



CORRUPTION AND DEMOCRACY IN AUSTRALIA

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PREPARED BY BARRY HINDESS

REPORT NO. 3

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Political Science Program  
Research School of Social Sciences  
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for the  
**Democratic Audit  
of Australia**

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# The Democratic Audit of Australia—Testing the Strength of Australian Democracy

In the period 2002–2004 the Political Science Program in the Australian National University's Research School of Social Sciences is conducting an audit to assess Australia's strengths and weaknesses as a democracy.

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The Audit has three specific aims:

- (1) ***Contributing to Methodology***: To make a major methodological contribution to the assessment of democracy—particularly through the study of federalism and through incorporating disagreements about 'democracy' into the research design.
- (2) ***Benchmarking***: To provide benchmarks for monitoring and international comparisons—our data can be used, for example, to track the progress of government reforms as well as to compare Australia with other countries.
- (3) ***Promoting Debate***: To promote public debate about democratic issues and about how Australia's democratic arrangements might be improved. The Audit website hosts lively debate on democratic issues and complements the production of reports like this.

## Background

The Audit approach recognises that democracy is a complex notion; therefore we are applying a detailed set of Audit questions already field-tested in various overseas countries. These questions were pioneered in the United Kingdom with related studies in Sweden, then further developed under the auspices of the International Institute for Democracy and Electoral Assistance—IDEA—in

Stockholm, which recently arranged testing in eight countries including New Zealand. We have devised additional questions both to take account of differing views about democracy, and because Australia is the first country with a federal system to undertake an Audit.

## Further Information

For further information about the Audit, please see the Audit website at:

<http://democratic.audit.anu.edu.au>

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## Executive Summary

At first sight, the relationship between corruption and democracy seems to be relatively straightforward. Popular control over government and political equality are generally regarded as the two most central values of democracy, and both are clearly subverted by corruption in the public sector.

In practice, this summary account of the relationship between democracy and corruption is far too simple. The first and most obvious complication is that many of those engaged in corrupt conduct have an interest in keeping it secret and the actual incidence of corruption is therefore difficult to establish with any degree of precision.

This difficulty is compounded by problems in the definition and identification of political corruption. The problem here is not only that there are different views about the meaning of political corruption, and thus about which political practices are to be counted as corrupt, but also that these differences are often driven by competing understandings of the public interest and the proper purpose of government. It is hardly possible to assess the impact of corruption on democracy in Australia without taking this diversity into account.

A second complication is that popular control and political equality are by no means the only values involved in the workings of modern democracy. Another which plays a significant part in our audit of Australian democracy is that of civil liberties and human rights. We shall see that there are important respects in which these values cut across the values of popular control and political equality. In practice, then, the most influential modern understanding of democracy already incorporates significant limits to popular control and political equality. Obstacles to the implementation of these two values should not always be seen as evidence of political corruption.

## 1. The definition and identification of corruption

What the many approaches to defining corruption seem to have in common is the eminently contestable idea of the public interest. If disputes about the corruption of public life are linked to arguments about the nature of politics and the public interest, then these disputes should be seen as the normal condition of politics, and of democratic politics in particular.

We must therefore consider the consequences for democracy of disagreements—among politicians themselves and, most especially, between politicians and others—about what is to count as corrupt conduct. Rather than treat such disputes as a problem to be resolved before we can get on with the task of studying corruption and its effects, we prefer to treat disagreement about the identification of political corruption as itself an important object of study. If professional politicians, their political advisors and members of the public who have privileged access to them take a more relaxed view of what is acceptable than the rest of the community, this tells us something important about the state of democracy in Australia. Direct evidence on this important issue is limited, but nevertheless suggests considerable public disquiet.

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### 1.1 Empirical research on corruption

However carefully it might be defined, the actual incidence of corruption will be difficult to determine with any degree of precision, in part because many of those involved in corrupt conduct will have a clear interest in keeping it hidden. Yet there will also be cases in which some of those involved in corrupt conduct will have an interest in advertising the fact. Indeed, if corruption is an abuse of power, then the flaunting of corruption might be seen as an affirmation of power, of one's ability to get away with such behaviour.

Public regulatory bodies have often been established to deal with entrenched corruption in the public and private sector: their ability to deal with the powerful is, however, likely to require considerable support from their political masters. Moreover, since their funding and the tenure of senior staff are usually subject to political decision, there may be a temptation to settle for peaceful co-existence; a condition in which the regulatory body serves to curb various excesses, and thus to reassure the public, but takes care not to push its inquiries too hard in politically sensitive areas. The findings of public regulatory bodies must therefore be interpreted with some caution. Even in the best of cases, they present us with the tip of an iceberg whose true dimensions always remain obscure.

It is partly for this reason that indirect measures of the incidence of corruption, such as Transparency International's annual Corruption Perceptions Index and its biennial Bribe Payers Index have proved to be so attractive. Australia performs extremely well on both Indexes. But they reflect a very limited view of corruption. They measure perceptions rather than actual behaviour, and their results must therefore be taken with a pinch of salt. More seriously, these measures reflect the perceived impact of corruption on private business, and they cannot be read as a measure of the impact of political corruption in other areas. We need to take a broader view of corruption in our examination of its impact on democracy in Australia.

## 1.2 The public significance of private sector corruption

The public impact of private sector corruption is important for our discussion of the relationship between corruption and democracy for several reasons. First, private sector attempts to shape the regulatory environment can have significant effects on the conduct of politics. Second, when it results in major business collapses, it throws many individuals into unemployment and erodes private savings and superannuation funds. Improper conduct by senior executives and failures of regulatory oversight are part of the story. A different but related issue is raised by the phenomenal growth of remuneration packages for senior business executives in recent years. This has been a matter of public debate in Australia and many other countries. While there is no suggestion that these packages and the conduct which produces them are necessarily illegal, there remains a widely held view that there is nevertheless something improper about many of them. This example shows that concerns about corruption may well relate to conduct which is neither illegal nor in contravention of clearly established codes of conduct.

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## 1.3 The power of the media

When large-scale media organisations curry favour with government, and do so with a considerable degree of success, this can both distort and seriously restrict the scope of informed public debate. If popular control, however indirect, is an important element in our understanding of democracy, then the development of such relationships between media organisations and government must be seen as undermining democracy, and thus as a pernicious species of political corruption.

The political power of media organisations also raises a more general issue. We should not be surprised if private media organisations behave in a partisan fashion. As long as a sufficiently diverse range of viewpoints is represented in the media overall, such conduct poses no particular threat to democratic government. What makes the self-interested conduct of media organisations so problematic is their political power—the product of allowing extreme concentration of ownership and the consequent absence of diversity to develop. The corruption in this case has become a structural condition of Australian society.

## 1.4 The entrusted powers of politicians and public servants

There have been questions about the trust that can be placed in Australia's elected governments, regardless of the party in power. At the Commonwealth level, they have been raised most clearly, perhaps, by Australia's part in the 2003 invasion of Iraq and, somewhat earlier, by the conduct of the Commonwealth Government over what became known as the 'children overboard' affair.

These cases raise many important questions about the character, and the quality, of Australian government. While those engaged in corrupt practices will often try to keep this secret, there will also be occasions when they have an interest in publicity. The transparent pretence of ministerial ignorance in these two cases can be seen as a deliberate flaunting of ministerial power. It demonstrates both a willingness to get things done by bending the rules and a confidence in the Government's ability to get away with doing so.

Of particular importance here is the politicisation of the public service, a process which had already begun under Labor but which now appears to have been carried considerably further. The result, at least according to the critics, is that the public service has been transformed from a servant of the public into a servant of the current administration, from an impartial source of frank and fearless advice to a pliant tool of whoever is in power. If this development seriously undermines the accountability of government, then the problem is further compounded by the fact that ministerial staffers are not answerable to parliament nor, unlike public servants, are they subject even to the limited requirements of a code of conduct.

## 1.5 ICAC and the Metherell case

The controversy surrounding the Metherell case raises important issues for our study of the place of corruption within Australian public life. First, there is the

problem that people may become habituated to conduct which outsiders might identify as corrupt. A certain level of corruption would then have been normalised and public perceptions of what is acceptable are to this extent corrupted. Second, the issue of corruption may be raised in cases where the conduct in question involves no clear private and personal gain. This is the problem of ‘institutional corruption’, in which the gain is political rather than personal.

If the line between corrupt and acceptable conduct is not easy to draw, then its precise location is likely to be disputed. There will be different views about what conduct is in fact acceptable and thus about how far and in what respects ‘the way things are done’ should be deemed to be corrupt. ICAC’s view of corruption at this time was clearly much stricter than Greiner’s but, as the majority Court of Appeal decision shows, it is a view disputed within the legal profession itself. Finally, the fact that Opposition parties in New South Wales have always been able to campaign on the issue of political corruption shows that there is significant public support for a view of corruption that is somewhat stricter than the one adopted by the party in power.

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## 2. Democracy and the public interest

What counts as corruption in the broader sense will depend on one’s understanding of the proper purpose of government.

### 2.1 The misplaced enthusiasms of the majority

While celebrating the original democratic idea of rule by the people, the modern understanding of democracy as representative government also endorses a traditional hostility to democracy. The institutions of representative government which embody the principle of popular rule—popular elections, political parties, representative assemblies and public service bureaucracies—serve also to exclude the people from the practical work of government. Indeed, one of the values of modern democracy is to protect the common interest against sectional interests of various kinds, including the misplaced enthusiasms of the majority.

### 2.2 Popular control and political equality?

If we identify popular control and political equality as the two central values of democracy, then the influence of private money must be seen as a significant corruption of democratic politics. However, if we add liberty to these values, and especially if we interpret liberty as applying to artificial subjects like corporations, the issue becomes more complex. We should expect to find differing opinions on

the extent to which the influence of money on the conduct of politics is regarded, as the second ICAC Report on the Metherell case puts it, simply as ‘part of the way things are done’, and thus as entirely acceptable.

### 3. Corrupt culture or ‘the way things are done’?

Using a small number of cases from recent Australian political history, this report shows that corruption, in the broader sense, is a more substantial problem than Australia’s impressive performance on the conventional international measures would seem to indicate.

#### 3.1 Institutional corruption and the gravy train

Tours of marginal seats by ministers and their staff in the period immediately before the calling of an election—in addition to the public funding provided afterward—looks suspiciously like double dipping. Another form of electoral campaigning at the public expense consists of government information campaigns run in pre-election periods.

There is also use for manifestly partisan purposes of funds intended to serve the day-to-day business of government. This is a prima facie instance of ‘institutional corruption’, a form of corruption in which the gain is ‘political rather than personal’. The line here between acceptable and unacceptable conduct is difficult to draw and, since Opposition parties make use of the same largesse, we can hardly expect them to pursue the issue too vigorously.

#### 3.2 Codes of conduct

This section of the report focuses on breaches of the Prime Minister’s code of conduct. Labor’s record in this respect may not have reached the heady levels achieved by the present government but it is nevertheless far from impressive.

#### 3.3 Bringing the electoral process into disrepute

Following its inquiry into the prosecution of Pauline Hanson and David Ettridge, the Queensland Crime and Misconduct Commission (CMC) concluded that the decision to prosecute them was made without political interference. This may well be substantially correct but there is scant support for this conclusion in the body of its report. Those who feared that One Nation may have been the victim of a plot by the major parties will find nothing here to allay their concerns.

A second issue raised by this case concerns the public reactions of mainstream politicians who criticised the severity of the original sentence. Their aim was to capitalise on public sympathy for Hanson and to deflect blame for her plight from the major parties themselves. The sentencing judge accused Hanson and Ettridge of bringing the electoral system into disrepute. Our discussion here and in the examples considered above suggests a different view, that the major parties are the more important culprits. They are happy enough to capitalise on public concerns about the corruption of their political opponents and manifestly unwilling to reform themselves.

## 4. Conclusions

The report recommends:

- uniform anti-defamation legislation to provide more protection for bona fide public interest disclosure;
- Commonwealth whistleblower protection legislation—to underline the seriousness of integrity issues;
- tightening of the regulation of political finance and consideration of the Canadian example of banning corporate donations to political parties;
- a more transparent system of accounting for politicians' use of public funds, especially in areas where they may be tempted to use these funds for partisan purposes;
- codes of conduct for parliamentarians and ministers in all jurisdictions which include the issue of post-separation employment;
- placing of responsibility for registers of interests and oversight of codes in the hands of an independent ethics commissioner;
- a statutory code of conduct for ministerial staff, also overseen by the independent ethics commissioner;
- adequate funding of public regulatory bodies and an open and fully accountable process for appointments to senior positions within them; and
- establishment of a Commissioner for Public Appointments to ensure such process is followed.



## Introduction

*Those of you who come in with me now will get big pieces of pie.  
Those who come in with me later will get smaller pieces of pie.  
Those who don't come in at all will get—Good Government.*

(Huey Long, Governor of Louisiana)

PAGE 1

At first sight, the relationship between corruption and democracy seems to be relatively straightforward. Popular control over government and political equality are generally regarded as the two most central values of democracy, and both are clearly subverted by corruption in the public sector. When elected or appointed officials act corruptly, they do so in a manner intended to evade public and administrative scrutiny. Public sector corruption thus poses serious problems of accountability and it presents a significant obstacle to popular control over the actions of government.

**Corruption versus  
political equality  
and popular  
control**

Moreover, since corruption commonly involves the special treatment of favoured individuals and organisations, it makes a mockery of the principle of political equality by promoting de facto legal and political inequalities. It seems then that societies which are more corrupt will also be less democratic and, conversely, those which are less corrupt will be more democratic. Many policy-oriented researchers argue that an inverse causal relationship can also be identified here, that an effective democracy will reduce the opportunities for corruption by subjecting the workings of government bodies to public scrutiny.

In practice, this summary account of the relationship between democracy and corruption is far too simple. The first and most obvious complication is that many of those engaged in corrupt conduct have an interest in keeping it secret and the actual incidence of corruption is therefore difficult to establish with any degree of precision. This difficulty is compounded by problems in the definition and identification of political corruption.

**'a concept which  
most participants  
in the debate are  
reluctant or  
unable to define'**

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Following initiatives taken by the World Bank and international development agencies in the 1980s, the interest of academics and public policy professionals in the problem of corruption has grown enormously. As a result, there is now a large, and extremely diverse, literature devoted to identifying the causes of corruption, assessing its consequences and considering how to bring it under control. While the importance of the problem is widely acknowledged, the empirical literature on corruption is marked by a reluctance to say precisely what is meant by the term: 'It is a curious state of affairs when an academic mini-industry and the policy agendas of development professionals are dominated by a concept which most participants in the debate are reluctant or unable to define'.<sup>1</sup> This has been noted in relation to development studies but the point applies equally well to the more general public policy discussion of corruption.

There is in fact a significant literature on the definition of political corruption but empirical researchers and policy practitioners have been impatient with its concerns. The problem here is not only that there are different views about the meaning of political corruption, and thus about which political practices are to be counted as corrupt, but also that these differences are often driven by competing understandings of the public interest and the proper purpose of government. Those with a practical interest in doing something about corruption have been understandably reluctant to get involved in these debates, preferring rather to adopt pragmatic solutions that allow them to get on with their work. Unfortunately, as we shall see, the most commonly used measures of corruption are of only limited value for our study of the impact of corruption on Australian democracy.

Nevertheless, since the content of the public interest is a matter of legitimate political debate, we should expect democratic politics to be marked by conflicting views about the incidence of political corruption. It is hardly possible to assess the impact of corruption on democracy in Australia without taking this diversity

<sup>1</sup> Williams, *New Concepts for Old*, p. 503.

into account. This brings us to a second set of complications. It concerns our understanding of democracy itself and the place within it of popular control and political equality. Since these are core democratic values it might seem that, notwithstanding the contestation just noted, they could provide us with a core understanding of the proper purpose of democratic government, and thus, that obstacles to their implementation could be seen as a corruption of government.

The difficulty here is that popular control and political equality are by no means the only values involved in the workings of modern democracy. Another which plays a significant part in our audit of Australian democracy is that of civil liberties and human rights. We shall see that there are important respects in which these values cut across the values of popular control and political equality. In practice, then, the most influential modern understanding of democracy already incorporates significant limits to popular control and political equality. Obstacles to the implementation of these two values should not always be seen as evidence of political corruption. We must consider the possibility that they serve a legitimate political purpose.

The first section of this report addresses the problem of identifying political corruption, leaving discussion of popular control and political equality to the section that follows. Together, they prepare the ground for our later exploration of the relationship between corruption and democracy in Australia.

## 1. The definition and identification of corruption

*the sense of a thing being changed from its naturally sound condition, into something unsound, impure, debased, infected...*

(Mark Philp, 'Defining political corruption')

While the modern literature on corruption is not overly concerned with questions of definition, there have been some notable recent exceptions. One of the most important of these is Mark Philp's 'Defining political corruption'. What concerns us at this point is his argument that even the most diverse accounts of political corruption rest on a conception of the public interest. Philp develops this argument through an examination of definitions offered in the influential collection *Political Corruption*.

A first definition of corruption is in terms of the public interest. Corruption, in this view, appears whenever:

a responsible functionary or office holder is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the rewards and thereby does damage to the public and its interests.<sup>2</sup>

## Corruption versus the public interest

This suggests that the identification of corruption requires a clear understanding of the public interest, something that is notoriously open to dispute. While this appeal to the public interest is not always explicit, it is a core component of any account of political corruption.

Secondly, corruption has been defined by reference to public opinion. In 1989, following a campaign directed against the corrupt character of the previous Labor administration, the newly elected Liberal Government of New South Wales established an Independent Commission against Corruption (ICAC). In an early paper ICAC argued that the identification of corrupt conduct will 'be influenced by cultural issues and accepted behavioural standards within the community. There may be behaviour that is "right" in one country and "wrong" in another'.<sup>3</sup>

## Corruption and public opinion

This observation raises serious problems for the comparative study of corruption which, fortunately, need not concern us here. However, it obscures a point of far greater significance for our discussion: namely, that opinion within the one community will often be divided over the identification of corrupt conduct. In these cases, conduct which is acceptable to some members of the community will be deemed by others to be corrupt. To rely in such cases on what 'the public' identifies as corrupt is in practice to privilege the views of only part of the community. A related problem is that sections of the public may be so habituated to forms of conduct which an outsider might identify as corrupt that they do not bother to label them as such.

The acceptance by one part of the community of conduct considered by others to be corrupt is precisely the condition invoked by an ICAC report into the Metherell case (which we examine in 1.5 below):

The whole point of the legislation was to combat a corrupt culture, a culture that regards nothing wrong with things like jobs for the boys, or giving a Government contract to a mate, and accepts corruption as part of the way things are done.<sup>4</sup>

<sup>2</sup> Friedrich, 'Corruption Concepts in Historical Perspective', p. 10.

<sup>3</sup> ICAC, 'Defending the Fundamental Political Values', p. 3; quoted in Philip, 'Defining political corruption', pp. 23–4.

<sup>4</sup> ICAC, *Second Report*, p. 3.

ICAC's perception that there was a widespread acceptance of political corruption in New South Wales, and perhaps in Australia more generally, was disputed at the time, not least by Premier Greiner himself. The issues raised by this dispute pose serious problems for our assessment of the relationship between corruption and democracy in Australia. We will return to them at several points in the following discussion.

Thirdly, corruption has been defined in terms of legally defined norms. This also creates problems. If corruption is widely accepted 'as part of the way things are done', we can hardly expect the law to remain untouched. 'The law itself', Philip observes, 'can originate in corrupt practices: that an act is legal does not always mean that it is not corrupt'.<sup>5</sup>

**Corruption  
as flouting  
legal norms**

Fourthly, some authors argue that to include damage to the public interest in the definition of corruption risks confusing the phenomenon with its effects. For this reason, while recognising that corruption may well damage the public interest, Joseph Nye argues that corrupt conduct should be seen as an abuse of entrusted power. The behaviour of public servants and politicians is thus corrupt, in his view, if it 'deviates from the formal duties of a public role because of private-regarding... pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence'.<sup>6</sup>

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**Corruption  
as deviating  
from formal duties**

Philip notes that, by insisting that the deviation from formal duties must be for private gains, even this definition draws on an implied contrast with the public interest. Moreover, while it may sometimes facilitate the identification of corruption in the case of public officials whose conduct is constrained by clearly defined rules, Nye's definition faces two complementary difficulties. One concerns its somewhat old-fashioned suggestion that the public interest will be sufficiently protected from corruption if public officials conduct themselves according to the formal duties of their offices. As the 'Yes Minister' series illustrated all too clearly, skilled administrators may well be able to adapt the formal rules of office so as to subvert their apparent purpose.

<sup>5</sup> Philip, 'Defining political corruption', p. 25.

<sup>6</sup> Nye, 'Corruption and Political Development', p. 966.

**Corruption  
as abuse  
of authority  
to maximise  
income**

The other difficulty with definition of corruption in terms of deviation from formal duties is that there are many public offices in which the formal rules are specifically designed to allow the incumbent a substantial degree of discretion. What is to count as an abuse of entrusted power in such cases will often be a matter of judgement. An elected assembly may choose to subject its members to an explicit code of conduct (although many of them do not), but even the

most restrictive of these codes leaves politicians with considerable scope for pursuing their private interests without directly breaching the requirements of the code.

Fifthly, corruption has been defined by reference to economic models of behaviour. Jacob von Klaveren, for example, sees corruption as occurring when a public official ‘abuses his authority in order to obtain an extra income from the public’. He thus conceives of corruption ‘in terms of a civil servant who regards his [sic] office as a business, the income of which he will... seek to maximise’.<sup>7</sup> Yet it is not unreasonable for civil servants, like other employees, to seek to increase their income. What identifies an act as corrupt in this case is not that it aims to maximise income or other rewards but rather that it does so specifically through an abuse of power. Thus, while they may seem to offer a distinctive approach to the definition of corruption, economic models in fact rely on a ‘public office’ understanding of corruption and therefore on an implicit appeal to the public interest.

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### **Five Definitions of Corruption**

The conduct of public officials is said to be corrupt when:

- it damages the public interest
- public opinion regards it as corrupt
- it flouts legal norms
- it deviates from the formal duties of office
- officials abuse their authority in order to maximise their income

<sup>7</sup> Von Klaveren, ‘The Concept of Corruption’, pp. 25–6.

In effect, then, while there are many approaches to the definition of corruption, all of them seem to draw on the eminently contestable idea of the public interest. Philip argues that definitional disputes have obscured the fact that the basic meaning of corruption is not in dispute: 'It is rooted in the sense of a thing being changed from its naturally sound condition, into something unsound, impure, debased, infected...'.<sup>8</sup>

If there is a problem over the definition of political corruption, it lies not in any disagreement about the understanding of corruption itself but rather in the application of this understanding to politics. The problem here is simply that there is no general agreement on the 'naturally sound condition' of politics, and thus on what is to count as a significant departure from that condition. Nor, for that matter, is there always agreement on what is to count as damage to the public interest. To address these issues is to enter a field of intractable debate which studies of corruption have generally preferred to avoid.

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This is perhaps the most important reason scholars and policy practitioners have been reluctant to inquire too closely into the precise definition of political corruption. They have aimed to study corruption and respond to the undeniable problems which it poses without getting too caught up in contentious issues concerning the 'naturally sound condition' of public life and the content of the public interest. Yet, it hardly seems possible to make an assessment of the nature and extent of corruption in Australian public life without drawing on some understanding of these issues. Studies of corruption which fail to address these issues directly simply leave their view implicit.

Empirical studies of corruption in public life are generally impatient with the problem of definition, preferring a pragmatic solution which allows them to get on with the job of dealing with its causes and consequences and working out how to bring it under control. Like the majority of other studies of corruption, this report offers no precise definition but it takes a different view of the significance of definitional disagreement. If, as Philip maintains, disputes about the corruption of public life are linked to arguments about the nature of politics and the public interest, then these disputes should be seen as the normal condition of politics, and of democratic politics in particular.

<sup>8</sup> Philip, 'Defining political corruption', p. 29.

## Public disquiet about standards in public life

If we are to explore the relationship between corruption and democracy, we must also consider the consequences for democracy of disagreements—among politicians themselves and, most especially, between politicians and others—about what is to count as corrupt conduct. Rather than treat such disputes as posing a problem that has to be resolved, by fiat if necessary, before we can get on with the task of studying corruption and its effects, we prefer to treat disagreement about the identification of political corruption as an important part of the object of study. If professional politicians, their political advisors and members of the public who have privileged access to them take a more relaxed view of what is acceptable than the rest of the community, this tells us something important about the state of democracy in Australia.

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Direct evidence on this important issue is rather limited but what there is shows considerable public disquiet. Survey data from Morgan Gallup shows falling support for the view that Australian state and federal politicians display high or very high standards of ethics and honesty. Many respondents feel that parliamentarians ‘tell lies if they feel the truth will hurt them politically’.<sup>9</sup>

The 2001 Australian Election Study included a number of questions bearing on current perceptions. Two of them, relating to politicians and public servants respectively, focused directly on public perceptions of corruption in government. Of the respondents, 46 per cent thought that ‘corruption such as bribe taking’ was very widespread or quite widespread amongst politicians, while only 8 per cent thought it hardly happens at all. The corresponding figures for public servants are even worse: 54 per cent and 5 per cent. When asked whether people in government were ‘too often interested in looking after themselves’ or could be ‘trusted to do the right thing’, 40 per cent responded that they usually look after themselves. Finally, to the question of whether ‘government is run by a few big interests looking out for themselves, or for the benefit of all the people’, 48 per cent felt that it was mostly or entirely run for the benefit of big interests.

A recent book, *The Prince’s New Clothes*, asks why Australians distrust their politicians but, curiously, its contributors do not address the issue of corruption and there is no entry for the term in the index. Several chapters nevertheless bear indirectly on the issue. Murray Goot’s careful discussion of the evidence on public trust of politicians, for example, establishes that the reputation of politicians for honesty and ethical conduct has suffered a decline.<sup>10</sup>

<sup>9</sup> McAllister, ‘Keeping Them Honest’, p. 23.

<sup>10</sup> Goot, ‘Distrustful, Disenchanted and Disengaged?’.

**Table 1: Public perception of corruption in government**

%	
40.3	Usually look after themselves
28.1	Sometimes look after themselves
20.6	Sometimes can be trusted to do right
11.0	Usually can be trusted to do right
13.6	Entirely run for the big interests
34.1	Mostly run for the big interests
35.7	About half and half
15.8	Mostly run for the benefit of all
0.8	Entirely run for the benefit of all

In general, do you feel that the people in government are too often interested in looking after themselves, or do you feel that they can be trusted to do the right thing nearly all the time?

Would you say the Government is run by a few big interests looking out for themselves, or that it is run for the benefit of all the people?

Source: Australian Election Study 2001.

A recent IPSOS Mackay Report shows that 52 per cent of respondents would regard no politicians as reliable or trustworthy.<sup>11</sup> These findings suggest that the standards which politicians apply to their own behaviour are generally seen as far too lax. This issue is also addressed, in a very different way, in Jeffrey Minson's chapter in *The Prince's New Clothes*. In 'Holding on to office', Minson argues that public office should be seen as a specific domain of ethical conduct. This clearly implies that politicians' standards should depart, at least in some respects, from those of the wider community.

We shall see, in the third section of this report, that competing perceptions of politics and the public interest can lead to very different perceptions of corrupt conduct and thus of the impact of corruption on democracy. The remainder of this section considers the more common approaches to the practical study of corruption and shows why they are of limited value in our assessment of the relationship between corruption and democracy in Australia.

<sup>11</sup> IPSOS Mackay, 'Report: Mind and Mood Quantitative Extension'.

## 1.1 Empirical research on corruption

*If citizens had a magic wand... they would most like to eliminate corruption from political parties.*

(Transparency International, Press Release, 3 July 2003)

### Impact on economic growth

Empirical research on corruption tends to focus on the public sector, seeing corruption either as a matter of improper conduct of a kind that has damaging economic effects or, somewhat more generally, as conduct which deviates from the formal duties of public office. The OECD, the World Bank and international development agencies generally favour the first perspective while public regulatory bodies, like ICAC in New South Wales, favour the second. Studies of these kinds may well produce useful results but they are of limited value for our assessment of the impact of corruption on democracy in Australia. The focus of the one on the economic effects of corruption treats its consequences for democracy as being of secondary importance while the work of public regulatory bodies is often seriously circumscribed by the power and the sensitivities of their political masters.

The first of these perspectives is particularly concerned with the impact of corruption on economic growth and therefore sees it as an especially serious problem for non-Western countries. Not surprisingly, perhaps, this perspective also suggests that an important part of the corruption on which it focuses is likely to involve the conduct of Western businesses operating in these countries. Susan Rose-Ackerman, who has worked closely with the World Bank in her studies of corruption, presents a particularly clear example of this approach in her book *Corruption and Government*. She begins by asking why so many poor countries have low or negative rates of economic growth even, in some cases, when they are well-endowed with natural resources or a highly-educated labour force. An important part of the answer is corruption which, she argues, is likely to be particularly severe in countries with 'dysfunctional public and private institutions'. These countries, she suggests, will be characterised by 'a pervasive failure to tap self-interest for productive purposes'.<sup>12</sup>

Rose-Ackerman takes as her benchmark for the identification of dysfunctional institutions 'the archetypical competitive market' which, she tells us, serves to transmute self-interest 'into productive activities that lead to efficient resource use'. She contrasts the workings of a well-functioning market with a less desirable

<sup>12</sup> Rose-Ackerman, *Corruption and Government*, pp. 1–2.

condition in which people use resources not only for productive purposes but also to obtain an advantage for themselves ‘in dividing up the benefits of economic activity—called “rent-seeking” by economists’.<sup>13</sup>

*Corruption and Government* proceeds to explore the relationships between productive economic activity and unproductive rent-seeking by examining ‘the universal phenomenon of corruption in the public sector’.<sup>14</sup> Rose-Ackerman thus relies on a ‘public office’ definition of corruption: rent-seeking activity on the part of public officials is corrupt when it involves the abuse of public power for private advantage. Such unauthorised rent-seeking diverts resources from other forms of economic activity and is thus seen as a restraint on economic growth. *Corruption and Government* suggests that countries will be poorer overall if they have high levels of public sector corruption and that the remedy lies in major institutional reforms of the kind promoted by the ‘good governance’ programs of the World Bank and other international agencies.

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This first Western perspective on corruption thus focuses on what it sees as the limitations of non-Western cultures and ways of life, and especially on the cases in which conduct that was once acceptable ‘no longer fits modern conditions’.<sup>15</sup> In contrast, since the problems on which they focus appear largely within their own jurisdiction, the discourse of public regulatory bodies in Australia and other Western states tends to be rather less complacent.

Three Australian jurisdictions now have statutory anti-corruption commissions, apart from the more specialised bodies in each State which deal with issues such as corruption within the police, long a major issue in Australia. A good example is the Police Integrity Commission in New South Wales, which has a staff of about 100. In June 2004 the Commonwealth announced that it would establish an independent body with the powers of a royal commission to address corruption in Commonwealth law enforcement agencies.

<sup>13</sup> Rose-Ackerman, *Corruption and Government*, p. 2.

<sup>14</sup> Rose-Ackerman, *Corruption and Government*, p. 2.

<sup>15</sup> Rose-Ackerman, *Corruption and Government*, p. 5.

Table 2: State anti-corruption bodies		
State	Anti-corruption body	Year established
NSW	Independent Commission Against Corruption	1988
Vic	-	
Qld	Qld Criminal Justice Commission*	1989
	Qld Crime Commission*	1997
	Crime and Misconduct Commission	2002
WA	Anti-Corruption Commission#	1996
	Corruption and Crime Commission	2004
SA	-	
Tas	-	
	* Merged in the Crime and Misconduct Commission	
	# Replaced by the Corruption and Crime Commission	

In addition, in all Australian jurisdictions the Ombudsman has the power to investigate complaints relating to defective administration. This can lead to prima facie cases of corruption, at which stage the matter would be referred to anti-corruption bodies where they exist or else to the police.

Table 3: Current Ombudsman legislation		
Jurisdiction	Name	Year of legislation
Commonwealth	Commonwealth Ombudsman	1976
NSW	Ombudsman	1974
Victoria	Ombudsman	1973
Queensland	Parliamentary Commissioner aka Ombudsman	1974
Western Australia	Parliamentary Commissioner aka Ombudsman	1971
South Australia	Ombudsman	1972
Tasmania	Ombudsman	1978
Australian Capital Territory	Ombudsman	1989
Northern Territory	Ombudsman	1978

Similarly, the Ombudsman can investigate whistleblower complaints, even if they are anonymous. This is sometimes known as protected disclosure or public interest disclosure. Specific legislation has been enacted in most Australian jurisdictions to protect whistleblowers, usually defined as people who report corrupt, illegal, fraudulent or harmful activity by an organisation or members of it. Such legislation protects whistleblowers from legal action on the basis of secrecy or confidentiality requirements and provides penalties for victimising whistleblowers. In 2002 the Northern Territory Law Reform Committee recommended legislation for that jurisdiction comparable to that in Victoria and Tasmania.

**Table 4: Whistleblower protection: Current legislation**

Jurisdiction	Name of legislation	Year of legislation
NSW	Protected Disclosures Act	1994
Victoria	Whistleblowers Protection Act	2001
Queensland	Whistleblower Protection Act	1994
Western Australia	Public Interest Disclosure Act	2003
South Australia	Whistleblowers Protection Act	1993
Tasmania	Public Interest Disclosures Act	2002
Australian Capital Territory	Public Interest Disclosure Act	1994

At the federal level there is some protection for public service whistleblowers under the *Public Service Act 1999*, but coverage does not extend to public sector employees covered under different Acts (about half). It does not extend, for example, to those employed by the Australian Security Intelligence Organisation. Whistleblower Protection Bills were introduced into the federal parliament in 1991 and 1993 by Green Senators, and Public Interest Disclosure Bills in 2001 and 2002 by Australian Democrats Senator Andrew Murray. These were all Private Senator's Bills.

A number of federal bodies have recommended legislation and a Senate Select Committee on Public Interest Whistleblowing recommended in 1994 that 'the practice of whistleblowing should be the subject of Commonwealth legislation to facilitate the making of disclosures in the public interest and to ensure protection for those who choose so to do'.<sup>16</sup> The former Labor government stated in 1995 that it would introduce such legislation but no action was taken before the change of government. Federal whistleblowing legislation would be an important step in elevating integrity issues and confirming a place for individual conscience. Its absence is anomalous in relation to comparator democracies.

<sup>16</sup> Senate Select Committee on Public Interest Whistleblowing, *In the Public Interest*, p. 98, para. 6.66.

Table 5: Whistleblower protection: International legislation		
Jurisdiction	Name of legislation	Year of legislation
Canada	Bill C-25: Public Servants Disclosure Protection Act	2004
New Zealand	Protected Disclosures Act	2000
UK	Public Interest Disclosure Act	1998
USA	Whistleblower Protection Act	1989

The New South Wales ICAC, which is itself modelled on the Hong Kong ICAC, is perhaps the most familiar Australian example of a generalist anti-corruption agency. ICAC is one of only three Australian agencies with a general brief to investigate and prevent corruption in the public sector; the others are the Crime and Misconduct Commission in Queensland and the Corruption and Crime Commission in Western Australia. There are a host of more specialised regulatory agencies and, as we have seen, the Ombudsmen also have a role to play, both under their own acts and under whistleblower protection acts. ICAC is required by the 1989 Independent Commission Against Corruption Act to examine the conduct of public servants and politicians to determine whether it is corrupt. Section 8 of the ICAC Act identifies conduct as corrupt if it adversely affects the honest or impartial performance of official functions, involves a breach of public trust, or the misuse of information acquired in the course of their public functions. This reflects a clear ‘public office’ view of corruption.

Section 9 of the ICAC Act qualifies this general account by treating corrupt conduct, in effect, as a punishable offence, and therefore insisting on the need to take proper account of the rights of an accused individual before making a finding of corruption. Thus, notwithstanding the definition set out in Section 8, the Commission is required to make no finding of corruption unless the conduct in question can be shown to involve an identifiable criminal or disciplinary offence, provide reasonable grounds for dismissal or, in the case of ministers and elected members, constitute a substantial breach of a relevant code of conduct. The Act’s definition of corrupt conduct is thus designed less to clarify the general meaning of the term ‘corruption’ as to identify the range of conduct on which ICAC is required to focus and to specify the conditions in which a finding of corruption can be made.

## Incidence of corruption always difficult to determine

Before turning to the limitations of these approaches, we should note that, however carefully it might be defined, the actual incidence of corruption will be difficult to determine with any degree of precision, in part because many of those involved in corrupt conduct will have a clear interest in keeping it hidden. Yet there will also be cases in which some of those involved in corrupt conduct will have an interest in advertising the fact. Indeed, if corruption is an abuse of power, then the flaunting of corruption might be seen as an affirmation of power, of one's ability to get away with such behaviour. It might be seen, somewhat more positively, as evidence of one's capacity to get things done in spite of the obstacles which the law and the rules of proper procedure seem to put in the way. Even in such cases, however, while the fact of corruption will be only too clear, many of its details are likely to remain hidden. I have already noted the perception, in the second ICAC Report on the Metherell case, that political corruption was widely accepted in New South Wales 'as part of the way things are done'.

We might add that corruption has been more visible—and thus in certain respects more widely accepted—at the State than at the Commonwealth level.<sup>17</sup> Former ministers in New South Wales and Queensland and two former premiers in Western Australia have been gaoled. A former premier of Tasmania was criticised by a Royal Commission for complicity in attempted corruption (the offering by a businessman of a bribe to persuade an MP to change sides). Over the past thirty years there have been widespread investigations of state governments drawn from all three major parties—the Askin Government in New South Wales, the Bjelke-Petersen Government in Queensland and the Burke Government in Western Australia. Social links on the racecourse or in clubs have been important in cementing relationships between police, criminals and politicians. Gambling, liquor licensing and prostitution laws have been significant in encouraging these kinds of contact.

**Corruption  
more visible  
at State than  
Commonwealth  
level**

The central role of the drug trade in creating criminal networks has become increasingly important and has been analysed by writers such as Alfred McCoy.<sup>18</sup> In recent years the mechanisms for controlling such potential for corruption have been tightened. However it still remains necessary from time to time to publicly expose police corruption, as recently in New South Wales, or to disband drug task forces, as in Victoria. Outbreaks of criminal gang warfare in Melbourne in 2004

<sup>17</sup> Uhr, 'Australia: Integrity Assessment'.

<sup>18</sup> McCoy, *Drug Traffic*.

and connections with police corruption suggest the widespread ramifications of the problem. It is usually individual police rather than politicians who are most likely to be implicated. The apparent inadequacy of the ethical standards unit of Victoria Police led to calls for an anti-corruption commission similar to those in other States.

Only one Commonwealth parliamentarian (Andrew Theophanous) has been gaoled for corruption, in a case involving immigration visas. The level of government at which corruption has been most visible is perhaps that of local government, where corrupt dealings between developers and elected officials have often been revealed. The affairs of trade unions have also been of some concern to reformers since the case brought against the Federated Ironworkers by Laurie Short in 1951. The most important issue has been fraudulent elections. Unions registered with the arbitration system must deposit their rules, but in the past there was little attempt to supervise the administration of these. Today, under the Workplace Relations Act, the Australian Electoral Commission must conduct all elections for registered organisations (trade unions and employer groups) unless an exemption has been granted. The affairs of the Ship Painters' and Dockers' Union, the Builders Labourers Federation and the Construction, Mining and Forestry Union have all been subject to official enquiries. These have been criticised from within the union movement as politically motivated.

Within political parties election procedures have also been criticised and have led to civil and criminal proceedings. In 2002 the Australian Labor Party (ALP) amended its national rules to prevent 'branch stacking' by paying the membership fees of others *en masse* or signing up ineligible members. The Liberal Party has yet to standardise its procedures and there have been comparable disputes within it in recent years.

The point to be noted here is that, to the extent that corruption is regarded as acceptable, corrupt actors will often have a clear interest in achieving a certain kind of visibility as 'can do' politicians. Conversely, those who refuse to be corrupted risk being identified as weak, uncooperative or simply ineffectual.

The nature of Australian defamation laws has also made it extremely difficult for even the most dedicated investigative journalist to reveal corruption.<sup>19</sup> For example, television journalist Chris Masters spent three months making a program called 'The Moonlight State' in 1987, which was shown on the Australian Broadcasting Corporation's current affairs program, Four Corners. It uncovered

<sup>19</sup> Nash, 'Freedom of the Press in Australia'.

massive corruption in Queensland, involving police, government, brothel owners and others. It led to a Royal Commission and to many successful prosecutions, including that of Police Commissioner Sir Terence Lewis, and to the demise of a corrupt government. The corrupt Police Commissioner was stripped of his knighthood but was out of gaol before Masters and the Australian Broadcasting Corporation had finished defending 13 years of defamation actions. The financial implications of such actions make investigative journalism perilous, quite apart from the commercial imperatives that make it unlikely that journalists will be given three months to undertake a major investigation of this kind. Nevertheless investigative journalism has been important in revealing links between police and criminals, gang warfare and the ramifications of the drug trade. The Askin, Bjelke-Petersen and Burke governments were all effectively analysed by investigative journalists, such as David Hickie.<sup>20</sup>

## Compromising the watchdogs

Public regulatory bodies have often been established to deal with entrenched corruption in the public and private sectors but their ability to deal with those who are powerful in the sense just noted is likely to require considerable support from their political masters. Their recommendations for improvements in legislation, for example, are unlikely to be implemented without the backing of the government of the day. Moreover, since their funding and the tenure of senior staff are usually subject to political decision, there may be a temptation to settle for peaceful co-existence, a condition in which the regulatory body serves to curb various excesses, and thus to reassure the public, but takes care not to push its inquiries too hard in politically sensitive areas.<sup>21</sup> To the extent that our watchdogs have been compromised in this way, this too must be regarded as an insidious form of political corruption.

**Compromising  
the watchdogs**

The Australian Electoral Commission (AEC) offers an illustration of both problems. The AEC was established as a statutory authority in 1984, with independence from direct ministerial control and a requirement the Chair be from the judiciary. On the other hand, there has been disquiet in recent years over the nature of government appointments to statutory positions such as Electoral Commissioner, and calls for a more transparent and bipartisan method of appointment. The independence of the Commission is one concern, the regulatory regime over which it presides is another. The AEC has responsibility for overseeing the disclosure of donations

**No restrictions  
on corporate  
donations to  
political parties**

<sup>20</sup> Hickie, *The Prince and the Premier*.

<sup>21</sup> MAOR, 'Feeling the Heat?', explores the relationships in a number of jurisdictions.

to political parties and for administering a public funding system intended to reduce dependence on private money. Nonetheless, as our Audit Report, *Australian Electoral Systems*, concludes, the regulation of political finance in this country is remarkably lax. There are no restrictions on the level or source of corporate donations to political parties, unlike the case in comparator democracies. Moreover, while the AEC has the power to undertake the independent auditing of party records, it has never been adequately resourced for this task. Nor do there appear to have been any prosecutions for breaches of disclosure obligations in recent times. The Funding and Disclosure reports for the 1996 and 1998 elections make no reference to prosecutions, unlike those for the 1984, 1987, 1990 and 1993 elections.<sup>22</sup> Moreover, the Director of the Funding and Disclosure Section informed the Joint Standing Committee on Electoral Matters in May 2004 that there had been no prosecutions in her time (three years).<sup>23</sup>

While some loopholes in the disclosure regime have been closed, others have been discovered. Since the early 1990s the AEC has made numerous recommendations to the Joint Select Committee on Electoral Matters for changes in the laws governing electoral disclosures but these have not been acted upon. Members of the Committee have confessed that both sides of politics have ignored these proposals for fear that they would restrict fund-raising.<sup>24</sup> In terms of public confidence, however, there is an urgent need to tighten up the regulatory regime for political finance and to consider the outright banning of corporate donations to political parties, a step already taken by 23 other democracies, including Canada.

## Australians for Honest Politics

The suspicion that the AEC has settled for a condition of peaceful coexistence has been raised by its conduct in relation to federal minister Tony Abbott's involvement in Australians for Honest Politics. Abbott was one of three trustees of this fund, established to 'support legal actions to test the extent to which political entities comply with Australian law'.<sup>25</sup> In 1998 it supported a private court case against Pauline Hanson by a disgruntled One Nation member, Terry Sharples. This set in motion the process which led to her conviction in August 2003 for fraudulently registering One Nation in Queensland and dishonestly claiming \$500 000 in electoral expenses.

<sup>22</sup> Tham and Orr, 'Submission to the JSCEM Inquiry into Electoral Funding and Disclosure', p. 44, n.130. See also Orr, 2003.

<sup>23</sup> Australia, Joint Standing Committee on Electoral Matters, *Proof Committee Hansard*, 11 May 2004, p. EM7.

<sup>24</sup> See the *Sydney Morning Herald*, 4 September 2003.

<sup>25</sup> Letter from Tony Abbott to the AEC, 20 October 1998.

The AEC agreed in August 2003 to review its earlier finding that Australians for Honest Politics was not associated with the Liberal Party under the terms of the Electoral Act. For it to be classified as an 'associated entity', and hence required to disclose the identity of its donors, the AEC would need to show that the fund was established 'wholly or significantly' to benefit the Liberal Party. The stated aims of the fund make this difficult to prove, in spite of the fact that its funds have been used only against organisations which pose a threat to the Liberals' electoral support. In November that year one observer, choosing his words with great care, noted that its 'procrastination in the face of what most experts on political law consider an open-and-shut case against Abbott leaves the commission looking in many eyes as though it has been captured by the Howard Government'.<sup>26</sup>

The findings of public regulatory bodies must therefore be interpreted with some caution. Even in the best of cases, they present us with the tip of an iceberg whose true dimensions always remain obscure. It is partly for this reason that indirect measures of the incidence of corruption, such as Transparency International's annual Corruption Perceptions Index and its biennial Bribe Payers Index have proved to be so attractive.

The Corruption Perceptions Index is a composite index, bringing together the results of polls and surveys by a variety of independent institutions—from the World Bank and Columbia University to commercial enterprises such as the Economist Intelligence Unit and PricewaterhouseCoopers. The surveys themselves are mostly carried out among professional risk analysts and business people, both residents and expatriates. Their results tend to reflect the perceived impact of corruption on private business and thus to neglect its impact in other areas of society.

The Bribe Payers Index asks business experts in the leading emerging markets to assess the propensity of businesses from major exporting countries to offer bribes as a means of obtaining contracts in these markets. Its results suggest that bribery by foreign firms is endemic in public works, construction and the arms and defence sectors.

<sup>26</sup> Mike Seccombe, *Sydney Morning Herald*, 8 November 2003.

## Australia's rating on international corruption indexes

Australia performs extremely well on both the Corruption Perceptions and Bribe Payers indices (see Tables 6 and 7 for details), ranking as equal eighth with Norway and Switzerland on the Corruption Perceptions Index, well above

**Compared  
with most  
of the world,  
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pretty good**

the majority of OECD states and just below Singapore, Sweden and the Netherlands, and in first place, least corrupt of all major exporting nations, on the 2002 Bribe Payers Index. If we take these indices as our measures of the incidence of corruption, they suggest that while there may still be room for improvement, corruption can hardly be seen as a major problem in Australia. The presence of ICAC and other regulatory institutions, and the relatively high level of respect in which they appear to be held, despite spectacular regulatory failures in the financial sector,

suggest a similar conclusion: corruption certainly exists in Australia and it is clearly a blot on our democracy but, compared with most of the world, Australia looks pretty good.

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**But these  
indices reflect  
a limited view  
of corruption**

Australia has good reason to be pleased with its record in this respect, but it would nevertheless be a mistake to base our discussion of corruption and democracy in Australia on such comforting results. The difficulty is not that they are entirely without foundation but rather that they reflect a very limited view of corruption. Transparency International's two indices, for example, measure perceptions rather than actual behaviour, and their results must therefore be taken with a pinch of salt. Moreover, both these measures reflect

the perceived impact of corruption on private business, and they cannot be read as a measure of the impact of political corruption in other areas.

Finally, the Australia's position in the Bribe Payers Index reflects the behaviour of Australian exporting firms in emerging markets. It takes no account of their activities in Australia itself, their political donations, participation in political fund-raising events and relationships with government agencies such as the Department of Foreign Affairs and Trade and AusAID. Both indices clearly draw on the economic perspective on corruption in the public sector with which we began. ICAC also focuses on corruption in the public sector but it operates with a very demanding standard of proof and, for reasons noted earlier, its findings can hardly be regarded as a definitive measure of the extent of public sector corruption.

Transparency International has recently developed a further indirect measure, the Global Corruption Barometer, based on a survey of public opinion in 47 countries around the world. It measures attitudes towards corruption and expectations of future levels of corruption. The finding of most interest for our discussion is that in three countries out of four, political parties are singled out as the institution from which people would most like to have corruption removed.

Transparency International's 2004 *Global Corruption Report* follows up this concern by focusing specifically on political corruption. Luxembourg is the only OECD country included in the Corruption Barometer whose citizens do not rank corruption in political parties as their primary concern. Australia is not included in the survey but, in this respect at least, there is no reason to suppose that it would differ substantially from the OECD norm. We have already noted a 2003 IPSOS Mackay Report finding that 52 per cent of respondents regard no politicians as reliable or trustworthy. Like other Transparency International indices, the Corruption Barometer measures perceptions rather than behaviour. More importantly, though, it shows that there is widespread public concern over forms of corruption which are not entirely captured by business-related indices and which will often be too sensitive for public regulatory bodies to address directly.

**Table 6: Corruption Perceptions Index 2003**

Rank	Country	CPI 2003 score	Surveys used	Standard deviation	High-low range
1	Finland	9.7	8	0.3	9.2 - 10.0
2	Iceland	9.6	7	0.3	9.2 - 10.0
3	Denmark	9.5	9	0.4	8.8 - 9.9
	New Zealand	9.5	8	0.2	9.2 - 9.6
5	Singapore	9.4	12	0.1	9.2 - 9.5
6	Sweden	9.3	11	0.2	8.8 - 9.6
7	Netherlands	8.9	9	0.3	8.5 - 9.3
8	Australia	8.8	12	0.9	6.7 - 9.5
	Norway	8.8	8	0.5	8.0 - 9.3
	Switzerland	8.8	9	0.8	6.9 - 9.4
11	Canada	8.7	12	0.9	6.5 - 9.4
	Luxembourg	8.7	6	0.4	8.0 - 9.2
	United Kingdom	8.7	13	0.5	7.8 - 9.2

*Continued next page*

Table 6: Corruption Perceptions Index 2003					
Rank	Country	CPI 2003 score	Surveys used	Standard deviation	High-low range
14	Austria	8.0	9	0.7	7.3 - 9.3
	Hong Kong	8.0	11	1.1	5.6 - 9.3
16	Germany	7.7	11	1.2	4.9 - 9.2
17	Belgium	7.6	9	0.9	6.6 - 9.2
18	Ireland	7.5	9	0.7	6.5 - 8.8
	USA	7.5	13	1.2	4.9 - 9.2
20	Chile	7.4	12	0.9	5.6 - 8.8
21	Israel	7.0	10	1.2	4.7 - 8.1
	Japan	7.0	13	1.1	5.5 - 8.8
23	France	6.9	12	1.1	4.8 - 9.0
	Spain	6.9	11	0.8	5.2 - 7.8
25	Portugal	6.6	9	1.2	4.9 - 8.1
26	Oman	6.3	4	0.9	5.5 - 7.3
27	Bahrain	6.1	3	1.1	5.5 - 7.4
	Cyprus	6.1	3	1.6	4.7 - 7.8
29	Slovenia	5.9	12	1.2	4.7 - 8.8
30	Botswana	5.7	6	0.9	4.7 - 7.3
	Taiwan	5.7	13	1.0	3.6 - 7.8
32	Qatar	5.6	3	0.1	5.5 - 5.7
33	Estonia	5.5	12	0.6	4.7 - 6.6
	Uruguay	5.5	7	1.1	4.1 - 7.4
35	Italy	5.3	11	1.1	3.3 - 7.3
	Kuwait	5.3	4	1.7	3.3 - 7.4
37	Malaysia	5.2	13	1.1	3.6 - 8.0
	United Arab Emirates	5.2	3	0.5	4.6 - 5.6
39	Tunisia	4.9	6	0.7	3.6 - 5.6
40	Hungary	4.8	13	0.6	4.0 - 5.6
41	Lithuania	4.7	10	1.6	3.0 - 7.7
	Namibia	4.7	6	1.3	3.6 - 6.6

Source: Transparency International 2003.

Table 7: Bribe Payers Index 2002			Table 7: Cont.		
Rank	Country	Score	Rank	Country	Score
1	Australia	8.5	13	USA	5.3
2	Sweden	8.4		Japan	5.3
	Switzerland	8.4	15	Malaysia	4.3
4	Austria	8.2		Hong Kong	4.3
5	Canada	8.1	17	Italy	4.1
6	Netherlands	7.8	18	South Korea	3.9
	Belgium	7.8	19	Taiwan	3.8
8	United Kingdom	6.9	20	China (People's Republic)	3.5
9	Singapore	6.3	21	Russia	3.2
	Germany	6.3		Domestic companies	1.9
11	Spain	5.8	Source: Transparency International 2002.		
12	France	5.5			

We might note, finally, Australia's position on the Index of Press Freedom constructed by Reporters without Borders. This index covers a broader range of issues than media corruption alone since it also includes, for example, the harassment of journalists by members of the public. Yet it is nevertheless worth comparing this index with Transparency International's Corruption Perceptions Index.

Australia, number 8 on the 2003 Corruption Perceptions Index, is ranked at 50 in terms of press freedom, well below most members of the OECD and below several of the poorest countries in the world, such as Benin (29th position), East Timor (30th) and Madagascar (46th). Singapore, just above Australia on the Corruption Perceptions Index, is ranked at 144. It seems clear that Transparency International's Corruption Perceptions Index would yield very different results if the views of media analysts played a significant part in its construction. Australia's performance, in particular, would be considerably less impressive.

Table 8: World Press Freedom Ranking			Table 8: Cont.		
2003 Ranking	Country	2002 Ranking	2003 Ranking	Country	2002 Ranking
1	Finland	1	27	United Kingdom	21
1	Iceland	1	28	Portugal	7
1	Netherlands	1	29	Benin	21
1	Norway	1	30	Timor-Leste	Not rated
5	Denmark	10	31	Greece	19
5	Trinidad and Tobago	Not rated	31	United States of America	17
7	Belgium	12	33	Poland	29
8	Germany	7	34	Albania	Not rated
9	Sweden	7	34	Bulgaria	38
10	Canada	5	34	Nicaragua	Not rated
10	Latvia	Not rated	37	Bosnia and Herzegovina	43
10	Czech Republic	41	37	Chile	24
10	Estonia	Not rated	37	El Salvador	33
10	Slovakia	Not rated	40	Paraguay	32
10	Switzerland	15	41	Mauritius	36
10	Austria	26	42	Ecuador	20
10	Ireland	6	42	Spain	29
10	Lithuania	Not rated	44	Israel	92
10	New Zealand	Not rated	44	Japan	26
10	Slovenia	14	46	Madagascar	65
10	Hungary	24	47	Cape Verde	46
10	Jamaica	Not rated	48	Ghana	67
10	South Africa	26	49	South Korea	39
24	Costa Rica	15	50	Australia <sup>1</sup>	12
25	Uruguay	21	Source: Reporters without Borders, 2002, 2003.		
26	France	11			

<sup>1</sup> Criteria used by Reporters sans frontières (RSF) in compiling the rankings are murders or arrests of journalists; censorship; pressure; state monopolies in various fields; punishment of press law offences; and regulation of the media. Australia's drop in rank from 12 in 2002 to 50 was the single biggest downwards move recorded in the rankings. Much of this drop was due to the prevention of free reporting on the country's refugee camps. The 2003 RSF Report noted that the Immigration ministry had done everything possible to prevent journalists gaining access to asylum-seekers or reporting on the situation in the camps in Australia or offshore. Former Immigration Minister Philip Ruddock had defended the restrictions on ABC Radio saying that the ban on journalists covering a hunger strike was 'an operational decision' taken by civil protection services to 'secure the safety of the detainees'.

## 1.2 The public significance of private sector corruption

*CEO: (n) greedy liar with personality disorder*

*(Financial Times)*

The Barometer's findings thus suggest the need for a broader view of corruption in our examination of its impact on democracy in Australia. The following examples will reinforce this point. We can begin with the point that the two perspectives outlined above restrict themselves to problems of public sector corruption. A spate of recent business scandals in the USA and, to a lesser but still significant extent, in Australia and other Western states suggest that this focus is altogether too narrow, that corruption in the private sector can have significant public consequences. When it results in major business collapses, for example, it throws many individuals into unemployment and erodes private savings and superannuation funds.

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The collapse of the insurance company HIH in 2002, which clearly involved improper conduct by some of its senior executives and a truly impressive failure of regulatory oversight, left many individuals and businesses uninsured. It also seriously undermined the Australian reinsurance market, pushing up the costs of many kinds of insurance, with damaging flow-on effects for the costs of health care and the future of Medicare, school fees, and the financial viability of sports clubs and other voluntary organisations.

A different but related issue is raised by the phenomenal growth in recent years of remuneration packages for senior business executives. This has been a matter of public debate in Australia and many other countries. While there is no suggestion that these packages and the conduct which produces them are necessarily illegal, there remains a widely held view that there is nevertheless something improper about many of them. This example shows that concerns about corruption may well relate to conduct which is neither illegal nor in contravention of clearly established codes of conduct.

Governments have made disapproving noises in response to this manifest public concern. Yet, in marked contrast to their willingness to intervene in the determination of wages and working conditions for the most disadvantaged members of the population, they have been reluctant to intervene directly in the matter of executive remuneration. Australia has followed Britain, however, in drafting legislation to empower shareholders, the nominal owners of a company, to exercise a limited degree of scrutiny over executive remuneration packages and to make non-binding recommendations to the board of directors on these matters.

The problem of excessive remuneration packages is only part of a broader set of concerns. A recent report, 'CEO: (n) greedy liar with personality disorder',<sup>27</sup> introduces a further disturbing twist to the issue of executive conduct. The report suggests that, while the proportion of individuals with antisocial personality disorders in the general population is roughly one in twenty, the proportion amongst CEOs of large corporations is very much higher.

A related argument by William K. Black, a specialist in white-collar crime, discusses the phenomenon of 'control fraud', which happens when senior executives of a corporation manage it for fraudulent ends.<sup>28</sup> Enron, he suggests, was only the most conspicuous recent example of a phenomenon which is all too common in corporate behaviour. To the claim that Enron was brought down by the market, and thus that its failure demonstrates the capacity of the market system to correct itself without government regulation, Black responds that the market only got around to destroying this criminal enterprise after it had already caused enormous damage. It was the actual workings of the market, which hardly accord with the idealised image sometimes presented, that 'allowed Enron and its fellow control frauds to grow massively and cause so much damage to so many people. The financial markets provided billions of dollars to an insolvent, criminal enterprise'. Finally, the damage caused by control fraud in large corporations is not limited to investors, creditors and employees. Enron and other US business scandals have shown that corrupt corporations can also use their resources to shape the regulatory environment in which they operate.

Some readers may regard such claims regarding the character of CEOs and the extent of control fraud as serious but exaggerated. They might also argue that economic corruption of this kind is much less of a problem in Australia than it is in the USA. A recent Australian Securities and Investments Commission (ASIC) report, for example, claims that examples of 'corporate failings or misconduct' found in the USA were not identified here, nor were any of Wall Street's 'misleading selling practices'.<sup>29</sup> Unfortunately, ASIC began its inquiry some considerable time later than similar inquiries in the USA, well after Wall Street firms had begun to institute reforms which were then picked up by their Australian counterparts. Moreover, the ASIC investigation did not cover the period of the boom in stock prices. It was not designed to capture the problems identified in the USA. As a result 'the boom-time behaviour of the investment banks and their research divisions in this country will remain a secret. Something to be discussed in hushed and appalled tones over a Scotch at the club, but not—perish the

<sup>27</sup> *Financial Times*, 2 July 2003; cf. Haigh, *Bad Company*.

<sup>28</sup> Black, 'Corporate super-predators'.

<sup>29</sup> IPOs Mackay, 'ASIC, *Research analyst independence*, 22 August 2003.'

thought—in public'.<sup>30</sup> We might perhaps see this as another example of a regulator opting for a condition of peaceful coexistence.

Be that as it may, the issue of executive power, and of control fraud in particular, clearly indicates that concern over the impact of corruption on public life should not be restricted to the conduct of politicians and public servants. Noting that there are positions of trust in the private as well as the public sector, Transparency International now defines corruption as 'the abuse of entrusted power for private gain'. This is a great improvement on its original definition of corruption as the use of public office for private gain, but the further examples considered below will show that it does not yet take us far enough.

The public impact of private sector corruption is important for our discussion of the relationship between corruption and democracy for several reasons. First, private sector attempts to shape the regulatory environment can have significant effects on the conduct of politics. Second, it offers a valuable corrective to the first of our perspectives on corruption, undermining its complacent view that economic corruption is a serious problem only in the non-Western world and suggesting that its endorsement of competitive markets needs to be severely qualified. If markets cannot be relied upon to correct the problem, or if they do so only after considerable damage has been done, there is a clear need for publicly accountable regulation in this area.

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### 1.3 The power of the media

*the huge wealth generated by privileged commercial access to the broadcasting spectrum, controlled by government regulation... has led to a vast increase in the trade in favours to media organisations.*

(Max Suich)

My next example focuses on the media. The issue of freedom of the press has already been the subject of one of our Audit Reports,<sup>31</sup> but what concerns me here is a different aspect of the political role of media organisations. In *The Murdoch Archipelago*, Bruce Page argues that the corporate culture of News Corporation has not only corrupted journalistic standards to the serious detriment of public debate, but has also enabled News Corp to exert a damaging political influence in Australia, Britain and the USA. Like other media conglomerates, News Corp uses journalism in pursuit of the commercial interests and the social

<sup>30</sup> *Sydney Morning Herald*, 25 August 2003.

<sup>31</sup> Nash, 'Freedom of the Press in Australia'.

and political obsessions of its proprietor but, Page suggests, it does so in a manner that is qualitatively different from its competitors. Not only does News Corp have a pronounced editorial bias towards the right but also, and in Page's view more seriously, it shamelessly uses its influence to support, or to intimidate, politicians in its pursuit of special favours from government. News Corp's investigative journalism and public scrutiny of government activity thus has a highly selective character, usually appearing only if it is seen as likely to result in a clear commercial advantage.

Max Suich's review of *The Murdoch Archipelago* presents a more cautious and, in many respects, more disturbing picture.<sup>32</sup> Without disputing Page's detailed account of News Corp's activities, Suich clearly doubts that its behaviour is quite as distinctive as Page seems to suggest. He notes the cooperative efforts of the major US broadcasters, including Murdoch's Fox, to change the pattern of media regulation to their collective advantage. He observes a similar pattern in Australia:

the farming of government favours is no Murdoch monopoly... most major media owners... past and present, have relied on their influence to obtain favours from government. It has been the huge wealth generated by privileged commercial access to the broadcasting spectrum, controlled by government regulation, in all three democracies [Britain, Australia and the USA] that has led to a vast increase in the trade in favours to media organisations.

An example, too recent to be cited by Suich, concerns the publicity given to Telstra's plans to merge Fairfax with Sensis, Telstra's advertising business. This would have given Telstra (and thus the Commonwealth Government) control over the Fairfax papers. In 2000, Telstra had conducted unsuccessful negotiations to buy Kerry Packer's media corporation, PBL. The merger story was first aired on Channel Nine (owned by PBL) on 17 February 2004 and detailed in *The Bulletin* (also owned by PBL) the following day. *The Sydney Morning Herald* cited a 'highly connected source' as saying: 'The people who own that publication [*The Bulletin*] may have wanted to send a message that this [Fairfax/Telstra deal] is not a good thing'<sup>33</sup>—the point being that PBL may wish to reopen negotiations with Telstra at some point. What is significant for our purposes is the suggestion that, had it not been for PBL's clear interest in breaking this story, it may not have become public until too late.

Suich's broader analysis is supported by many observers in Britain and the USA. Here is Paul Krugman writing in the *New York Times*, hardly a radical paper, at the time of an attempt by the Federal Communications Commission to relax

<sup>32</sup> Suich, 'In the wake of a tycoon', *Sydney Morning Herald*, 11 October 2003, p.14.

<sup>33</sup> *Sydney Morning Herald*, 21 February 2004.

legislative restrictions on media ownership. In the USA, as in Australia, these restrictions had been designed, at least in part, to enhance competition between media outlets, foster independent broadcasters and publishers, and thus provide the public with a wide variety of views and perspectives. Krugman notes how News Corp pandered to the Chinese government—for example, by dropping BBC World's news service—in order to gain access to the Chinese market for its satellite TV operations.

### **Krugman then asks if something similar could happen in the USA:**

Of course it can. Through its policy decisions—especially, though not only, decisions involving media regulation—the U.S. government can reward media companies that please it, punish those that don't. This gives private networks an incentive to curry favor with those in power. Yet because the networks aren't government-owned, they aren't subject to the kind of scrutiny faced by the BBC, which must take care not to seem like a tool of the ruling party. So we shouldn't be surprised if America's 'independent' television is far more deferential to those in power than the state-run systems in Britain or—for another example—Israel.<sup>34</sup>

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Australian readers might once have been tempted to add our own state-run system to Krugman's two examples but campaigns by Labor and Coalition Governments have seriously weakened its willingness to take an independent line.

The worry about large-scale media organisations currying favour with government, and doing so, it must be said, with a considerable degree of success, is that it can both distort and seriously restrict the scope of informed public debate. If popular control, however indirect, is an important element in our understanding of democracy, then the development of such relationships between media organisations and government must be seen as undermining democracy, and thus as a pernicious species of political corruption. We have already noted

<sup>34</sup> Krugman, *New York Times*, 3 May 2003.

Australia's dismal performance on the Index of Press Freedom. Problematic relationships between media organisations and government nevertheless have no place in ICAC discussions. However, stretching the notion of trust far beyond Transparency International's own preferred usage, they might well be included within its definition of corruption as 'the abuse of entrusted power for private gain'.

But the political power of media organisations also raises a more general issue. We should not be surprised if private media organisations behave in a partisan fashion and, so long as a sufficiently diverse range of viewpoints is represented in the media overall, such conduct poses no particular threat to democratic government. If the conduct of News Corp and other media organisations does seem to pose a problem of political corruption, the problem is not just a matter of individual or organisational behaviour. What makes the self-interested conduct of media organisations so problematic is the political power which they possess, and this is the product of the political and economic conditions which have allowed the extreme concentration of ownership and the consequent absence of diversity to develop. The corruption in this case has become a structural condition of Australian society.

## 1.4 The entrusted powers of politicians and public servants

*What the Opposition and media have opened up here is the very nature of politics itself—that is, the conflict between the demands of politics and the demands of public office.*

(Nick Greiner)

The scope for corruption in the relationship between politics and the media is too large a topic to be properly examined in this report. I have raised the matter here as part of a larger argument that the two most influential perspectives on corruption are of limited value at best for our assessment of the impact of corruption on democracy in Australia. The questions which will concern us most directly in the following discussion involve the entrusted powers of politicians and public servants and the contested line dividing corrupt from acceptable conduct.

Questions about the trust that can be placed in Australia's elected governments have been raised during the reigns of both major parties. At the Commonwealth level in recent years they have been raised most clearly, perhaps, by Australia's part in the 2003 invasion of Iraq and, somewhat earlier, by the conduct of the

Commonwealth Government over what became known as the children overboard affair. Andrew Wilkie, who resigned from the Office of National Assessments (ONA) in the run-up to the war on Iraq, gave evidence to a parliamentary committee on 22 August 2003. His statement suggested that, while ONA and other agencies prepared professional, carefully qualified assessments, the Australian Government:

deliberately skewed the truth by taking the ambiguity out of the issue. Key intelligence assessment qualifications like 'probably', 'could' and 'uncorroborated evidence suggests' were frequently dropped. Much more useful words like 'massive' and 'mammoth' were included, even though such words had not been offered to the government by its intelligence agencies. Before we knew it the Government had created a mythical Iraq...<sup>35</sup>

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The Government also presented evidence, which ONA, Defence and DFAT all knew at the time had been discredited, suggesting that Iraq was seeking to obtain uranium from Niger. 'It beggars belief', says Wilkie, that ONA knew this 'but did not advise the Prime Minister, that Defence knew but did not tell the Defence Minister and that Foreign Affairs knew but did not tell the Foreign Minister'.<sup>36</sup>

Wilkie's claim that the intelligence agencies provided carefully qualified assessments and that their reservations were discounted by the Government is supported in a November 2003 report by the Senate Intelligence Committee, made public on 1 March 2004. The Report clears the Government of any charge of 'sexing up' the case for war by deliberately fabricating evidence. Nevertheless, it clearly shows, in the words of Labor's Kevin Rudd, that the Government was 'cherry-picking the intelligence advice it received to suit its own political objective'.<sup>37</sup> The Committee Report also shows, without providing any clear explanation, that ONA hardened its assessment of Iraq's weapons of mass destruction between one day and the next after receiving a request for a report from Foreign Affairs.

The following day Alexander Downer stated what many observers take to be the real reason for Australia's part in the invasion of Iraq:

It wasn't a time in our history to have a great and historic breach with the US. If we were to walk away from the American alliance it would leave us as a country very vulnerable and very open, particularly given the environment we have with terrorism in South-East Asia, the North Korea issue.<sup>38</sup>

<sup>35</sup> Australia, Joint Committee on ASIO, ASIS and DSD, *Official Committee Hansard*, 22 August 2003, p. 35.

<sup>36</sup> Australia, Joint Committee on ASIO, ASIS and DSD, *Official Committee Hansard*, 22 August 2003, p. 35.

<sup>37</sup> Rudd, quoted in *Sydney Morning Herald*, 2 March 2004.

<sup>38</sup> Downer, quoted in *Sydney Morning Herald*, 3 March 2004

**Ministers  
using staff as  
a defence  
against  
accountability**

This is not the reason which the Government gave at the time of the invasion. Downer's statement thus suggests that there may be times when it is necessary for the Government to mislead the people in order to build popular support for actions which it believes to be in the public interest. We will return to the implications of this point.

The suggestion that ministers had no knowledge of their public service advisors' reservations about the evidence recalls another Government misinformation affair, this time in the months before the 2001 election. During the campaign, the Prime Minister made much of a report suggesting that asylum-seekers were throwing children overboard, apparently in order to force a rescue by the Navy and thus to bring the asylum-seekers into the sphere of Australian responsibility. Senior figures in the Navy and Defence knew that the story was false, but the Government successfully managed to avoid being officially informed of this fact until well after the election.

Public servants are expected to offer frank and fearless advice to their ministers, and there is no reason to suppose that their subordinates deliberately kept ministers in ignorance of the relevant facts in these cases. What happened, rather, was that ministers used their staff as a defence against accountability. The Government exploited the differences between ministers and their staffers on the one hand and between staffers and public servants on the other to evade responsibility for its deliberate campaigns of misinformation, refusing to acknowledge in public what it clearly knew to be the case.<sup>39</sup>

These cases raise many important questions about the character, and the quality, of Australian government. I noted earlier that while those engaged in corrupt practices will often try to keep this secret, there will also be occasions when they have an interest in publicity. The transparent pretence of ministerial ignorance in these two cases can be seen as a deliberate flaunting of ministerial power. It demonstrates both a willingness to get things done by bending the rules and a confidence in the Government's ability to get away with doing so.

The issues which particularly interest me here, however, concern the politicisation of the public service, a process which had already begun under Labor but which now appears to have been carried considerably further. Critics have argued that the Government misrepresented the advice it was getting from some sections of the public service, required others to give officially only the advice that it wished to hear, and promoted public servants who proved themselves willing to do its

<sup>39</sup> See Marr and Wilkinson, *Dark Victory*, and Weller, *Don't Tell the Prime Minister*.

bidding. The Clerk of the Senate, Hary Evans, claims that ministerial staffers were used to 'browbeat and intimidate public servants to ensure that public service performance accords with political objectives'.<sup>40</sup>

The result, at least according to the critics, is that the public service has been transformed from a servant of the public into a servant of the current administration, from an impartial source of frank and fearless advice to a pliant tool of whoever is in power. If this development seriously undermines the accountability of government, then the problem is further compounded by the fact that ministerial staffers are not answerable to parliament nor, unlike public servants, are they subject to the limited requirements of a code of conduct.<sup>41</sup>

I have focused here on two widely reported cases, but the problem is clearly a broader one. A leaked memorandum reported in the *Sydney Morning Herald* offers an example of public servants acting pre-emptively to avoid finding themselves required to give advice which they knew would prove unpopular with the ministers concerned. It shows that, in mid-1995 when the Keating Government was under pressure from anti-smoking groups to commission studies into the dangers of tobacco additives, a senior scientist with the federal Department of Health advised against testing tobacco additives because the test results might have forced the Government to ban cigarettes.<sup>42</sup>

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The politicisation of the public service and the questionable conduct of ministerial staffers do not register within either of the practical perspectives on corruption noted earlier. The abuse of entrusted power, which is the core of Transparency International's most recent definition of corruption, is certainly at issue here but private gain, which also forms part of Transparency International's definition, is not its primary objective. As for the ICAC approach, the abuse of power in this case need involve no criminal or disciplinary offences while the conduct of ministerial staffers can hardly be said to be in breach of a non-existent code of conduct.

**Ministerial staffers  
cannot breach a  
non-existent  
code of conduct**

Finally, these two perspectives on corruption focus on the conduct of individuals, but the politicisation of the public service also raises more general issues concerning the political or organisational climate within which these individuals operate, a climate which encourages, and in some cases even requires, them to engage in such problematic conduct. To suggest that the politicisation of the public service could, like the relationship between government and media corporations, usefully be seen as a matter of corruption is thus to invoke an older understanding of corruption as involving something more than improper behaviour on the part of individuals. It is also a disease of the body politic.

<sup>40</sup> Evans, quoted in *Sydney Morning Herald*, 5 November 2003.

<sup>41</sup> Tiernan, 'Problem or Solution?'.  
<sup>42</sup> *Sydney Morning Herald*, 19 November 2003.

## 1.5 ICAC and the Metherell case

*I'd like to make it clear that being a member of the Labor Party is no disqualification for appointment to high office. Indeed, one can see that I'm not going to appoint my enemies. If possible, and if my friends have talent and capacity, I will appoint them any day.*

(Neville Wran, Premier of New South Wales)

In the 1988 New South Wales State election the Liberal Party under the leadership of Nick Greiner campaigned, as NSW Opposition parties are wont to do, against the corrupt character of the incumbent administration. What particularly distinguished this Liberal campaign from earlier attempts by Opposition parties to capitalise on this issue was their promise to establish an independent body, not subject to direct political control, to deal with the problem of public sector corruption, including the improper exercise of political patronage.

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John Howard's 1996 promise, whose fate we consider in Section 3 below, to establish a code of conduct for ministers represents a safer version of the same strategy. It appeals to public concerns over the behaviour of ministers while taking care to ensure that their conduct is not exposed to independent scrutiny. Public sector corruption was by no means the only element in the successful New South Wales Liberal campaign but there is little doubt that it appealed to popular perceptions of the Labor Government.

The Independent Commission Against Corruption (ICAC) was established in the first legislative session of the Coalition administration in NSW. The next election left the Coalition with fewer seats and dependent on Independent support. Later that year, Tony Metherell resigned his ministerial position following his conviction on tax offences and subsequently resigned from the Liberal Party, leaving the Coalition Government in an even more precarious position. Metherell resigned from parliament in April 1992, following private negotiations with the Greiner administration. Metherell's appointment on the day of his resignation to a senior position in the State public service led to a public outcry, only partly orchestrated by the Labor Party, a motion of censure in the Legislative Assembly and an investigation by ICAC.

Greiner's response to the censure motion insisted the Metherell appointment was entirely consistent with prevailing political standards and that to render it illegal would mean 'the death of politics in this State':

What the Opposition and media have opened up here is the very nature of politics itself—that is, the conflict between the demands of politics and the demands of public office... the standards implied in this censure of me today are entirely new standards... I am not sure... that those standards are going to produce a workable system of democracy in our State.<sup>43</sup>

In June that year ICAC reported that the actions of Greiner and others constituted a partial exercise of official functions, thus satisfying the necessary conditions set out in Section 8 of the ICAC Act for conduct being corrupt. ICAC also judged that this conduct provided reasonable grounds for dismissal of a public servant. Under Section 9c of the ICAC Act this was sufficient to justify a finding of corrupt conduct. This was a contentious finding. It was overturned in August by the Court of Appeal which judged, by a two to one majority, that while the conduct fell under Section 8 of the Act it did not constitute reasonable grounds for dismissal under Section 9. The following month ICAC responded to these setbacks with a second Report on the Metherell case, which included the passage cited earlier:

The whole point of the legislation was to combat a corrupt culture, a culture that regards nothing wrong with things like jobs for the boys, or giving a Government contract to a mate, and accepts corruption as part of the way things are done.<sup>44</sup>

The controversy surrounding this case raises a number of important issues for our study of the place of corruption within Australian public life. First, there is the problem noted earlier that people may become habituated to conduct which outsiders might identify as corrupt. A certain level of corruption would then have been normalised and public perceptions of what is acceptable would to this extent be corrupted. Second, it shows that the issue of corruption may be raised in cases where, like Nick Greiner's, the conduct in question involves no clear private and personal gain. This is what the American political scientist, Dennis F. Thompson, calls the problem of 'institutional corruption', a form of corruption in which the gain is 'political rather than personal'. Thomson acknowledges that institutional corruption is not always easy to identify 'because it is so closely related to conduct that is a perfectly acceptable part of political life'.<sup>45</sup>

**Corruption  
where gain  
is political  
not personal**

<sup>43</sup> Greiner, 28 April 1992, quoted in ICAC, *Report on Investigation*, pp. 92–3.

<sup>44</sup> ICAC, *Second Report*, p. 3.

<sup>45</sup> Thompson, *Ethics in Congress*, p. 7.

Yet there is a more important point to be noted here. If the line between corrupt and acceptable conduct is not easy to draw, then its precise location is likely to be disputed.<sup>46</sup> There will be different views about what conduct is in fact acceptable and thus about how far and in what respects ‘the way things are done’ should be deemed to be corrupt. ICAC’s view of corruption at this time was clearly much stricter than Greiner’s but, as the majority Court of Appeal decision shows, it is a view which is disputed within the legal profession itself.

Finally, Greiner’s claim that the standards invoked in the censure motion were ‘entirely new’ is disingenuous since he had appealed to the same standards in his successful election campaign in 1988. They are standards which are routinely invoked by Opposition parties and equally routinely violated by the party in power. The fact that Opposition parties in New South Wales have always been able to campaign on the issue of political corruption shows that there is significant public support for a view of corruption that is somewhat stricter than the one adopted by the party in power.

## 2. Democracy and the public interest

*By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole... adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.*

(Federalist, #10)

We have seen that the most common approaches to the study of corruption treat it either as a matter of improper conduct on the part of public officials which has damaging economic effects or as involving conduct which deviates from the formal duties of public office. While such studies may produce important results in their own sphere, they are of limited value for our assessment of the impact of corruption on democracy in Australia. We have argued that this assessment requires a broader understanding of corruption and that the application of this understanding to the political sphere is likely to prove contentious.

In spite of this point, it might nevertheless be suggested that the idea of the public interest could provide us with a secure base from which to identify indisputable cases of political corruption. In Aristotle’s *Politics*, for example, a true form of government is defined as one that operates according to its own proper purpose or *telos*. The government of a state must thus ‘have a regard to the common interest’, otherwise it will be ‘defective or perverted’.<sup>47</sup>

<sup>46</sup> Rynard and Shugarman, *Cruelty and Deception*.

<sup>47</sup> *Politics*, 1279a, 17–21.

According to Aristotle, anything which diverts the government of a state from its pursuit of the common interest could be seen as a form of corruption. Rulers and public officials who pursue their own private interests to the detriment of the common interest would be obvious cases in point. But so too, in Aristotle's view, would be a condition in which the political activities of citizens show no regard for the common interest. Individual cases of corrupt conduct would then be seen as symptoms of a larger, societal corruption.

What counts as corruption in this broader sense will depend on one's understanding of the proper purpose of government. In the case of a state like Australia, which claims to be democratic, it is tempting to follow the *IDEA Handbook on Democracy Assessment* in suggesting that the proper purpose of government can be defined, at least in part, in terms of the principles of popular control and political equality. The politicisation of the public service, the conduct of ministerial staffers and the political power of large media organisations all threaten the public accountability of government, thereby undermining popular control and promoting de facto legal and political inequalities. Must we then conclude that they are signs of political corruption?

Unfortunately, while this conclusion has an obvious appeal, it does not take account of the second complication noted at the beginning of this Audit Report, namely, that the modern understanding of democracy as representative government already incorporates significant limits to popular control and political equality. Democracy is an arrangement which gives the poor and uneducated a significant role in the work of government. For this reason, at least until recently, democracy has been seen as a major source of political corruption.<sup>48</sup>

**Until recently  
democracy has  
been seen as  
a major source  
of political  
corruption**

Obstacles to popular control and political equality have traditionally been seen as barriers to the corruption of government. If democracy is now viewed more favourably, this is largely because its modern varieties incorporate significant limits to popular control and political equality. Before we can pursue the impact of corruption on democracy in contemporary Australia, we must first consider the tortuous relationship between these two principles and modern systems of representative government. This will require us to step back briefly from contemporary concerns in order that we might return to them more effectively in later sections of this Audit Report.

<sup>48</sup> Roberts, *Athens on trial*.

For the greater part of its history, up to the period of the American and French revolutions in the late eighteenth century, democracy was seen as one of three basic forms of the government of a state, the others being monarchy and aristocracy—government by the one or by the few. Democracy meant government by the many, that is, by the people (the citizens) themselves, although the term was sometimes used for any form of government in which political power was distributed more broadly than in an aristocracy. Most of those who had anything at all to say about democracy in the early modern period thought that it would be a remarkably unsatisfactory form of government.

One reason reflects the powerful distrust of the people—of the poor and, for the most part, poorly educated majority—which has always been a central feature of Western political thought. It is easy to understand why the rich and powerful, who can never be more than a small minority in the population of any state, might dislike the idea of government by the majority. Opposition to that idea has often included a significant element of self-interest. But there is another component to the traditional distrust of the people which also deserves our attention.

Aristotle sometimes uses the term ‘democracy’ to refer, not to rule by the citizens as a whole, but rather to what he sees as a perverted form of their rule, that is, to a government dominated by the short-term interests and prejudices of the poor and uncultivated majority, and therefore also, he believes, by the populist appeals of unprincipled demagogues.<sup>49</sup> Here democracy is contrasted unfavourably to other forms of rule in which the cultivated minority are able to ensure that the government of the state does indeed ‘have a regard to the common interest’.

This classical fear of the people can also be found in modern arguments in favour of representative government. In the late eighteenth-century *Federalist Papers*, to take just one example, James Madison strenuously opposed the idea that America should become a democracy, which he understood to mean that government would be by the people themselves. Instead, he favoured a system of representative government which, among its many advantages, assured ‘the total exclusion of the people, in their collective form’ from any share in the work of government. Representative government would also keep the dangerous vice of faction under control. A faction, he tells us, consists of

a number of citizens, *whether amounting to a majority or minority of the whole*, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.<sup>50</sup>

<sup>49</sup> *Politics*, 1279b, 4–10.

<sup>50</sup> Madison, *Federalist*, #10—emphasis added.

For our purposes, the most interesting feature of this definition is the suggestion that the citizens cannot be trusted to identify the 'permanent and aggregate interests of the community', that those interests might in fact be betrayed by a majority of the citizens themselves.

Representative government was thus originally seen as a form of popular rule only in the sense that it was clearly not a matter of government by a king or an aristocracy. It could thus be expected to escape the all too familiar forms of corruption that were seen as characteristic of rule by the one or the few. In England, for example, James Mill's *Essay on Government* (1825) presented a powerful case in favour of representative government, but his argument concentrated on the need to prevent those entrusted with the powers of government from using it simply for their own private ends. It was a defensive case aimed at preventing arbitrary rule by powerful groups or individuals, not a positive argument in favour of popular control.

On the other hand, because it placed the work of government in the hands of elected representatives and unelected public servants, representative government seemed to ensure that this work was not in the hands of the people themselves. Representative government seemed, in other words, to promise the best of all governmental worlds: to avoid the specific forms of corruption associated with government by the one or the few while minimising the dangers of arbitrary rule by the people themselves.

## 2.1 The misplaced enthusiasms of the majority

*It's the day to have your say*

(Advertising slogan, New South Wales Electoral Commission, 2003 State election)

Today, in contrast to Madison's usage, democracy is seen precisely as a matter of representative government. The growing support for democratic government in the West itself since the early nineteenth century and the more recent Western promotion of democratic government in other parts of the world shows, not that the older hostility to democracy has finally been discarded in favour of a more enlightened perspective on popular rule, but rather that it has now been incorporated into the meaning of democracy itself.

What is distinctive, then, about the modern understanding of democracy as representative government is that while celebrating the original democratic idea of rule by the people, it also endorses the traditional hostility to democracy.

The institutions of representative government which embody the principle of popular rule—popular elections, political parties, representative assemblies and public service bureaucracies—serve also to exclude the people from the practical work of government.

To the extent that this longstanding fear of the people has any basis in principle—rather than simply reflecting the interests of the rich and powerful—it draws on the Aristotelian view, noted earlier, that true forms of government 'have a regard to the common interest', while other forms of government are 'defective or perverted'. Representative government clearly incorporates this concern, and one of the values of modern democracy is thus to protect the common interest against sectional interests of various kinds, including the misplaced enthusiasms of the majority. The advertising slogan adopted by the New South Wales Electoral Commission to encourage people to vote nicely captures this balance between the inclusive and exclusive aspects of representative government: 'it's the day to have your say'. For the rest of the time, it suggests, government is the business of professionals.

A more telling example of the implications of this concern to protect the common interests against the misplaced enthusiasms of the majority can be found in Alexander Downer's statement, quoted earlier, concerning Australia's involvement in the invasion of Iraq:

It wasn't a time in our history to have a great and historic breach with the US. If we were to walk away from the American alliance it would leave us as a country very vulnerable and very open, particularly given the environment we have with terrorism in South-East Asia, the North Korea issue.<sup>51</sup>

The suggestion that it may be in Australia's interest to follow a course of action which is opposed at the time by a clear majority of the population is one that many readers will find disturbing.

However, there is a second implication of Downer's comment which also bears directly on the issue of popular control. His statement was made the day after the release of a Senate Intelligence Committee Report which found, among other things, that the Government's case for war had seriously misrepresented its intelligence advice. In this context, Downer's statement can thus be seen as implying that there may be times when it is necessary for the Government to mislead the people in order to build popular support for actions which it believes

<sup>51</sup> Downer, quoted in *Sydney Morning Herald*, 3 March 2004.

to be in the public interest. While the merits of the Australian Government's actions in this case may be open to debate, there can be little doubt that this broader view of the responsibilities of government is widely shared by political leaders throughout the modern world. It reflects an influential understanding of modern democracy that sees popular control over government as something which should always be carefully circumscribed.

We should recall, finally, that disputes over the public interest are the normal condition of democratic politics. Thus, in situations where governments believe it is in the public interest for them to mislead the people there will be others who take a different view of the public interest and thus of their government's deceptions. Both sides, in such cases, are likely to see the conduct of the other as undermining the public interest.

## 2.2 Popular control and political equality?

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In practice, the content of the common interest is a matter of ongoing partisan debate in modern democracies. But it is normally understood as involving political and economic stability, the protection of individual liberty and private property, and some degree of equality of opportunity. The *IDEA Handbook* maintains that liberty is subsumed within the values of popular control and political equality.<sup>52</sup> However, this is misleading in two respects. First, as the record of Jean Calvin's Geneva or the democratic New England communities described in Alexis de Tocqueville's *Democracy in America* strongly suggest, communities organised on the basis of these two values are by no means always sympathetic to the liberty of unpopular minorities. It is partly for this reason that the Democratic Audit of Australia has decided to include liberty as a separate item among our indicators.

Secondly, liberty and the other supplementary principles clearly cut across the principle of popular control, suggesting that not all obstacles to popular control can be seen as evidence of corruption. These principles also have significant implications for the principle of political equality. We can begin by noting that the *IDEA Handbook on Democracy Assessment* treats political equality essentially in electoral terms. Our Audit Report, *Australian Electoral Systems*, shows that contemporary Australia, along with other Western democracies, is far from securing even this kind of political equality for its citizens. The continuing importance of this issue was most starkly demonstrated by the 2000 American Presidential election, where the deliberate and systematic disenfranchisement of large numbers of (mostly Black) voters by officers of the Florida state government had a decisive impact on the outcome.

<sup>52</sup> IDEA, *Handbook on Democracy Assessment*, p. 14.

Our Report also notes that even the most egalitarian electoral systems can only do so much for political equality.

They do not, for instance, ensure that ongoing policy development or the daily business of government are responsive to the needs and opinions of the populace, let alone that these processes treat people equally.<sup>53</sup>

Inequality of voting rights is certainly important but it is only part of the problem of political inequality. We are all familiar with significant forms of political influence, associated with differences of money, education, and other means of access to elected or appointed officials, which operate outside the electoral process itself.

Advocates of representative government have defended the limitations it imposes on popular control precisely because they insulate the common interest from the misplaced enthusiasms of the majority. An important part of their concern has been the protection of individual liberty, private property and some degree of equality of opportunity. The protection of private property and equality of opportunity in the modern world is also, in practice, the protection of significant inequalities in income and wealth. Thus, to the extent that wealth, income and education make a difference to one's access to elected or appointed officials, we might say that modern representative government actually promotes certain kinds of political inequality. To address such political inequality would involve political changes far more radical than most inhabitants of Western societies would now be willing to contemplate.

But perhaps this is reading too much into the idea of political equality. Jean-Jacques Rousseau insists that equality between citizens:

must not be taken to imply that degrees of power and wealth should be absolutely the same for all, but rather that power shall stop short of violence and never be exercised except by virtue of authority and law, and, where wealth is concerned, that no citizen shall be rich enough to buy another and none so poor as to be forced to sell himself;...<sup>54</sup>

Equality in this sense is entirely compatible with considerable differences in wealth, income and political influence.

If we were to adapt Rousseau's rather lax understanding of equality to modern conditions it is far from clear where the limits to acceptable inequalities in political influence would now be drawn. The populations of modern states are generally much larger than those with which Rousseau was concerned and, in Western

<sup>53</sup> Orr, *Australian Electoral Systems*, p. 4.

<sup>54</sup> Rousseau, *The Social Contract*, p. 96.

states at least, the purchase and sale of votes now plays a relatively small part in determining electoral outcomes. The purchase of political influence is another matter. *Australian Electoral Systems* notes that the influence of private money is the most important issue facing electoral equality in all modern democracies. Since the influence of money is clearly not confined to election campaigns, this observation applies to political equality more generally. The Australian system of regulating political finance:

pays most heed to liberty interests, which hold that politics is like a market, and indeed that wealth generated in the market can legitimately buy a louder voice in electoral politics.<sup>55</sup>

An additional complication, reported in a Parliamentary Library Research Note, is that donors to a political party need not lodge a return to the Australian Electoral Commission

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if they believe they have received something in return for their money. Thus, a businesswoman who pays \$10 000 to attend a party fundraiser and who sits next to a political figure or converses with another businessperson such that she believes that her business has benefited, has made a purchase rather than a donation and need not lodge a return, despite having paid \$10 000 to the party.<sup>56</sup>

We might add that, along with other modern democracies, Australia interprets freedom of speech as a right belonging not just to human individuals but also to legal subjects of other kinds. This does something to mitigate the effects of inequalities of wealth by enabling trade unions and other non-government organisations to speak on behalf of their members. Yet it also enables business corporations to use their wealth for political purposes.

**No disclosure  
required  
if donor has  
received a  
benefit**

If we follow IDEA in identifying popular control and political equality as the two central values of democracy, then the influence of private money must be seen as a significant corruption of democratic politics. However, if we add liberty to these values, and especially if we interpret liberty as applying to artificial subjects like corporations, the issue becomes more complex. As in other cases where the line is unclear, we should expect to find differing opinions on the extent to which the influence of money on the conduct of politics is regarded, as the second ICAC Report on the Metherell case puts it, simply as ‘part of the way things are done’, and thus as entirely acceptable.

<sup>55</sup> Orr, *Australian Electoral Systems*, p. 72.

<sup>56</sup> Miskin, ‘Political finance disclosure’, p. 3.

### 3. Corrupt culture or 'the way things are done'?

*The whole point of the legislation was to combat a corrupt culture, a culture that regards nothing wrong with things like jobs for the boys, or giving a Government contract to a mate, and accepts corruption as part of the way things are done.*

(ICAC, *Second Report*, p. 3)

In practice, then, while an exclusive focus on popular control and political equality might suggest that limits to the implementation of these values should be seen as corruptions of government, the most influential modern understandings of democracy reflect a more complex view. Democracy is now thought to involve a number of other values—stability, individual liberty, private property and equality of opportunity—which themselves involve significant social and economic inequalities, and the political system can hardly be insulated from their effects. The promotion of these other values requires that government be protected from corruption by sectional interests, including, at times, the enthusiasms of the majority.

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However, the very features of representative government which appear to mitigate this source of political corruption can also be seen as creating conditions in which other kinds of corruption might be expected to flourish. This is because, by excluding 'the people in their collective form' from the work of government, they leave the greater part of that work in the hands of the few, of elected representatives and public servants. The essay in which Madison celebrates the American republic for its exclusion of the people also notes that the people 'may possibly be betrayed by the representatives of the people'.<sup>57</sup>

The issue of betrayal of the people by their representatives has been addressed in recent years by public choice theorists on the right and by participatory and deliberative democrats on the left and centre, all of them seeking ways to prevent public officials from pursuing merely sectional agendas. The final section of this report takes a more mundane approach, using a small number of cases from recent Australian political history to show that corruption, in this broader sense, is a more substantial problem than Australia's impressive performance on the conventional international measures would seem to indicate.

<sup>57</sup> Madison, *Federalist*, #63.

### 3.1 Institutional corruption and the gravy train

A few months before the 2001 federal election Peter Andren, an Independent member of the House of Representatives, asked the Prime Minister for an assurance that ‘the ongoing marginal seat tours by you, other ministers, their shadows and their staff represent legitimate parliamentary duties and not party political pre-election campaigning at tax-payers’ expense’.<sup>58</sup> Since political parties already receive earmarked public funds to help cover their election expenses, this additional use of parliamentary travel funds looks suspiciously like double-dipping.

The use of  
parliamentary  
staff for electoral  
purpose

The Prime Minister avoided the point of the question, insisting that it was perfectly legitimate for senior ministers to visit all parts of the country and, he added, ‘it verges on humbug to think there is something improper about that’.<sup>59</sup> The use of MPs’ parliamentary staff for electoral purposes raises a similar issue. Overtime payments and travel expenses for MPs’ staff rises dramatically in the weeks before an election. In the month of the 1988 campaign, for example, these costs were \$1 000 000 more than the monthly average for the remainder of that year.<sup>60</sup>

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What happens, of course, is that parliamentarians’ staff are used for campaigning. Only after the campaign has officially begun are parties required to pay for this out of their own funds, and even then they receive substantial support from the public purse. In order to be able to make use of these additional public funds, governing parties now tend to leave the official campaign launch as late as possible. The publicly accountable funding of electoral campaigns is thus only a small part of the true cost to the public purse of campaigning.

Another form of electoral campaigning at the public expense consists of government information campaigns run in pre-election periods. (For a recent instance, see Figure 1.) The use of government advertising for electoral campaign purposes skews the electoral system in favour of incumbent governments. It is also an abuse of public resources for political gain and one which is now practised on a very large scale. In 1999 the Federal Government ranked ninth out of the top fifty advertisers in Australia but by 2000 and 2001 it had reached the top.<sup>61</sup>

<sup>58</sup> Australia, House of Representatives 2001, *Debates*, 5 June, pp. 27247–8.

<sup>59</sup> Australia, House of Representatives 2001, *Debates*, 5 June, p. 27248.

<sup>60</sup> Ross Peake, ‘Taxpayers taken for a free ride’, *Canberra Times*, 16 June 2001, p. C3.

<sup>61</sup> Young, ‘Democracy, communication and money’, p. 2.



The more official use of public funds for parties' electoral campaigns poses problems of its own, and these have been examined in our Audit Report on *Australian Electoral Systems*. What concerns us here is not this open use of public funds but rather the use for manifestly partisan purposes of funds intended to serve the day-to-day business of government. This is a prima facie instance of the 'institutional corruption' noted in our discussion of the Metherell case, a form of corruption in which the gain is 'political rather than personal'. The line here between acceptable and unacceptable conduct is difficult to draw and, since Opposition parties make use of the same largesse, we can hardly expect them to pursue the issue too vigorously.

The fiddling of public funds around election time is only part of a larger problem. The partisan use of public resources by those in power is part of 'the way things are done'. (John Howard's frequent appearances at public functions to perform the role that would once have belonged to the Governor-General represents an innovative recent extension of this practice.) It is accepted, and practised with only the flimsiest of disguises, by all major players in the system. This is the point of the remark that to question ministers' electioneering on public funds 'verges on humbug'. No true politician, the Prime Minister seems to imply, would see it as a problem.

Every winter, parliamentarians flock overseas on publicly funded study tours. In August and October 2002, Philip Ruddock, then Minister for Immigration and Aboriginal Affairs, made overseas trips of 18 and 15 days respectively, with a recorded cost to the exchequer of \$235 570. In the same year, the Prime Minister made several overseas trips, with a recorded cost of over \$3 million.<sup>62</sup> Expensive overseas trips by senior ministers and their partners are another part of the way things are done. Opposition parties may complain about the costs but, as in other areas, they seldom push the issue too hard.

It would not be surprising if politicians, like other mortals, were tempted to indulge themselves while travelling on official business. If they were to succumb, it would be a relatively minor case of the 'rent-seeking' activity that has been called a 'universal phenomenon... in the public sector'.<sup>63</sup> What gives the issue added significance here is the Coalition's attempt to make political capital out of a trip made by Geoff Clark, Chairman of the Aboriginal and Torres Strait Islander Commission (ATSIC), to a conference in Ireland accompanied by his wife. The cost to ATSIC was \$31 000. The Board of ATSIC had approved the trip, as had the minister, Philip Ruddock. When *The Australian* later complained that Clark

<sup>62</sup> Figures from Alan Ramsey, *Sydney Morning Herald*, 19 July 2003.

<sup>63</sup> Rose-Ackerman, *Corruption and Government*, p. 2.

had spent only two days at the week-long conference, Ruddock wrote to Clark asking that he ‘show cause’ why he should not be dismissed for misbehaviour. The Deputy Prime Minister, John Anderson, suggested on ABC radio that Clark should be given ‘a proper opportunity to explain himself’. An example of the pot calling the kettle black, perhaps, and in more senses than one. There is clearly an element of wedge politics involved here, with the Coalition trying to capitalise on anti-Aboriginal sentiments in some sections of the electorate.<sup>64</sup> But Ruddock and Anderson were also trying to capitalise on popular concerns over public figures riding the gravy train, thereby acknowledging the public importance of standards which politicians refuse to apply to their own behaviour.

Labor was also seeking to capitalise on public disquiet about politicians using public funds for private benefit. The overseas study tours, to which federal politicians become entitled once they have served one term, are a popular target in the media. In debate over the abuse of such entitlements Labor was able to refer to its 2004 Platform commitment to establish ‘an independent auditor of parliamentary allowances and entitlements with appropriate powers of investigation’.<sup>65</sup>

### 3.2 Codes of conduct

*It is vital that ministers and parliamentary secretaries do not by their conduct undermine public confidence in them or their government.*

*Ministers must be honest in their dealings and should not intentionally mislead the Parliament or the public. Any misconception caused inadvertently should be corrected at the earliest opportunity.*

(The Prime Minister's Code of Conduct for Ministers, 1996)

In April 1986 the Leader of the Opposition moved a motion of censure against the Labor Prime Minister, accusing him, not without reason, of ‘expedient and opportunistic interpretation of rules he himself has laid down for the conduct of his ministers’.<sup>66</sup> The motion related specifically to an apparent conflict of interest on the part of the then Trade Minister, John Dawkins, arising from his mother’s holding of shares in Bell Resources at the time it was trying to take over BHP. ‘Everybody knows’, John Howard declared, ‘that if a man who stands to gain... tries to tell the average Australian that he may not have a conflict of interest... there is not a man or woman who would believe him’.<sup>67</sup>

<sup>64</sup> Senior political journalist Alan Ramsey noted that Clark ‘is a blackfella who looks like a whitefella [and] thinks he can behave like one’, *Sydney Morning Herald*, 19 July 2003.

<sup>65</sup> ALP, *ALP National Platform and Constitution. As adopted at the 43rd National Conference—Sydney, 29 January-31 January 2004*, s.16:31.

<sup>66</sup> Australia, House of Representatives 1986, *Debates*, vol. HR147, p. 2142.

<sup>67</sup> Australia, House of Representatives 1986, *Debates*, vol. HR147, p. 2143.

The Opposition continued to plug away at the issue of ministerial conduct and some years later, during the 1996 federal election campaign, Howard successfully exploited it by promising, if elected, to establish a clear and effective code of conduct for ministers. The earliest version of the code lays down rules, many of which were relaxed in later revisions, for avoiding either the fact or the appearance of conflict of interest, but it begins with the lines quoted above. These words appear at some point in all later versions of the code. Table 9 summarises the codes of conduct currently in force in Australian legislatures.

Table 9: Summary of Codes of Conduct in Australia and selected overseas countries									
Australian Codes	Federal	NSW	Vic	Qld	Tas	SA	WA	ACT	NT
Ministerial Code	✓	✓	✓			✓	✓	✓	
Members' code		✓	✓	✓	✓		✓		
Post-separation employment					✓	✓	✓	✓	
Register of interests	✓	✓	✓	✓	✓	✓	✓	✓	✓
Ethics/standards mechanism providing advice or conducting investigations		✓		✓					
Overseas countries Codes	UK	Scotland	Wales	Northern Ireland	Republic of Ireland	Canada	New Zealand	USA	
Ministerial Code	✓	✓	✓	✓	✓	✓	✓	✓	
Members' code	✓	✓	✓	✓	✓				✓
Post-separation employment	✓	✓	✓	✓			✓		✓
Register of interests	✓	✓	✓	✓	✓	✓	✓	✓	✓
Ethics/standards mechanism providing advice or conducting investigations	✓	✓	✓	✓	✓	✓	✓		✓
Source: Parliament of Australia Parliamentary Library.									

In October 1996 Jim Short and Brian Gibson were forced to resign from the ministry over possible conflicts of interest. The code was reviewed twice in 1997 and again in March 1998 after the Opposition established that Resources Minister, Warwick Parer, had substantial shareholdings in the resources sector and had clearly and repeatedly broken the code. Unlike Short and Gibson, Parer was not required to resign but continued Opposition attacks over his apparent conflict of interests made his position untenable and he left parliament after the 1998 election. The conflict of interest issue arose again, in a different form, when Parer was commissioned by the Government in 2003 to review Australia's involvement in the international emissions trading scheme proposed under the Kyoto protocol. Australia formally abandoned the scheme in early 2004.

At the end of March 1998 a Nine Network report revealed that the Prime Minister had himself breached the explicit requirements of the code in 1996 by failing to resign his directorship of a public company which received an annual grant of \$100 000 from the federal Government. The Prime Minister resigned his directorship on the day that Short and Gibson stood down, six days after Cabinet had approved the grant. The company in question was a conservative think-tank, the Menzies Research Centre, which operated as a non-profit organisation. The PM defended his position by finessing the issue of conflict of interest, arguing that the Centre was not a company 'in the ordinary sense' and thus that he had nothing personally to gain from his directorship. The code was subsequently revised to limit public exposure of ministers' business interests, and again to allow ministers to hold on to their interests provided that they relinquish control to an outside nominee or trust.<sup>68</sup>

While there has been no enforcement of the code since the ministerial resignations over 'travel rorts' of 1997, the issue of ministerial breaches, some by the Prime Minister himself, continues to be raised. Here are a few of the more prominent examples.

- March 2001. Arts Minister Peter McGauran, who had already been forced to resign over accusations of 'travel rorts' in 1997, was accused of failing to declare his interests in the gambling industry while acting briefly as Minister for Communications and promoting a government moratorium on online gambling.
- November 2002. Assistant Treasurer Helen Coonan was accused of failing to disclose her position as director of a private company, Endispute Pty Ltd, at the time she was appointed to the ministry. She claimed to have resigned her directorship on 24 December 2001, a month after her appointment to the ministry. Endispute did not inform ASIC of her resignation until 15 November 2002, two days after the Opposition had raised the issue in parliament, although the Corporations Act, which Coonan was responsible for administering, required that ASIC be informed of a director's departure within 14 days of the event.
- June 2003. Immigration Minister Philip Ruddock was accused of misleading parliament over what became known as the 'cash for visa' scandal. Having rejected Mr Hbeiche's earlier applications for a visa, the minister finally accepted his third application. The Opposition claimed that he changed his mind only after a donation to Liberal Party funds from Karim Kisrwni. They also raised a number of related issues about Ruddock's links with the Lebanese community in Western Sydney. A Senate Select Committee

<sup>68</sup> The current (December 1998) version of *A Guide on Key Elements of Ministerial Responsibility* is available online at: [http://www.dpnc.gov.au/docs/govt\\_index.cfm#elements](http://www.dpnc.gov.au/docs/govt_index.cfm#elements).

was established on 19 June to look into cases of alleged impropriety in the minister's use of his discretionary powers. The Committee's enquiries 'were hampered by lack of access to relevant case files, which may have shed some light on the minister's reasoning' and it was therefore unable to reach any clear conclusion. It did, however, raise the issue of whether there was 'adequate transparency and accountability' around the minister's discretionary power 'to prevent corruption seeping into the system'.<sup>69</sup>



A fugitive Philippines businessman, Dante Tan, who made a \$10 000 donation to the Minister for Immigration's re-election fund prior to a visa being granted, also made an undeclared purchase of ALP raffle tickets in 2001.

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Source: Peter Nicholson  
www.nicholsoncartoons.com.au

- August 2003. The Prime Minister was accused of misleading parliament over his meetings with representatives of the Manildra company, the largest Australian manufacturer of ethanol, in November 2002 to discuss the issue of ethanol imports. The Prime Minister had originally told parliament that there had been no such meetings.
- September 2003. The Prime Minister was accused, as we noted earlier, of misleading parliament over the intelligence reports used to justify Australia's part in the invasion of Iraq.

Disputes over alleged breaches of the code relate to the two requirements noted earlier: that ministers should avoid not only the fact but also the appearance of any conflict of interest; and that they should not mislead parliament or the public. The first requirement, at least in its earliest versions, threatened to undermine the normal practice of politics. In this respect, it left the Prime Minister with a less

<sup>69</sup> Senate Select Committee, p. 100.

destructive form of the problem that had undermined Nick Greiner's premiership. He dealt with the problem by weakening the code and progressively ignoring its requirements. As we suggested in connection with the Metherell case, the major parties aim to capitalise on public disquiet over corrupt political conduct while they are in Opposition, thereby ensuring that the issue remains in the public mind. Yet they display no serious intention of acting on the issue while in government, thereby further reinforcing public disquiet.

Our discussion of the issue at the federal level has focused on the Coalition government. Labor's record in this respect may not have reached the heady levels achieved by the present government but, as Howard pointed out in his 1986 censure motion, it is nevertheless far from impressive. The Senate's 2003 inquiry into the Members of Parliament (Staff) Act, which was established to deal with the issue, noted earlier, of the unaccountable conduct of ministerial staffers, gives an interesting clue to the likely perspective of a future Labor government.

The Senate committee identified circumstances in which staffers should be required to appear before Parliamentary Committees and recommended that the Act be amended to require the Prime Minister to promulgate a code of conduct for ministerial staff. The committee's three Coalition senators dissented entirely from the Inquiry's findings while the Democrat's Andrew Murray, who supported the majority recommendations, favoured a statutory code. The fact that the Inquiry assigned responsibility for addressing this issue to the Prime Minister of the day suggests that the Labor members of the committee understand the issue of codes of conduct in the same partisan sense as did Howard while in Opposition. They are determined not to create a regime that might be used against a Government of their own party. What worries them, it seems, is not that the conduct of ministerial staffers is unaccountable but rather that the wrong party is in power. More recently, however, the Labour opposition has had a change of heart, with accountability spokesperson, Senator John Faulkner, announcing a proposed code of conduct for future ministerial staff that will require them to appear before parliamentary committees.

The second requirement of the ministerial code, that ministers should not mislead either parliament or the public draws on the longer Westminster tradition of responsible government. The central code of conduct in this tradition is Erskine May's *Treatise on The Law, Privileges Proceedings and Usage of Parliament*. Regarding the conduct of ministers, it insists that they 'have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments... it is of paramount importance that ministers give accurate and truthful information to Parliament... Ministers who knowingly mislead Parliament will be expected to offer their resignation... ministers should be as open as possible with Parliament...'.<sup>70</sup>

<sup>70</sup> Quoted in Mike Secombe, 'A different sort of truth', *Sydney Morning Herald*, 16 August 2003.

Erskine May also suggests that the making of a deliberately misleading statement may be treated as a contempt of parliament. It gives the example of John Profumo who, in a 1963 statement to the House, lied about his involvement with Christine Keeler (who also had a relationship with an official of the Soviet Embassy) and was subsequently found by parliament to be guilty of a grave contempt.

Ministerial standards in Britain are no longer as strict as this example suggests, but what interests us here is the fate of the expectation concerning ministerial conduct in the Australian context. The federal equivalent of Erskine May, *House of Representatives Practice*, is somewhat weaker. It cites the British 1963 resolution while noting that there has been no equivalent action in Australia: 'claims that Members have deliberately misled the House have been raised as matters of privilege or contempt in the House, the Speaker has not, to date, accepted such a claim'.<sup>71</sup> But the crucial difference concerns the position of Speaker. In Britain the Speaker is elected by the House and is expected thereafter to be independent of party allegiance. Australian Speakers, in contrast, hold office at the whim of the government of the day and clearly act on the basis of their partisan commitments. The result, as widely observed, is that ministerial conduct is judged only by the standard of electoral expediency. So long as governments can bear the political heat, they can break the code with impunity.

For ministers to mislead parliament or the public and make decisions in conditions where they face a clear conflict of interest is normal practice. So too are Opposition attempts to capitalise on public disquiet over this behaviour. Both are 'part of the way things are done' in Australian politics, accepted by all major parties. It would not be surprising if, as Simon Longstaff of the St James Ethics Centre suggests, this has led to 'a degradation in the way the community views the executive. There is a structural problem here. We have a party political system which has strangled the life out of the democratic polity. Parliament is treated as a joke'.<sup>72</sup>

### 3.3 Bringing the electoral process into disrepute

*We've always known that the justice you get is the amount of justice that you can afford to buy.*

(Rod Evans, National President of One Nation)<sup>73</sup>

Pauline Hanson's One Nation registered with the Australian Electoral Commission in March 1997 and with the Queensland Electoral Commission (QEC) in December that year. To register with the QEC at the time, a party had to have 500 members

<sup>71</sup> *House of Representatives Practice*, p. 709.

<sup>72</sup> Quoted in Mike Secombe, 'A different sort of truth', *Sydney Morning Herald*, 16 August 2003.

<sup>73</sup> Quoted in *Canberra Times*, 9 November 2003.

or a Queensland parliamentarian. The QEC checked One Nation's status by contacting 273 persons from the membership list provided and asking if they were members of the party. Of those, 237 responded, all agreeing that they were indeed members. The party won eleven seats in the 1998 state election and, like all parties receiving at least 4 per cent of first preference votes, it subsequently received electoral funding at the rate of about \$1.80 per first preference vote—a total of approximately \$500 000.

In August 1999, following a successful civil action against Pauline Hanson and David Ettridge, two of the party leaders, the QEC deregistered One Nation and began action to recover \$500 000 electoral funding given to the party. The money was repaid in December 2000 but Hanson and Ettridge were later committed to trial for fraudulently registering One Nation as a political party in Queensland. The prosecution charged that, in spite of the 237 positive responses to QEC's letter on precisely this point, One Nation had only three members at the time of its registration, and that the names presented to the QEC in fact belonged to members of a supporters' group. Hanson and Ettridge were found guilty and sentenced to three years in prison. One Nation complained that the major parties had colluded in a campaign to undermine their party.

After several appeals the verdict was finally overturned on 6 November. The appeals themselves were funded largely by a Sydney businessman, to the tune of \$500 000. In the absence of this support Hanson and Ettridge would still be in gaol.

Justice de Jersey of the Court of Appeal noted that those whose names appeared on the list supplied to the QEC had completed a form headed 'Pauline Hanson's One Nation', which is the name of a political party, and had been sent a membership card, recording the name of the party and stating:

Members of Pauline Hanson's One Nation are dedicated to assisting candidates endorsed by Pauline Hanson to win seats in the next Federal Election.

Orthodox contract theory, he continued, strongly suggests that these people had applied to join a political party and that the party had accepted their applications. The fact that they had no say in determining the policy of the party had no bearing on this issue—and in practice, we might add, it hardly distinguishes them from the members of the three major parties.<sup>74</sup> The other judges of the Court of Appeal concurred. This part of the Appeal decision suggested both that the jury may have been misdirected and that the prosecution case had always been extremely

<sup>74</sup> Queensland, Supreme Court—Court of Appeal, 2003.

weak. It was thus seen as raising questions about the decision of the Queensland DPP to proceed with the case, suggesting that One Nation's complaint about a plot by the major parties may not have been unreasonable.

It gets worse. Responding to public concerns, the Queensland Parliament asked the Crime and Misconduct Commission (CMC) to look into the prosecution of Hanson and Ettridge. The Commission issued its report in January 2004, a quiet month. It confirmed the striking weakness of the prosecution case, noting that 'it is not easy to understand, at first sight, how the conclusion was able to be reached that none of these people was a member of the party'. The Commission nevertheless 'found no evidence of political pressure or other improper influence or impropriety' in the police investigation leading to the prosecution or in the prosecution itself.<sup>75</sup>

I noted earlier that public regulatory bodies may be tempted not to push their inquiries too hard in politically sensitive areas. The CMC's summary conclusions may have alleviated the disquiet of those who had little sympathy for Hanson and Ettridge but its report does little to allay this broader concern. Regarding the police investigation leading up to the decision to prosecute, the CMC notes that the evidence against Hanson and Ettridge was reviewed by Detective Sergeant McNeill. He reported, on 22 August 2000, that the evidence was not sufficient to justify prosecution and recommended that the investigation be finalised. A few days later, a lawyer employed by the Police Service reached a similar conclusion. In spite of these reports, Detective Inspector Webster noted 'the political implication of [McNeill's] recommendation' and concluded that further investigation was warranted.<sup>76</sup>

The CMC took the view, as we have seen, that there was no evidence that political pressure had been brought to bear and that this reference to 'political implication' was 'merely prompted by the thought that the utmost care must be taken before the Police Service finally adopted a course of action'.<sup>77</sup> The suggestion that the utmost care might not always be taken in cases with no 'political implication' is a disturbing one. Nor is it clear why the 'utmost care' in this particular case should be seen as undermining McNeill's initial recommendation that the investigation be finalised. Why was it felt to be necessary that the police try harder in their search for reasons to justify prosecution? On this point, the CMC has nothing to say.

<sup>75</sup> Crime and Misconduct Commission, p. v.

<sup>76</sup> Crime and Misconduct Commission, p. 6.

<sup>77</sup> Crime and Misconduct Commission, p. 7.

Chapter 6 of the CMC report notes that evidence of political pressure was in fact provided in David Ettridge's submission. This included:

sworn affidavits from various people asserting that during the course of the police investigation a number of Queensland police officers stated that their investigation was politically motivated and/or conducted under political pressure.<sup>78</sup>

The CMC interviewed the officers concerned, all of whom denied making such statements. It also interviewed David Oldfield, one of the founders of One Nation who had subsequently fallen out with Hanson and Ettridge, since one of the affidavits cited a statement made in his presence. Oldfield denied having any recollection of such a statement.<sup>79</sup> Placing its trust in these denials, the CMC appears to have discounted the evidence provided in the affidavits.

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Here, as in its treatment of 'political implication', the CMC opted for the most anodyne interpretation of the material before it. Its conclusion that there was no political interference may well be substantially correct but there is scant support for this conclusion in the body of its report. The CMC asks the reader, in effect, to trust its judgement. Those who feared that One Nation may have been the victim of a plot by the major parties will find nothing here to allay their concerns.

A second issue raised by this case concerns the public reactions of mainstream politicians. In giving her reasons for supporting the appeal, Justice McMurdo noted that senior parliamentarians, 'many of whom were trained lawyers, were reported in the media as making inappropriate comments about this case'. She cites, among others, John Howard, Bronwyn Bishop and Bob Carr as suggesting that the original sentences were excessive. Such comments, she suggests, 'could reasonably be seen as an attempt to influence the judicial appellate process and to interfere with the independence of the judiciary for cynical political motives'.

A failure by legislators to act with similar restraint in the future... will only undermine confidence in the judiciary and consequentially the democratic government of this State and nation.<sup>80</sup>

McMurdo's point about cynical political motives is well taken but she misunderstands their intent. The aim was not to interfere with the judicial process but rather to capitalise on public sympathy for Hanson and to deflect blame for her plight from the major parties themselves.

<sup>78</sup> Crime and Misconduct Commission, p. 17.

<sup>79</sup> Crime and Misconduct Commission, p. 18.

<sup>80</sup> Supreme Court of Queensland, 2003.

We noted earlier, in section 1.1, that Terry Sharples' private case against Hanson had been supported by Australians for Honest Politics (AHP), a fund established 'to support legal actions to test the extent to which political entities comply with Australian law'. Tony Abbott's involvement in AHP received substantial publicity around the time of the trial. According to a handwritten agreement witnessed and dated 11 July 1998, Abbott had given Sharples 'my personal guarantee that you will not be further out-of-pocket as a result of this action'.<sup>81</sup> This publicity forced the AEC to review its earlier finding that AHP was not associated with the Liberal Party. After reviewing additional information and seeking legal advice, in July 2004 the AEC returned to its original decision.

Hanson was sentenced on 15 August 2003. On the same day the Labor Party, displaying an exquisite sense of timing, announced that Mike Kaiser was to be appointed to the position of Assistant National Secretary. Kaiser had been a Party Organiser in Queensland, and State Secretary of the ALP from 1993 to February 2000, when he was elected to the state seat of Woodridge. The Queensland Criminal Justice Commission's inquiry into branch stacking in the ALP subsequently revealed that Kaiser had made a false electoral enrolment in 1986, when he was a student. The statute of limitations meant that he could not be charged with this offence but he resigned from the ALP in January 2001 and from parliament a month later.

Following Kaiser's new appointment, Liberal Senator George Brandis observed that the Queensland Labor Premier, Peter Beattie, had been 'uncompromising in his righteousness' against 'Kaiser and the other [ALP] rorters'. He quoted Beattie as saying, in December 2000: 'I have had every faction after my guts for garters because I never compromised on principle, decency and honesty. I have had a gutful of these crooks. My integrity means something to me. And I will never compromise on these [expletive deleted] things ever'.<sup>82</sup> Beattie agreed that Kaiser's appointment had come at an unfortunate time politically. He also said 'Mike Kaiser is one of the most gifted campaigners this party has ever produced. I can understand why the federal ALP would want him'.<sup>83</sup>

It was not unreasonable for One Nation to complain of the 'terrible injustice' handed to Hanson and Ettridge and to claim that the 'the corrupt two-party system' applied one law to the major parties and another, much more severe, to troublesome newcomers.<sup>84</sup> But there is a more general lesson to be drawn from this whole sorry saga. The sentencing judge, Patsy Wolfe, accused Hanson and Ettridge of

<sup>81</sup> Cited by Margo Kingston, *Sydney Morning Herald* webdiary, 29 August 2003: <<http://www.smh.com.au/articles/2003/08/29/1062050665430.html>>.

<sup>82</sup> Reported by Alan Ramsey, *Sydney Morning Herald*, 19 August 2003.

<sup>83</sup> Reported by Alan Ramsey, *Sydney Morning Herald*, 19 August 2003.

<sup>84</sup> National President's message to members, 10 September 2003.

bringing the electoral system into disrepute and claimed that their ‘crimes affect the confidence of people in the electoral process’.<sup>85</sup> In similar vein, broadsheet newspapers editorialised that sympathy for Hanson and Ettridge was ‘misplaced. The law must preserve the integrity of the democratic system’.<sup>86</sup> Our discussion here and in the examples considered above suggests a different view, which is that the major parties are the more important culprits. They are happy enough to capitalise on public concerns about the corruption of their political opponents and manifestly unwilling to reform themselves.

## 4. Conclusions

While the basic idea of corruption as a departure from a normally sound condition is well understood, its application to the political sphere is less straightforward, in part because there is disagreement about both the proper conduct of politics and the content of the common interest which the political system is expected to promote. Practical research on corruption has tended to avoid these disputes, preferring rather to focus on the economic impact of corruption and the use of formal or legalistic definitions of the problem. Such studies have their place but they tell us little about the impact of corruption on democracy. If politics is corrupt, we can hardly expect the law and the conduct of public regulatory agencies to remain immune from its effects. Moreover, even if the problem of definition could be resolved, many of those involved in corrupt conduct will have an interest in keeping it under wraps. We noted that the nature of Australia’s current defamation laws constitutes a serious barrier to disclosure and, moreover, that the Commonwealth still lacks comprehensive whistleblower protection legislation.

**We need uniform anti-defamation legislation which provides more protection for bona fide public interest disclosure and we also need Commonwealth whistleblower protection legislation—to underline the seriousness of integrity issues.**

The most popular indirect measures of corruption, Transparency International’s Corruption Perceptions Index and its Bribe Payers Index, focus on the economic sphere and have little to say about the political impact of corruption. TI’s recently developed Corruption Barometer avoids this difficulty by looking at public perceptions of corruption in different spheres. Its results show that in three countries out of four, people are most concerned about corruption in political parties.

<sup>85</sup> Queensland, District Court, p. 6.

<sup>86</sup> *Sydney Morning Herald*, 22 August 2003.

**To allay concerns about corruption in political parties, Australia should tighten up its regulation of political finance and consider following other democracies, such as Canada, in banning corporate donations to political parties.**

Assessment of the political impact of corruption within the audit framework developed by IDEA is further complicated by the limitations of the framework itself. IDEA identifies popular control of government and political equality as the two key values or principles of democracy. However, as we have seen, the most influential modern understandings of democracy and the institutional arrangements of modern democratic states impose severe restraints on the implementation of both principles. A significant part of the failure of democratic states to realise these principles in practice is the result of deliberate institutional design, not of corruption. Appeals to the principles of popular control and political equality is thus of limited value for our study of the impact of corruption on democracy in Australia.

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The third section of this Report argues that, however effective the institutional arrangements of Australian politics may be in protecting the public interest from the enthusiasms of the people, they are less than satisfactory in other respects. We have taken cases from recent Australian politics to show that the pursuit of sectional interests—of politicians themselves, of the major parties and those who have privileged access to their counsels—is solidly entrenched as ‘part of the way things are done’. If this is corruption, then it is accepted and practised with only the flimsiest of disguises by all major players.

Our discussion here has identified several areas which are in urgent need of reform. First, under the heading of ‘institutional corruption and the gravy train’, we noted that the partisan use of public resources is an accepted part of ‘the way things are done’ in Australia. The disease is a familiar one, and so too is the recommended treatment: publicity and accountability. The same point applies to the publicly funded travel and other perks of ministers and parliamentarians.

**We need a more transparent system of accounting for politicians’ use of public funds, especially in areas where they may be tempted to use these funds for partisan purposes.**

Second, under the heading of ‘codes of conduct’, we noted that there is considerable variation between Australian legislatures in the codes of conduct for parliamentarians and ministers. The absence of a code of conduct for ministerial staffers is a standing invitation to institutional corruption. The Report of the Senate’s 2003 inquiry into the

Members of Parliament (Staff) Act recognises the problem but offers only a cosmetic solution.<sup>87</sup> We also noted that Coalition and Labor Governments have interpreted these codes, where they exist, in an expedient and opportunistic fashion.

**All jurisdictions should have registers of interests and codes of conduct for parliamentarians and ministers. Such codes should cover the issue of post-separation employment.<sup>88</sup> Responsibility for registers of interests and oversight of codes should be in the hands of an independent ethics commissioner and not remain in the hands of those likely to benefit from their breach.**

**There should be a statutory code of conduct for ministerial staff also overseen by the independent ethics commissioner.**

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Finally, we considered some of the issues raised by the prosecution of Pauline Hanson and David Ettridge for fraudulently registering One Nation as a political party in Queensland. The sentencing judge described Hanson and Ettridge as bringing the electoral process into disrepute, but we have provided more than enough evidence in this Report to suggest that the major parties are the greater culprits. While the anodyne Report of Queensland's Crime and Misconduct Commission (CMC) concludes that there was no impropriety in the prosecution, One Nation nevertheless had good reason to complain that they were the victim of a 'corrupt two-party system'. Despite the AEC's ruling, this case also raised serious questions regarding the involvement of a Commonwealth minister, Tony Abbott, in *Australians for Honest Politics* (AHP).

Indeed, the conduct of both the CMC and AEC in this case provides grounds for the suspicion that these important political watchdogs may have been brought to heel by their respective governments. These and other public regulatory bodies play a fundamental role in Australian democracy. It is essential that they should be seen to be independent of the government of the day.

**Public regulatory bodies should be properly funded for the tasks they are required to perform. Appointments to senior positions within them should follow an open and fully accountable process and there should be a Commissioner for Public Appointments to ensure such process is followed.**

<sup>87</sup> Finance and Public Administration References Committee, *Staff employed under the Members of Parliament (Staff) Act 1984*.

<sup>88</sup> On this, see ICAC, 2004, *Report on investigation into conduct of the Hon. J. Richard Face*.

Here, as in so many areas of Australian public life, it is easy to make the case for reform. Yet it is difficult to be optimistic about its implementation while the major parties continue to treat public concerns about corruption merely as a stick with which to beat their opponents. Indeed, it is striking how widely the corrupt conduct of politics is reported in Australia's mainstream media. We have seen that, while those engaged in corruption have an interest in secrecy, they may also have an interest in a certain kind of publicity, in advertising their power and ability to get things done. In the wake of the children overboard affair and Australia's part in the war on Iraq, it was clear that many Australians believed that they had been lied to by their government, but continued to support it nevertheless. Rather than see this as evidence of moral and political failure on the part of the electorate, we might do better to treat it as an entirely reasonable response to the perception that politicians are not to be trusted. Thus, while the Government is thought to lie to suit its political purposes, the Opposition is not expected to behave any differently. In this respect, at least, there is little to choose between them.

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