to gain additional information yielded any great success, indicating that income and expenditure are extremely sensitive issues for the political parties and there is a culture of secrecy at work that is difficult to penetrate.

## Chapter 6 – Conclusion and questions for reform

The study so far has identified various problems with the financing of Australian political parties. Secrecy, corruption and political inequality attend private contributions while public funding is not sufficiently transparent and favours incumbent parties. Worse, very little is known of the political spending of parties. What is to be done about these deficiencies?

### Reforms to the regulation of private funding

#### **A plan for change: The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth)**

The Coalition government is currently proposing significant changes to the federal disclosure scheme. The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth) ('the Bill'), firstly, seeks to reduce disclosure obligations. For instance, the Bill abolishes the provisions requiring broadcasters and publishers to lodge post-election returns detailing political advertisements. Importantly, the Bill, if it becomes law, will increase and index the thresholds at which political participants will have to disclose details of receipts (see Table 6.1).

**Table 6.1: Increase in disclosure thresholds proposed by Bill**

| <b>Return</b>   | <b>Current disclosure threshold (\$)</b> | <b>Proposed disclosure threshold (\$)</b> |
|---|--|---|
| Post-election returns by donors of gifts to candidates                | 200                                      | More than 10,000                          |
| Post-election returns by donors of gifts to groups of candidates      | 1,000                                    | More than 10,000                          |
| Post-election returns by candidates of gifts                          | 200                                      | More than 10,000                          |
| Post-election returns by groups of candidates of gifts                | 1,000                                    | More than 10,000                          |
| Annual returns of advertising etc expenditure of Cth govt departments | 1,500                                    | More than 10,000                          |
| Annual returns by donors  | 1,500                                    | More than 10,000                          |
| Annual returns by registered parties                                  | 1,500                                    | More than 10,000                          |

|                                       |       |                  |
|---------------------------------------|-------|------------------|
| Annual returns by associated entities | 1,500 | More than 10,000 |
|---------------------------------------|-------|------------------|

The Bill will also increase the level at which parties and other political participants are allowed to receive anonymous donations and loans. Currently, there is a prohibition against receiving anonymous donations and loans with a value of \$1,500 or more. The Bill, if it becomes law, will increase this amount to \$10,000 and index this amount.

There are four major arguments for these changes. The first states that the increases in disclosure thresholds merely adjust for inflation. To test this argument, Table 6.2 adjusts the disclosure thresholds by the changes in the Consumer Price Index since their introduction. The table demonstrates the implausibility of the inflation-argument. None of the adjusted figures come close to even a third of \$10,000. The adjusted figure for the disclosure thresholds of the annual returns of parties and associated entities, for instance, is barely a fifth of \$10,000.

**Table 6.2: Adjusting disclosure thresholds for inflation**

| Return  | Disclosure threshold (\$) upon introduction ('IN') | Threshold adjusted for inflation (\$) |
|---|--|---------------------------------------|
| <i>Introduced in 1984</i>   |  | IN x 149.8/68.1                       |
| Post-election returns by candidates of gifts                          | 200  | 439.94                                |
| Post-election returns by groups of candidates of gifts                | 1,000  | 2199.71                               |
| <i>Introduced in 1991</i>   |  | IN x 149.8/105.8                      |
| Annual returns of advertising etc expenditure of Cth govt departments | 1,500  | 2123.81                               |
| <i>Introduced in 1992</i>   |  | IN x 149.8/107.6                      |
| Post-election returns by donors of gifts to candidates                | 200  | 278.44                                |
| Post-election returns by donors of gifts to groups of candidates      | 1,000  | 1392.19                               |
| Annual returns by registered parties                                  | 1,500  | 2088.29                               |
| Annual returns by associated  | 1,500  | 2088.29                               |

|                           |       |                  |
|---------------------------|-------|------------------|
| entities                  |       |                  |
| <i>Introduced in 1995</i> |       | IN x 149.8/114.7 |
| Annual returns by donors  | 1,500 | 1959.02          |

Note: Calculations were based on the following figures: the Consumer Price Index for the first quarters of 1985, 1991, 1992 and 1995 which were respectively 68.1, 105.8, 107.6 and 114.7 and the index for the third quarter of 2005 which was 149.8 (Australian Bureau of Statistics, *Consumer Price Index, Australia* (Catalogue Number 6401, October 2005)).

The second argument, in essence, contends that the increases will still result in adequate transparency. Citing evidence by Liberal Party federal director, Brian Loughnane, a majority of the Joint Standing Committee on Electoral Matters has argued that 88 per cent of all moneys received as donations to the ALP and Liberal Party will remain disclosed if \$10,000 thresholds were introduced.<sup>84</sup>

With the current \$1,500 thresholds, details of a small portion of ALP and Liberal Party funds are not disclosed. While this portion is relatively minor in terms of percentage, it is still in the order of hundreds of thousands of dollars (see Table 6.3).

**Table 6.3: Undisclosed receipts and donations for federal ALP and Liberal Party**

|                      | Total receipts (\$) | Undisclosed receipts (\$) | Undisclosed receipts (% of total receipts) | Disclosed donations (\$) | Disclosed donations (% of total receipts) |
|----------------------|---------------------|---------------------------|--|--------------------------|---|
| <b>ALP</b>           | 6,808,984           | 262,121                   | 3.84                                       | 2,353,891                | 34.57                                     |
| <b>Liberal Party</b> | 3,999,687           | 117,749                   | 2.94                                       | 2,621,079                | 65.53                                     |

Source: Annual returns, 2003/2004

Table 6.4 attempts to gauge the amounts that will be undisclosed if the thresholds were increased to \$10,000. It shows that, if a \$10,000 disclosure threshold applied in the 2003/2004 financial year, more than 90 per cent of the donations disclosed by the federal ALP and Liberal Party under the current \$1,500 threshold would still be revealed. These figures are, however, not as significant as the portion of total receipts that will still be disclosed. Sums are labelled as ‘donations’ in annual returns through

a voluntary system of identification and do not include contributions that can be reasonably considered political donations, for instance, the purchase of political access (see Chapter Two).

The figures relating to total receipts suggest that Loughnane’s estimate holds in relation to the federal Liberal Party but not to the federal ALP. The last column of Table 6.4 shows that undisclosed sums come close to a million dollars for the federal ALP and is nearly half a million for the federal Liberal Party. It demonstrates that increasing the disclosure thresholds to \$10,000 will significantly increase the level of non-disclosure.

Moreover, these figures, being drawn from the annual returns of the federal ALP and Liberal Party, may understate the level of non-disclosure. It is possible that the level of non-disclosure for state branches may be even higher with an increase in the disclosure thresholds. For instance, the Greens have estimated that if the threshold were increased to \$5,000, 56 per cent of the money received by the NSW branch of the Liberal Party—nearly \$5 million dollars—would remain undisclosed.<sup>85</sup>

**Table 6.4: Undisclosed receipts and donations > \$10,000 for federal ALP and Liberal Party**

|                      | Total of disclosed donations > \$10 000 (\$) | Total of disclosed donations > \$10 000 (% of disclosed donations) | Total of disclosed donations > \$10 000 (% of total receipts) | Total of receipts > \$10 000 (\$) | Total of receipts > \$10 000 (% of total receipts) | Total of receipts < \$10,000 (\$) |
|----------------------|--|--|---|-----------------------------------|--|-----------------------------------|
| <b>ALP</b>           | 2,327,500                                    | 98.88  | 34.18   | 5,894,764                         | 86.57  | 914 446                           |
| <b>Liberal Party</b> | 2,436,620                                    | 93.03  | 60.92   | 3,520,226                         | 88.01  | 479 562                           |

Source: Annual returns, 2003/2004

There is another reason why these figures should be treated with some caution. While they give some indication of the level of non-disclosure if the thresholds were

<sup>84</sup> Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (‘JSCEM 2004 Federal Election Report’) para. 13.72.

<sup>85</sup> Rhiannon and Thompson, ‘Hidden Money’, pp. 12-3.

increased, they are probably under-estimates. As non-disclosure is increasingly legitimised, it is likely that parties will take greater advantage of the regulatory gaps that are opened up by the changes.

One gap stems from disclosure thresholds applying *separately* to each registered political party. In the context where the national, State and Territory branches of the major political parties are *each* treated as a registered political party, this means that a major party constituted by the nine branches has the cumulative benefit of nine thresholds. So it is, for example, that a company can presently donate \$1,499 to each State and Territory branch of the Labor Party as well as its national branch—a total of \$13,491—without the Labor Party having to reveal the identity of the donor.

Increasing the disclosure threshold to more than \$10,000 will create such a gap in the disclosure scheme that describing this as a ‘loophole’ seems almost laughable. This proposal, if enacted, will mean that a donor can give a total of \$90,000 to a major party without the party having to disclose the identity of the donor. Having such a high threshold in practice can only mean more secret donations.

The change that will perhaps most seriously compromise transparency is the increase in the permissible amounts of anonymous donations and loans. This change is less about public disclosure of donations and loans and rather about records kept by parties. It will mean that parties can legally accept larger sums without knowing details of the donor. This potentially renders the whole notion of disclosure thresholds meaningless.

Take, for instance, a situation where the Liberal Party, through its various branches accepts anonymous donations from a single company to the amount of \$90,000. The company then gives an additional \$9,000 that is publicly disclosed. Under the proposed changes, details of the entire \$99,000 should be disclosed. The ability to legally accept \$90,000 in anonymous circumstances, however, potentially destroys the paper trail required to enforce such an obligation. At best, this change is an invitation to poor record keeping; at worse, it is a recipe for wholesale circumvention of the disclosure scheme.

The third major argument proposed for increasing the disclosure thresholds says that it is unlikely that ‘donations of less than the threshold . . . could be said to exert undue influence over recipients or to engender corruption’. This argument has also been buttressed by reference to the UK disclosure threshold of £10,000.<sup>86</sup>

The reference to the UK disclosure threshold is a weak and decontextualised argument. It fails to take into account other features of the UK disclosure scheme. For instance, there is no mention of the fact that, under the British scheme, parties are required to lodge quarterly returns with weekly returns during election campaigns; returns that are accompanied by auditor’s statements. This argument also pays insufficient attention to the already existing problems with achieving adequate transparency under the Australian scheme.

Further, arguments based on comparisons per se can cut both ways. Increasing Australia’s disclosure threshold does put Australia more in line with New Zealand and the United Kingdom. But equally, it can be said to put it out of sync with the United States and Canada, countries that have much lower disclosure thresholds than that which currently applies in Australia (see Table 6.5).

**Table 6.5: Current disclosure thresholds of various countries**

|                                  | US  | Canada   | New Zealand | UK       | Australia |
|----------------------------------|---|----------|-------------|----------|-----------|
| Threshold for disclosure         | Generally US\$200 per annum<br>During election campaign, gifts > US\$1,000 reported within 48 hours | CAD\$200 | NZ\$10,000  | £5,000   | A\$1,500  |
| Threshold in Australian dollars* | Generally \$267 per annum<br>During election campaign, gifts > \$1,335 reported within 48 hours     | \$231    | \$9,071     | \$11,830 | \$1,500   |

\* Currency conversions made as at 21 January 2006.

More importantly, the observation that a \$10,000 sum does not carry risk of undue influence or corruption is implausible. It was donations of around \$10,000 that

<sup>86</sup> JSCEM 2004 Federal Election Report, para. 13.73. See also para. 13.75.

sparked the ‘Cash-for-visas’ controversies. Political access and influence are also regularly being bought for \$10,000 or less. For instance, \$10,000 will easily purchase membership of Progressive Business or sponsorship of the Millennium Forum (as discussed in Chapter Two).

The argument also assumes that increases in the disclosure thresholds will merely allow sums of \$10,000 or less to be kept secret. In fact, these increases, together with the increase in the permissible amounts of anonymous donations, will allow the clandestine receipt of donations of much more than that sum.

The final argument for increases in the disclosure thresholds that needs to be considered is that which says ‘higher thresholds would encourage more individuals and small businesses to make donations to all candidates and parties’.<sup>87</sup> Such encouragement, it is said, will occur because of the alleviation of ‘the administrative burden of filing a disclosure for relatively small donations’ and by protecting the privacy of would-be contributors who feared political intimidation if their donations were made public.<sup>88</sup>

This argument is entirely speculative. There is no evidence disclosure obligations which merely require an annual return identifying the donor’s identity and the date and sum of the donation are discouraging donations. Neither is there any serious evidence that disclosure is resulting in political intimidation (see Chapter Two).

More fundamentally, this argument presupposes that encouraging donations between \$1,500 and \$10,000 by individuals and small businesses is a good thing. This is a weak presupposition: businesses, even if small, have no legitimate claim to democratic representation and characterising sums of this amount as ‘relatively small’ is questionable to say the least.

The Bill also proposes to increase the disclosure obligations of some political participants. It seeks to repeal the current provisions requiring third parties that have incurred \$1,000 or more in political expenditure to lodge *post-election* returns; returns

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<sup>87</sup> Ibid para. 13.71.

<sup>88</sup> Ibid para. 13.78.

that must provide details of gifts exceeding \$1,000 that were received for the purpose of making such expenditure. Replacing these provisions are ones requiring third parties that have spent more than \$10,000 in a financial year on political expenditure to lodge *annual* returns. Such returns must disclose details of political expenditure as well as details of gifts exceeding \$10,000 that were received for the purpose of such expenditure.

This change is said to place such third parties on the same footing as ‘all entities involved in the political process and covered by the CEA’ and promotes ‘the interests of transparency and consistency’.<sup>89</sup> The argument based on transparency is cogent: if an entity is spending money to influence political outcomes, citizens are entitled to know who is financing their spending in order to make an informed decision. Annual returns of the kind being proposed are not too onerous in achieving such disclosure.

The argument based on consistency, however, rings hollow in one key respect. Parties are not required to disclose details of their political spending. The result is that there is very little public information of party spending (see Chapter Three). If third parties are required to disclose details of their political spending, the same should apply to parties and their associated entities as a matter of political equality.

The Bill also proposes to broaden the definition of ‘associated entity’ to include entities that are financial members or that have voting rights in a registered party including those whose financial membership or voting rights are held on their behalf by others.

The strongest argument for this change is perhaps one based on popular control over public decision-making. Such control requires informed voting which, in turn, implies that voters need to know who controls parties including their members and those who exercise voting rights. As the *Democratic Audit of Australia Report* on political parties noted, there are serious problems in this area. For instance, parties are not

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<sup>89</sup> Ibid para. 13.134.

required to disclose the level of party membership and have generally shown no inclination to voluntarily disclose.<sup>90</sup>

The proposed change is, however, both over and under-inclusive. It is over-inclusive in that it imposes annual reporting obligations on organisations that do not have significant influence over the party's affairs. To overcome this flaw, a threshold of 'influence' should apply. For instance, an organisation could be considered an 'associated entity' when it provides 10 per cent of funds to the party or exercises 10 per cent of the party's voting rights.

It is under-inclusive because significant influence over a party's position is not confined to financial membership and voting rights. It can result from other forms of affiliation. For instance, sponsorship of the Millennium Forum entitles a company to regular access to key Liberal Party officials. This clearly allows it to influence the party's position.

The restricted scope of the proposed change highlights how it fails on the count of political equality. It discriminates against parties that have organisations as its members. The target of such discrimination is clear: of the main parties, only the ALP allows organisations to become members.<sup>91</sup>

It also discriminates against trade unions, organisations that politically participate through formal affiliation to the Labor Party. At the same time, it exempts corporate donors—entities that have no claim to democratic representation—which tend to wield influence through less formal means.

*Recommendation 1: Changes proposed by the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth) seeking to reduce disclosure obligations should be rejected.*

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<sup>90</sup> Jaensch, Brent and Bowden, *Australian Political Parties in the Spotlight: Democratic Audit of Australia Report No 4*, p. 52.

<sup>91</sup> *National Constitution of the ALP* clause 7 (cf *Australian Democrats: National Constitution and Regulations* clause 4.1; *The Charter and National Constitution of the Australian Greens (2004)* clause 8.1; *Liberal Party of Australia: Federal Constitution* clause 8).

*Recommendation 2: Changes proposed by the Bill requiring third parties to lodge annual returns should be accepted only if parties and associated entities are required to disclose details of political spending.*

*Recommendation 3: Changes proposed by the Bill broadening the definition of ‘associated entity’ should be changed to include less formal means of influencing party activities and restricted to entities wielding a significant level of influence.*

### **Improving disclosure and transparency**

A key problem is that disclosure schemes fail to provide adequate information of the type of contribution and especially in regard to the sale of political access. These failings can be rectified by adopting the AEC’s recommendations that payments at fundraisers (and like events) be deemed to be ‘gifts’<sup>92</sup> and that ‘gifts’ be identified separately in annual returns.<sup>93</sup>

What, arguably, would be a preferable method to address these problems would be to adopt the UK system of donations reports. British political parties, while required to prepare annual statements of accounts, also have to submit donation reports that are confined only to transactions considered to be donations. In completing these reports, parties not only have to disclose the amount and date of such donations but also must identify the status of the donor as individual, trade union, company or other entity.

An annual system of reporting also results in a lack of timeliness. Of the other Anglo-Saxon countries, only New Zealand has such a system. By comparison, the disclosure schemes of the United States, Canada and the United Kingdom require much more frequent disclosure and especially during election periods. The need for more frequent disclosure in Australia could be met by borrowing from these schemes or by adopting Democrats Senator Andrew Murray’s recommendation that donations over \$10,000 be disclosed more frequently and at least on a quarterly basis.<sup>94</sup>

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<sup>92</sup> AEC, ‘Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure’, para. 8.7.

<sup>93</sup> AEC, *Funding and Disclosure Report Following the Federal Election Held on 2 March 1996* paras. 4.3-4.4, Recommendation 5.

<sup>94</sup> JSCEM 2004 Federal Election Report, Supplementary remarks – Senator Andrew Murray para. 5.3.

**Table 6.6: Comparison of frequency of disclosure of donations**

|                                | US  | Canada  | New Zealand    | UK   | Australia |
|--------------------------------|---|---|----------------|--|-----------|
| <b>Frequency of disclosure</b> | Generally monthly<br><br>During election campaign, report 12 days before and 20 days after election | Quarterly reports as condition of receiving quarterly allowances<br><br>Annual and post-election disclosure also required | Annual returns | Weekly donation reports during election period<br><br>Quarterly donations reports<br><br>Annual statements of accounts | Annual    |

Finally, the Australian disclosure scheme is, arguably, plagued by a culture of non-compliance. Various strategies can be used to combat this problem. The enforcement resources of the electoral commissions must be adequate. Also, mechanisms should be put in place to verify the accuracy of disclosure returns. The Canadian, New Zealand and United Kingdom disclosure schemes, for instance, require returns (or at least those of parties with significant income) to be accompanied by an auditor's report vouching for its accuracy. Both of these strategies—which have been endorsed by the ALP<sup>95</sup>—should be put in place.

*Recommendation 4: Payments at fundraisers and like events be deemed 'gifts'.*

*Recommendation 5: Parties and associated entities submit 'gift' reports disclosing details of gifts received by them.*

*Recommendation 6: Parties and associated entities should be required to make more frequent disclosure and especially during election periods.*

*Recommendation 7: Adequate resources must be provided to electoral commissions to enable them to effectively enforce disclosure obligations.*

*Recommendation 8: All returns, or at least those of parties with significant income, be accompanied by an auditor's report verifying accuracy of returns.*

<sup>95</sup> Tim Gartrell, National Secretary, ALP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election', p 6-7.

### **More effectively preventing corruption as graft**

Disclosure schemes face a serious problem of proof when seeking to prevent corruption as graft. If such corruption is to be more effectively prevented, contributions that carry a significant risk of graft should be restricted.

Support for greater restrictions on political donations has come from figures in all the main parties. The Democrats, Greens Senator Bob Brown, and the ALP's Carmen Lawrence have long argued for ceilings on the amount of political donations and, in the case of Brown and Lawrence, a complete ban on corporate donations.<sup>96</sup> Democrats Senator Andrew Murray has recently recommended a \$100,000 annual cap on donations<sup>97</sup> while Dr Lawrence has called for a ban on donations from corporations and large organisations with a \$1,500 annual cap for individual donations.<sup>98</sup> They have been joined by Liberal Party MPs Malcolm Turnbull and Christopher Pyne, with Turnbull advocating a ban on corporate and trade unions donation as a condition of election funding<sup>99</sup> and Pyne calling for a ban on such donations with an annual cap of \$10,000 for individual donations.<sup>100</sup>

In determining what sort of regulatory strategy should be adopted to prevent corruption as graft, it is important to appreciate that the danger of such corruption increases with the donation amount. This points towards the adoption of amount restrictions. Both the United States and Canada impose such amount restrictions (see Table 6.7). Such restrictions, of course, would limit the freedom of Australian citizens to donate. A less invasive means would be to tax donations above a certain amount. This would preserve the freedom to donate while making its exercise less attractive.

### **Table 6.7: United States and Canadian caps on individual donations**

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<sup>96</sup> Bob Brown, *Corporate Donations are a cancer on Australian politics*, media release, 14 April 2000; and Carmen Lawrence, 'Renewing Democracy: Can Women Make a Difference?' Address to the Sydney Institute, 17 August 2000.

<sup>97</sup> JSCEM 2004 Federal Election Report, Supplementary remarks – Senator Andrew Murray para. 5.2.

<sup>98</sup> Carmen Lawrence, *The Democratic Project*, p. 8.

<sup>99</sup> Malcolm Turnbull MP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election,' pp. 2-3.

<sup>100</sup> Christopher Pyne MP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election,' p. 2.

|               | Limits on individual donations to candidates   | Limits on individual donations to parties etc   |
|---------------|--|---|
| United States | <p>US\$2,100 to each candidate per election cycle</p> <p>US\$40,000 to all candidates per election cycle</p> <p>US\$101,400 per election cycle for all contributions</p>                                   | <p>US\$26,700 to each national party committee per election cycle</p> <p>US\$5,000 to each political committee or state party committees per election cycle</p> <p>US\$61,400 for political committees per election cycle</p> <p>US\$101,400 per election cycle for all contributions</p> |
| Canada        | <p>C\$5,000 to each registered political group (i.e. party, district associations and endorsed candidates) per annum</p> <p>C\$5,000 to each candidate not endorsed by a registered party per election</p> |   |

The danger of corruption as graft is also heightened when the donor has a strong interest in governmental actions. This, on the other hand, suggests source restrictions. In the United States, for instance, contributions from persons or companies with contracts with the federal government are completely banned. Canada imposes a similar ban on contributions from Crown corporations and corporations that receive more than 50 per cent of their income from the federal government. Such regulation reflects the notion that contributions from donors that have a particularly strong interest in governmental action carries a serious danger of graft and, therefore, should be limited. The Victorian cap on donations from holders of gambling and casino licenses also reflects this idea as does the call from NSW Greens Legislative Council member, Lee Rhiannon,<sup>101</sup> and former Prime Minister, Paul Keating, for a ban on political donations from property developers, companies that are greatly affected by State planning laws.<sup>102</sup> Regulation similar to that found in the United States and Canada should be introduced in Australia while consideration should be given to banning contributions from companies that have particularly strong interest in governmental actions.

*Recommendation 9: Large contributions should be taxed.*

<sup>101</sup> Rhiannon’s proposal was accompanied by a Bill, see <<http://www.lee.greens.org.au>>.

*Recommendation 10: Contributions from persons and companies holding contracts with federal and State governments should be banned.*

*Recommendation 11: Bans on contributions from companies with particularly strong interest in governmental actions should be investigated.*

### **More effectively preventing corruption as undue influence**

If foreign contributions are seen as a form of corruption as undue influence, the solution is simple: a ban on donations from foreign parties like that proposed by Democrats Senator Andrew Murray<sup>103</sup> and which is already in place in United States, Canada and the United Kingdom.

It was said earlier, however, that this argument may not pay sufficient regard to the need to support democratic movements overseas. A more cautious approach to restricting foreign donations is perhaps warranted. The ALP has recommended a reform aimed at ensuring that foreign donations do not undermine the disclosure scheme. This proposal to forfeit foreign donations unless full disclosure is forthcoming should be adopted.<sup>104</sup>

The risk of corruption of corruption as undue influence pervades Australian politics through the reliance of parties on corporate money. This risk is also institutionalised through the regular sale of political access. A possible antidote to this danger is to institute a ban on corporate donations like that proposed by the Australian Democrats, Greens, the ALP's Carmen Lawrence and Liberal Party parliamentarians Malcolm Turnbull and Christopher Pyne. Such a ban is also found in the United States and Canada.

Such a ban does not pose a problem from the perspective of curbing political freedoms because commercial corporations have no legitimate claim to democratic

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<sup>102</sup> Allen, 'Keating Backs Ban on Developer Donations', *Australian Financial Review*, 4 June 2001, p.10.

<sup>103</sup> JSCEM 2004 Federal Election Report, Supplementary remarks – Senator Andrew Murray para. 5.4.

<sup>104</sup> Tim Gartrell, National Secretary, ALP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election', p. 6.

representation and therefore, have no right to such freedoms. The problem, however, with such a ban is that it will starve the major parties of funds at least in the short term. A better way would be to subject corporate donations to very high taxes with a view to eventually instituting a ban on such donations.

Another virtue of this regulatory method is that it may crystallise to business the costs of political donations. A precise monetary figure can be placed on such taxes whereas the costs of flouting a ban depends on less tangible factors whether it be the possibility of prosecution or the risk of adverse publicity.

Samuel Issacharoff and Pamela Karlan have warned that ‘political money, like water, has to go somewhere’.<sup>105</sup> Australian corporate donations are now in the order of millions of dollars. If there were a clamp down on such donations, where would the money go?

There are several possibilities. Businesses may continue to spend the money politically. They could continue directly contributing to parties by seeking out regulatory loopholes or they could engage in their own political campaigning. Alternatively, the money could be channelled back into the core commercial activities of the business.

These possibilities raise questions of principle and enforceability. If the premise that commercial corporations have no legitimate claim to democratic representation is accepted then regulation should steer business funds away from the political sphere. If business can continue to spend politically despite restrictions on corporate donations, the true purpose of these restrictions will then be undermined. What this suggests is that restrictions must not only apply to corporate donations but to all forms of political spending by business. In short, the taxes that apply to political contributions should be extended to other types of political spending by businesses.

Corruption as undue influence may also result from the institutional dependence of a party on business and/or trade union funds. It is the perception of undue influence resulting from such dependence that has prompted Malcolm Turnbull to call for a ban

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<sup>105</sup> Issacharoff and Karlan, ‘The Hydraulics of Campaign Finance Reform’, p. 1708.

on corporate and trade union donations as a condition of election funding. This approach can perhaps find support in the American and Canadian bans on both trade union and business donations.

Such a non-discriminatory approach is, however, highly problematic in Australia where trade unions are legally required to have majoritarian decision-making. It is such a requirement that distinguishes them from commercial corporations whose structures are fundamentally plutocratic.

There is still, however, a need for both types of organisations to be accountable to their members when making political contributions (see Chapter Two). Pointing to the fact that many union members do not vote for the Labor Party, Pyne has argued for a requirement that trade unions seek authorisation from their members in order to make political contributions.<sup>106</sup> Such a requirement has Australian precedent: for a few years, Western Australian trade unions were required to set up a separate fund for political spending.<sup>107</sup> Similarly, Democrats Senator Andrew Murray has recommended that businesses and trade unions respectively seek authorisation from their share-holders and members at annual general meetings or at least every three years.<sup>108</sup>

Another possible model are the UK controls on the donations made by trade unions and companies. British trade unions are required to ballot their members every ten years for authority to promote their political agendas. Once authorised, political expenditure by a trade union must be made from a separate political fund which individual members have a right not to contribute to. British companies, on the other hand, are required to seek authorisation from their shareholders every four years to make political donations and/or political expenditure.

These recommendations are certainly worth considering. If they are instituted, the controls on trade union and business donations should be simultaneously introduced as a matter of political equality. Imposition of trade union controls without equivalent

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<sup>106</sup> Christopher Pyne MP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election' p. 3.

<sup>107</sup> Former section 97P of the *Industrial Relations Act 1979* (WA). This requirement was in force from 1997 to 2002.

restrictions on business donations would, for example, be a serious violation of this principle: it would disadvantage political participants that have a prima facie entitlement to democratic representation while favouring those who have no such right.

*Recommendation 12: Foreign donations should be forfeited unless full disclosure is made with consideration to be given to banning foreign donations.*

*Recommendation 13: Corporate political spending should be heavily taxed with a view to eventually imposing a ban on such spending.*

*Recommendation 14: Measures to improve the internal accountability of companies and trade unions should be considered and, if instituted, introduced simultaneously.*

## Reforms to the regulation of public funding

### **State funding of election campaigns**

Election funding is a relatively new development in Australia but its impact should not be underestimated. It has brought about major changes in the ways that the parties are funded and organised and consequently, has had a significant impact on the way that they behave. The Australian system of providing political parties with a ‘gift’ of public funding for their election campaigns without requiring, in return, any expenditure limits, private donation limits, political advertising limits and without specifying the purposes for which the money must be spent, is extremely unusual by international standards.

Some countries provide public funding only for certain purposes (see Chapter Three). Further, most countries require parties to reign in their expenditure and/or their private funding in return for public money. Even in the US, for example, public funding usually comes with certain conditions. Candidates in presidential primaries, upon meeting various qualification requirements and agreeing to meet certain

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<sup>108</sup> JSCEM 2004 Federal Election Report, Supplementary remarks – Senator Andrew Murray para. 2.2 (trade unions) para. 5.5 (corporations).

expenditure limits, can receive public matching funds but a condition of the receipt of such funding is that the candidate adhere to spending limits. In relation to presidential elections, once a candidate becomes a nominee of a major party, s/he becomes eligible for a public grant on condition that the candidate must not spend more than the amount of the grant and must not accept private contributions in relation to the elections.

In other countries, there is also a closer nexus between public funding and disclosure obligations. Since 2003, Canadian parties have been required, as a condition of receiving quarterly allowances, to submit a quarterly return disclosing the total amount of contributions, the number of contributors as well as details concerning these contributions including their amounts and the dates they were received. These returns are then made public by the Chief Electoral Officer and can be inspected by any member of the public.

While there are some positive benefits of public funding and its provision is underpinned by some sound democratic principles, at present, the public funding system in Australia does not appear to be operating as it was intended or in the public interest. It has not, contrary to promises made when it was introduced, led to full disclosure, halted spiralling electioneering costs, stopped the flow of money from wealthy, private interests or evened out the playing field between established major parties, minor parties and new entrants. Neither is there any evidence that public funding has resulted in parties devoting more money to activities such as policy research or building party membership. There is a need to harness public funding to other regulatory methods and to use it to encourage parties to perform their democratic functions.

*Recommendation 15: In order to receive election funding, parties and candidates should be required to document their actual expenditure and consideration should be given to reimbursement only for spending for electioneering, policy research and development.*

*Recommendation 16: Failure to comply with disclosure obligations should result in a deduction of election funding.*

*Recommendation 17: In conjunction with taxing large contributions, parties and candidates should only be allowed to receive donations below a specified amount as a condition of receiving election funding.*

*Recommendation 18: If expenditure limits are not imposed, parties and candidates should be required to cap their spending as a condition of receiving election funding.*

*Recommendation 19: The possibility of requiring parties to dedicate some of their public funding to activities which benefit the polity such as long-term policy development, party building and encouraging political participation (as in other countries) should be investigated.*

### **Tax deductions**

Individuals making political contributions to federally registered parties can now claim tax-deductions up to a maximum of \$100. The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth) will increase this amount to \$1,500 and extend it to corporate contributions and donations received by parties registered under State and Territory laws as well as independent candidates and independent parliamentarians.

Tax subsidies can play a role in encouraging political participation through individual and small donations. In short, they can promote ‘grass-root’ financing. To do so, several conditions, however, need to be met: tax deductibility must be confined to citizens; the amount of tax deductions must be set reasonably low and the regressive effects of tax subsidies must be addressed.

The present proposal, however, fails to meet these conditions. It provides actors that have no legitimate claim to democratic representation, commercial corporations, with a public subsidy. It is set too high at \$1,500 and no attempt has been made to temper the regressive effects of the subsidy. If enacted, the proposal will entrench a blatantly unfair subsidy in the tax system.

There is another issue for political equality. Democrats Senator Andrew Murray opposed lifting the tax deductibility threshold for political parties unless it was also

lifted for all other relevant community organisations.<sup>109</sup> This was an interesting point given the ‘public good’ rationale that supporting a political party is contributing to civil society in the same way that donating to a charity is.

A better way forward is perhaps provided by the Canadian system of income tax credits. Such a system might have a prominent role if restrictions on large and corporate contributions are introduced. Such restrictions would mean that the major parties would, in the short term, lose a significant portion of their income. By encouraging small individual donations, a system of income tax credits could step into the breach.

**Table 6.8: Canadian system of income tax credits**

| Amount of contribution | Tax credit  |
|------------------------|---|
| C\$0 to C\$400         | 75% of contribution, e.g. C\$150 credit for C\$200 contribution   |
| C\$401 to C\$750       | C\$300 + 50% of amount of contribution exceeding C\$400, e.g. C\$400 credit for C\$600 contribution   |
| Over C\$750            | C\$475 + 33 1/43% of amount of contribution over C\$750 or C\$650, whichever is the lesser amount, e.g. C\$650 credit for C\$1,000 contribution |

*Recommendation 20: Changes proposed by the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth) to increase and extend tax-deductibility for political donations should be rejected.*

*Recommendation 21: An income tax credits system like the Canadian system should be considered.*

### **Parliamentary entitlements**

Compared with election funding, parliamentary entitlements are less well known and have received far less scrutiny. But their implications are just as important. Recent changes to parliamentary entitlements—particularly to communications and printing entitlements—represent a boosting of incumbency resources which have made it much easier for incumbents to perform local election campaign activities at taxpayer

<sup>109</sup> Ibid para. 13.109.

expense. There is significant evidence that this is occurring as old conventions prohibiting electioneering communication (as distinct from communication for parliamentary business) are over-ridden.

Other countries are more rigorous in preventing abuse of parliamentary entitlements. For example, in New Zealand, communication must relate to ‘parliamentary business’ (and not aimed at eliciting money, members or votes) and must be authorised by the Auditor-General as complying with this requirement. Another proposal worth considering is to severely limit the use of parliamentary entitlements once an election campaign is called.<sup>110</sup>

*Recommendation 22: There should be increased accountability and transparency in regard to the use of parliamentary entitlements including a concise, publicly-available document outlining all available benefits as well as annual reports documenting MP’s expenditure.*

*Recommendation 23: New guidelines should restrict MPs to using their printing and mail entitlements only for parliamentary or electorate business and not for party politics or electioneering.*

*Recommendation 24: There should be regular independent scrutiny of the use of parliamentary and public benefits including MPs’ adherence to the guidelines. Audits and reports should be made publicly available.*

*Recommendation 25: Consideration should be given to greater restrictions on the use of parliamentary entitlements during election campaigns.*

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<sup>110</sup> A similar proposal was made by federal ALP caucus chair, Daryl Melham: see Commonwealth, *Parliamentary Debates*, House of Representatives, 15 June 2005, (Daryl Melham).

## Reforms to government advertising

There may be some links between public funding—which has encouraged a system of strong financial linkage between parties and the state—and the increased use of incumbency benefits such as parliamentary entitlements and government advertising; all of which represent a shifting orientation toward greater use of state funds. Of these, government advertising and the use of consultants require particularly urgent attention as these benefits are available exclusively to the government and their current use, totaling billions of dollars, poses a serious threat to fair electoral competition.

In attempting to balance government’s need, and responsibility, to communicate with citizens with the need to prevent misuse of that communication for partisan benefit, international practice is instructive. In many respects, Australian regulation compares unfavourably to other countries (see Table 6.9). International practice also suggests various options including legislation, broadcasting license requirements, independent scrutiny of government ads, guidelines prohibiting partisan use and annual reports on spending, compliance and evaluation.

**Table 6.9: Regulation of government advertising**

|  | US  | Canada | Ontario, Canada | New Zealand | UK  | Australia (federal) |
|--|-----|--------|-----------------|-------------|-----|---------------------|
| <b>Guidelines which mention misuse of government advertising for partisan purposes</b> | N/a | Yes    | Yes             | Yes         | Yes | No                  |
| <b>Independent scrutiny of ad content before broadcast/publication</b>                 | No  | No     | Yes             | No          | No  | No                  |
| <b>Free time donated by commercial broadcasters as licence condition</b>               | Yes | N/a    | N/a             | N/a         | N/a | No                  |
| <b>Legislation specifically prohibiting misuse of appropriated funds for</b>           | Yes | No     | N/a             | No          | No  | No                  |

propaganda

### Legislation and broadcast licence requirements

In the United States, legislation (the *Consolidated Appropriations Act* of 2004) specifically prohibits the misuse of public funds and states that:

Appropriated funds may never be used in a general propaganda effort designed to aid a political party or candidates.

Provisions such as this have been in force there since 1952. Congress has also enacted a number of statutes restricting the ability of agencies to spend funds for publicity, propaganda or lobbying.

In the United States, there is also a tradition of broadcasters donating free time for government advertising as part of their licence conditions so that many government advertisements are made and broadcast for free. This tradition stems from the Federal Communications Commission's (FCC) requirements imposed by the *Communications Act 1934* that broadcasters operate in 'the public interest'. This has, traditionally, been interpreted as a requirement for broadcasters to provide free airtime for public service announcements (PSAs). According to recent accounts, this has meant that 'the average TV station' airs about 200 public service announcements per week in the US.<sup>111</sup>

While television and radio stations donate free time for government ads in a spirit of public and community service, advertising agents also donate their time and creative efforts to make many of these ads through the Ad Council. The council which has played a key role in making free PSAs since World War II (when it was known as the War Advertising Council) is a private, non-profit organisation that recruits and coordinates volunteers from the advertising and communications industries as well as media outlets and resources business and non-profit communities to produce 'thousands of public service campaigns on behalf of non-profit organizations and government agencies.'<sup>112</sup>

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<sup>111</sup> Jack McGuire, 'Let's Clear The Air About Public Service Announcements', *PSA Research*, undated, <available at <http://www.psaresearch.com/caf1020.html>>.

<sup>112</sup> Ad Council, *PSA Bulletin*, July/August 2005, <available at [http://psab.adcouncil.org/2005\\_July\\_August/](http://psab.adcouncil.org/2005_July_August/)>

According to the Ad Council, ‘campaigns produced by the Ad Council received an estimated US\$1.7 billion in donated media time and space during 2004.’<sup>113</sup> The Ad Council has produced advertising for government departments on a range of topics including prevention campaigns on drug use, obesity, drunk driving and domestic violence.

Despite recent changes weakening this tradition (including the FCC relaxing its interpretation of ‘public interest’ broadcasting), American governments have been able to save significant costs on government advertising compared to Australian governments because of the principle that government-citizen communication is important and broadcasters who profit from the broadcast spectrum (which is a public resource they are licensed to use) should, in return, be required to give something back to the community by broadcasting community announcements.

### **Guidelines, annual reports and greater accountability**

Unlike Australia, other countries such as Canada, New Zealand and the UK, all have guidelines in place which prohibit partisan misuse of government advertising.

Developed in 1989, the New Zealand guidelines state that:

(t)hese guidelines recognise the public concern that government advertising should not be conducted in a manner that results in public funds being used to finance publicity for party political purposes.

They also require that:

(g)overnment advertising should be presented in unbiased and objective language, and in a manner free from partisan promotion of Government policy and political argument.<sup>114</sup>

British guidelines state that government publicity should ‘be relevant to government responsibilities’, ‘objective and explanatory, not tendentious or polemical’ and ‘should not be, or be liable to misrepresentation as being, party political’. Basic

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<sup>113</sup> Ibid.

<sup>114</sup> See The Audit Office (New Zealand), *Suggested guidelines for a convention on publicly-funded government advertising and publicity*; and Cabinet Office Circular, *Guidelines for Government Advertising*, 20 November 1989.

conventions in the guidelines also direct that advertising ‘should be conducted in an economic and appropriate way, having regard to the need to be able to justify the costs as expenditure of public funds’. They also specify that Ministers have a ‘duty not to use public resources for party-political purposes’.<sup>115</sup>

Canada has just been forced to fix up their government advertising system following a major contracting scandal informally known as ‘Adscam’. Over CA\$1 billion was spent on Canadian government advertising over a decade. There were allegations that ads were used as pay back for agencies that were party donors and that proper contracting and competitive tendering procedures were not followed. Some of the key players were arrested and charged with fraud-related offences.

Following an inquiry and changes in regulation and practice, Canada now has a more detailed oversight of government advertising which includes guidelines, policies and legislation on financial administration. There are now specific *annual reports* on government advertising provided by the government which detail precise advertising costs, expenditure by organisation, investment by media type, the aims and target audience of large ad campaigns, as well as what media they ran in, and a post-advertising evaluation which outlines the results that the campaign achieved. This information is very valuable because members of the public can make up their own minds about whether the money was well spent. In order to minimise the potential partisan advantage to be gained when only certain officeholders have access to the research used for government advertising, the Canadian government also produces annual reports into public opinion research. It is this sort of detailed information which is needed in Australia to ensure accountability.

### **Independent scrutiny of advertising content**

While the processes in place at the Federal level in Canada are significant, recent changes to the regulation of government advertising in Ontario are even more thorough. In 2004, the *Government Advertising Act* required that the provincial

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<sup>115</sup> UK Cabinet Office, ‘Guidance on the Work of the Government Information Service’, last updated June 2005 available at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/government\\_information\\_service/annex\\_a.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/government_information_service/annex_a.asp).

Auditor General be responsible for ‘reviewing specific types of advertising by government offices before they are released’.

The Auditor General has brought in a lawyer who specialises in advertising as well as the Canadian academic Jonathon W. Rose, who is an expert on government advertising in Canada, to be in an Advertising Working Group which is in charge of approving government ads in Ontario. In theory, this ensures that approval of government ads is independent of the state.

The Auditor General and the Advertising Working Group make judgements about whether ads should be approved by using the standards set out in the legislation. These standards include that advertisements ‘must not be partisan’ and ‘it must not be a primary objective of the [ad] to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government’.

*Recommendation 26: There should be new guidelines prohibiting the misuse of government advertising for partisan purposes.*

*Recommendation 27: There should be a mechanism to monitor and enforce compliance with guidelines on government advertising. Consideration should be given to the Senate Finance and Public Administration Committee’s recommendation that the Auditor-General scrutinise the advertising content of government ad campaigns valued at \$250,000 or more.*

*Recommendation 28: There should be annual reports on government advertising and public opinion research. These reports should document spending and also include evaluations and results for each campaign.*

*Recommendation 29: Consideration should be given to imposing ‘public interest’ licence requirements on broadcasters so that they donate free time for government advertising of a community/public service nature.*

## Reforms to the regulation of political expenditure

### **Expenditure disclosure and limits**

Details of party spending are currently clouded by secrecy. In place of this situation should be requirements to disclose political spending. As stated by the Harders inquiry into the disclosure of electoral expenditure, it is:

in the public interest that electoral expenditure should be publicly disclosed ...  
(because of) the interest of the people in being informed of the cost of elections.<sup>116</sup>

This public interest rests on various grounds. Campaign costs are being partly defrayed by the public purse through electoral funding and parliamentary entitlements. It is in the public's interest to know how such state assistance is being used. Further, requiring disclosure of political spending will put Australia in line with all other Anglo-Saxon countries (see Table 6.10).

**Table 6.10: Expenditure disclosure schemes of various countries**

|   | US             | Canada                | New Zealand           | UK                    | Australia                            |
|---|----------------|-----------------------|-----------------------|-----------------------|--------------------------------------|
| Expenditure disclosure scheme for parties | Annual returns | Post-election returns | Post-election returns | Post-election returns | None except for NSW, Qld, Vic and WA |

Until recently, there has been an historical tradition of expenditure limits in Australia dating back over a hundred years. There have been recent calls for reintroduction of limits—even from some MPs. Peter Andren, for example, supports campaign expenditure limits of \$50,000 per candidate as reasonable.<sup>117</sup> All other Anglo-Saxon countries also have stronger regulation of political spending. Canada, New Zealand and the United Kingdom directly impose expenditure limits while the United States indirectly restricts such spending through contribution limits and the presidential election funding schemes (see Table 6.11).

**Table 6.11: Expenditure limits of various countries**

|                        | US   | Canada  | New Zealand                                   | UK  | Australia                              |
|------------------------|--|---|---|---|--|
| <b>Spending limits</b> | 'Co-ordinated' expenditure counted towards | Yes and calculated according to the number of | Yes<br>If contests party vote, limit of NZ\$1 | Yes and calculated according to seats contested | Only for Tasmanian Legislative Council |

<sup>116</sup> Commonwealth of Australia, *Inquiry into Disclosure of Electoral Expenditure*, pp 8-9 ('Harders Report').

<sup>117</sup> Peter Andren MP, 'Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election', p. 6.

|  |  |   |  |  |           |
|--|--|---|--|--|-----------|
|  | contribution limits  | listed electors in the contested electoral district | million plus NZ\$20,000 for each electorate candidate nominated by the party |  | elections |
|  | Condition of election funding for presidential primaries and elections |   | If does not contest the party vote, limit NZ\$20,000 per nominated candidate |  |           |

There are two main reasons which suggest a need for election expenditure limits. The first considers that containing increases in campaign expenditure reduces the need for parties and candidates to seek larger donations; donations which carry the risk of corruption and undue influence. The second argument relates to the equality/level-playing field rationale and fears that large-scale spending means elections can be bought. Fair electoral contests then demand the imposition of constraints on campaigning costs through campaign expenditure limits.

In pursuing both the anti-corruption and equality rationales, expenditure limits can perform a remedial function. For instance, if present spending levels were judged to be excessive and to carry an inordinate risk of corruption and undue influence, expenditure limits could be aimed at decreasing the amount of real spending and, in turn, the risk of corruption and undue influence. The UK experience demonstrates that campaign expenditure limits can effectively perform such a function. In the 1997 national election, the main parties, the Labour Party, the Conservative Party and the Liberal Democrats, spent a total of £45.5 million.<sup>118</sup> The 2001 national election, the first which was subject to the PPERA's national campaign expenditure limits, however, saw the parties' campaign expenditure sharply dropping £25.1 million.<sup>119</sup>

There is the contrary argument that expenditure limits are 'unenforceable' or 'unworkable'; arguments usually taken to be proven by Australia's experience with

<sup>118</sup> Committee on Standards in Public Life (Chair: Lord Neill of Bladen, QC), *Fifth Report: The Funding of Political Parties in the United Kingdom*. ('Neill Committee Report') pp. 36-8.

<sup>119</sup> Electoral Commission (UK), *Elections 2001: Campaign spending*, p. 17.

expenditure limits.<sup>120</sup> Arguments based on ‘unenforceability’ or ‘unworkability’, however, typically suffer from vagueness. In Australia, such arguments as they relate to campaign expenditure limits appear to be proxy for two specific arguments. It is said that ‘(a)ny limits set would quickly become obsolete.’<sup>121</sup> Moreover, these limits are seen to overly susceptible to non-compliance.

The first argument can be quickly dispensed with. Any problem with obsolescence can be dealt with automatic indexation of limits together with periodic reviews. As to the question of non-compliance, it is useful at the outset to make some general observations concerning the challenges faced by the enforcement of party finance regulation.

All laws are vulnerable to non-compliance. Political finance regulation is no exception and the degree of compliance will depend on various factors. It will depend on the willingness of the parties to comply. This, in turn, will be shaped by their views of the legitimacy of the regulation and their self-interest in compliance. The latter cuts both ways. For example, breaching expenditure limits might secure the culpable party a competitive advantage through increased expenditure but this needs to be balanced against the risk of being found out and the resulting opprobrium.

The extent of compliance will also depend on methods available to the parties to evade their obligations. In this respect, the effectiveness of political finance laws invariably rubs up against the ‘front organisation’ problem. This problem arises when a party sets up entities which are legally separate from the party but can still be controlled by the party. Political finance laws will be undermined if parties channel their funds and expenditure to these entities and these entities fall outside the regulatory net or are subject to less demanding obligations.

A separate problem faced by political finance laws lies with third parties, that is, political actors which are not parties or sufficiently related to the political parties. The challenge posed by third parties is not that they provide a vehicle for parties to evade their obligations simply because third parties are, by definition, not appendages of the

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<sup>120</sup> Harders Report, p. 13.

<sup>121</sup> Neill Committee Report, p. 172.

parties. Political finance laws that do not deal adequately with the ‘third party’ problem risk not evasion but irrelevance. For instance, if there were substantial third-party electoral activity, a regulatory framework centred upon parties and their associated entities would, in many ways, miss the mark by failing to regulate key political actors.

Compliance with political finance regulation will also clearly depend on the willingness and ability of the regulator, the AEC in the case of Australia, to enforce such regulation. Difficulties arise in this respect because of the AEC’s institutional dependence on the main political parties, those it is supposed to regulate. Such dependence must clearly have an inhibiting effect upon the AEC’s willingness of enforce political finance regulation.

This dependence is manifest in various ways. The AEC is dependent on the good will of the parties in conducting elections. The fact that the AEC is (rightly) under parliamentary supervision also means that it is dependent on the parties for the amount of its funding and is regularly subject to the scrutiny of various parliamentary committees.

The above circumstances demonstrate that political finance regulation will *always* face an enforcement gap. But to treat these circumstances as being fatal to any proposal to regulate political finance would be to give up on such regulation. By parity of reasoning, the fact that expenditure limits are, to some extent, unenforceable because of these circumstances should not be fatal to their introduction.

The key issue is whether there is something peculiar to such limits that make it particularly vulnerable to non-compliance. It is this point that is hard to make out. While it is true that the Australian experience with expenditure limits was marked by non-compliance, the Canadian, New Zealand and UK experience demonstrates that this does not necessarily have to be the case. Moreover, regulation of political expenditure would, on its face, seem easier to enforce than regulation of political funding because such expenditure is spent on visible activity like political broadcasting.

Lastly, it is said that expenditure limits constitute an unjustified interference with freedom of speech. This argument must be taken seriously not only because it poses a question of principle but also because, in Australia, a statute which unjustifiably infringes freedom of political communication will be unconstitutional.

This question of principle can, in fact, be usefully approached by applying the test for constitutionality. In short, the question of principle and that of constitutional validity can be approached in the same breath.

The High Court has held that a legislative provision will be invalid if:

- it effectively burdens freedom of communication about government or political matters either in its terms, operation or effect; and
- it is not reasonably appropriate and adapted to serve a legitimate end.<sup>122</sup>

With respect to the first criterion of invalidity, expenditure limits do not, on its face, burden freedom of political communication because their immediate impact is on the spending of money. It is important to note, however, that the weight of this burden will depend on the design of limits. The level at which the limit is pitched will be significant: the lower the level, the heavier its burden on the freedom of political communication. Similarly, the burden will depend on whether the limit is instituted through a simple prohibition, as in Canada, New Zealand and the United Kingdom, or as a condition on public funding like in the United States. If the latter is adopted, the burden on freedom of political communication will be much less as parties can still choose not to receive public funding and hence, be exempt from campaign expenditure limits.

Given that campaign expenditure limits invariably impose, to a greater or lesser degree, a burden on the freedom of political communication, the critical question then is whether the instituted limit is reasonably appropriate and adapted to a legitimate aim. At the outset, it can be categorically said that expenditure limits do not *necessarily* fail this test. There are clearly legitimate aims that can be invoked, namely, the anti-corruption and the equality/level-playing field rationales. This issue

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<sup>122</sup> *Lange v Australian Broadcasting Corporation* (1997) 145 ALR 96, 112.

then becomes whether the instituted limit is reasonably adapted to these aims. Again the design of the limit comes to the fore.

*Recommendation 30: Parties and candidates should be required to disclose details of their political expenditure.*

*Recommendation 31: Expenditure limits for election campaigns should be re-introduced with careful consideration to their design.*

*Recommendation 32: Policing and enforcement of such limits would need to be undertaken more comprehensively than in the past when limits were widely ignored due to lack of enforcement.*

### **Political advertising**

In many countries, it is the costs for paid political advertising which, in particular, are limited as this item of expenditure is driving spiraling campaign costs and it is currently a very inequitably distributed communication resource available only to the most wealthy candidates.

In the UK, there is a ban on political advertising in broadcast media (but not on political advertising in print or other media). Accompanying this ban is the provision by major public and commercial television and radio broadcasters of free broadcast time to qualifying political parties. While the allocation of such free-time is ultimately governed by a mixture of policies issued by the Office of Communication and those developed by broadcasters, an allocation formula of sorts has developed as a result of convention. Under this formula, the governing party and the main opposition party typically receive an identical number of broadcasts with a maximum of five broadcasts for each party. Generally, the number of broadcasts offered to the major parties is related to the electoral support they garnered in the previous election and the number of candidates they are standing at the current election. Minor parties standing candidates in at least one-sixth of the total seats also qualify for a broadcast.

Canadian party finance law, on the other hand, prescribes that broadcasters provide a certain amount of broadcasting time free of charge to registered political parties. It

also requires that broadcasters allocate a specified number of prime time hours for paid advertising by these parties during election time. Both sets of broadcasting time are allocated to the registered parties by the Broadcasting Arbitrator according to a formula based upon the party's success in the previous general election.

In New Zealand, there is a general ban on election broadcasts. In conjunction with this ban are public subsidies to registered parties in relation to political broadcasts. Free broadcasting time is provided by the public broadcasters, Television New Zealand and Radio New Zealand, and funds are also made available by the Ministry of Justice to the parties to purchase radio and television time for the election period. The amount of 'free time' is determined by the public broadcasters while the amount of funds made available is determined by the New Zealand Parliament. The amount made available for the 2005 election was NZ\$3.2 million.

In Australia, there are a number of options to reduce expenditure on political advertising.

*Recommendation 33: Overall campaign spending limits, if set at a reasonable level and enforced properly, would force parties to limit their spending on paid advertising.*

*Recommendation 34: Free air-time should be widely available.*

*Recommendation 35: Commercial broadcasters should be required by legislation (as in the US) to provide broadcasting time for election advertising at the lowest possible rate to counter the current situation where candidates and parties are reportedly paying unusually exorbitant rates.*

Conclusion: A skewed and secret system?

There are two central problems with the funding of Australian political parties. There is, firstly, a lack of transparency with secrecy a hallmark of private funding, political spending and the use of parliamentary entitlements and government resources.

More importantly, perhaps, is the political inequality that is maintained and perpetuated by Australian political finance. The distribution of private funds favours the Coalition and ALP and so do election funding, parliamentary entitlements and state resources like government advertising. A rough-and-ready comparison indicates that the amount of money available to either the Coalition or ALP through parliamentary entitlements, election funding and private funds is more than 15 times that available to other parties such as the Democrats or the Greens (see Table 6.12).

**Table 6.12: Major party funding, Federal level, 2004-05**

| Party     | Total MPs | Parliamentary entitlements * | Election funding (2004 election) | Private funding** | Total         |
|-----------|-----------|------------------------------|----------------------------------|-------------------|---------------|
| Coalition | 125       | \$110 878 000                | \$20 923 000                     | \$53 431 433      | \$185 232 433 |
| ALP       | 88        | \$78 058 112                 | \$16 710 000                     | \$44 953 523      | \$139 721 635 |
| Democrats | 4         | \$3 548 096                  | \$8 491                          | \$3 017 909       | \$6 574 496   |
| Greens    | 4         | \$3 548 096                  | \$3 316 702                      | \$2 276 284       | \$9 141 082   |

Note: Party representation as at 18 January 2006.

\* Average entitlement amount per MP (taken as minimum \$887 024 as calculated in Chapter Three) multiplied by the number of party MPs.

\*\* The annual returns for 2004/2005 have yet to be made public so figures from the last financial year coinciding with a Federal election, 2001/2002 financial year, have been used. Calculated from Dean Jaensch, Peter Brent and Brett Bowden, 2004, *Australian Political Parties in the Spotlight: Democratic Audit of Australia Report No 4*, unpublished data.

This comparison (which does not take into account resources available only to governments, e.g. government consultants and advertising) demonstrates how funding to Australian political parties is distorted. Private funding in the context of lax regulation favours the Coalition and the ALP. Far from equalising the playing field, monies from the public purse go disproportionately to the same parties. This is especially the case when these parties hold government. The broader picture then is one of institutional rules designed to protect the joint interests of the major parties by

arming them with far greater war chests than minor parties and new competitors. While electoral competition exists, it is largely confined to the major parties, with players outside this cartel disabled by financial disadvantages. If there is to be a 'fair go' in Australian politics, these inequalities must be tackled.

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