



MONASH BUSINESS SCHOOL

31 October 2016

Secretary
Joint Standing Committee on Electoral Matters
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PARLIAMENT HOUSE
CANBERRA ACT 2600

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Dear Committee members,

This submission is made in a personal capacity. It is the first of two submissions that I make in relation to the **Inquiry into all aspects of the 2016 Federal election and matters related thereto.** The accompanying submission to addresses Terms of Reference 1c, 2, 3 & 4 - which relate to political campaign financing.

I would be pleased to elaborate on this submission and to speak to it at a public hearing should the Committee so desire.

Yours sincerely

Ken Coghill

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The Author

Ken Coghill (10 November 1944 -)

Associate Professor the Hon Dr Ken Coghill is a civil society member of the Interim Working Group developing Australia's first National Action Plan.

He was born at Mansfield, Victoria, Australia in 1944 and is married with adult children. He graduated Bachelor of Veterinary Science from the University of Melbourne. After graduation Ken worked in the Department of Agriculture in the Australian state of Victoria and was elected as a local government Councillor (Rural City of Wodonga, 1972-77).

Ken was elected as Member for Werribee in the Legislative Assembly, Parliament of Victoria (from 1979 to 1996), where he was Parliamentary Secretary of the Cabinet (from 1982 to 1988) and Speaker (from 1988 to 1992). He is a Life Member of the Australian Labor Party.

After retiring from Parliament in 1996, Ken joined Monash University, and completed a PhD in Ministerial Responsibility and Accountability. He is an Associate Professor leading research teams specialising in governance and parliamentary studies in Australia and internationally. He teaches **Governance** for Masters degree students, most of whom are mid-career public servants and about half are international students.

He was lead author of **Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament** (Commonwealth Parliamentary Association, 2015) and led a research project on Melbourne City Council elections which produced the report "**Melbourne Democracy: Marvellous?**"

Ken is director of several not-for-profit organisations including **The Accountability Round Table Ltd** and the climate action group **Lighter Footprints Inc.** and participates in Australia's Open Government Partnership.

He has presented many conference papers and published many articles and book chapters and several books, the most recent being:

- **Fiduciary Duty and the Atmospheric Trust** by Coghill, K., Sampford, C., & Smith, T. (Eds.). (2012), Ashgate.
- **Parliamentarians Professional Development. The Need for Reform** by Colleen Lewis and Ken Coghill (eds.) 2016, Springer.

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Submission: Political Campaign Financing.

This submission mirrors provisions proposed as part of the Australian Government's Open Government Partnership (OGP). These address the OGP Grand Challenge:

Increasing Public Integrity—measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom.

This grand challenge is founded in the public trust principle whereby politicians, as public officers, must put the public interest ahead of personal, political and other private interests.

The 2014 report *Political Donations. Final Report of Panel of Experts* (NSW) and public statements by senior members of each of the major political parties, respected academic scholars and leading commentators have drawn attention to the perceptions of high risks of corrupt relationships between donors to political parties and candidates.

The case for reform was aptly expressed by then- Senator Faulkner who said -

The choice before us is whether to seek to adapt ourselves, or to throw up our hands and allow participants in the political system to do what they want. Given the importance of political financing to the conduct of elections, the structure of our political system, and the operation of political parties and other political actors, it is incumbent on governments to engage with these questions, and to take active steps to ensure that our democracy evolves in ways consistent with the expectations and requirements of citizens.

Prof Colleen Lewis reports that

evidence from the New South Wales (NSW) Independent Commission Against Corruption (ICAC), (lays) bare how a political party and some of its parliamentary members in NSW manipulated the current patchwork approach to political funding for their personal advantage and that of their party. A national approach, it is argued, would help to plug the gap unashamedly exploited by the federal Liberal Party to circumvent NSW laws pertaining to political donations.

The NSW regulatory scheme is by far the best of the schemes operating in Australia at national and states levels. The report *Political Donations. Final Report of Panel of Experts* recommended that, subject to some refinements, the scheme be adopted nationally throughout national, state and territory jurisdictions. This paper proposes a number of reforms largely consistent with that report but with some variations drawing on Canada's national model.

The proposals also reflect more recently expressed concerns that have focused on donations to parties, politicians and candidates by foreign donors. These concerns again highlight the extent to which Australian regulation of political campaign financing lags behind that of other comparable jurisdictions, as identified by the global Electoral Integrity Project and International IDEA.

The confluence of calls for reforms provides a strong basis for action to be taken in the immediate future as part of Australia's first OGP NAP commitments and co-incidentally the current Parliamentary Joint Select Committee on Electoral Matters inquiry and JSCEM's following reports and recommendations.

Commitments to and recommendations for reform of political campaign financing should include (but not necessarily limited to):

- (I) Donations (in total) by any individual person or entity to candidates and political parties contesting election to the House of Representatives or the Senate to be subject to an annual



- cap.¹ Penalties to apply to candidates, political parties and related entities which accept donations that exceed the annual cap and should range from forfeiture of public funding (to the value of, say double, the value of the breach), up to disqualification of the candidate(s) &/or de-registration of the party and bans on a third party's participation in the most egregious cases.
- (ii) Donations by entities other than natural persons (e.g. corporations) must not be made and must not be accepted by a candidate or political party or associated entity unless the donor has identified the beneficial owner(s) of the entity.²
 - (iii) Donations must not be made by a donor and must not be accepted by a candidate or political party or associated entity unless the donor is an Australian citizen or Permanent Resident or an entity registered in Australia (including in a State or Territory).³
 - (iv) Similar types of limitations would apply to donations for political campaign purposes to third parties.
 - (v) Continuous real-time disclosure of all donations accepted by candidates, political parties, associated entities and third parties, above a threshold of, say, \$100.
 - (vi) Limits on the value of campaign expenditure by candidates, political parties, associated entities and third parties, calculated according to the number of voters enrolled in the electorate(s) contested (with a different multiplier for third parties).⁴
 - (vii) Continuous real-time disclosure of all expenditure by candidates, political parties, associated entities and third parties.
 - (viii) Public funding to be based on reimbursement of a percentage of actual expenditure (up to the expenditure limit) by candidates, political parties, and associated entities in the electorate(s) each contested. The level of public funding should approximate the total provided to all candidates and parties under the current Australian scheme.⁵
 - (ix) Penalties to apply to candidates, political parties, associated entities and third parties whose expenditure exceeds the relevant limit (penalties would range from forfeiture of public funding to the value of, say double, the value of the breach up, to disqualification of the candidate(s) &/or de-registration of the party and bans on a third party's participation).

¹ The annual cap could be say, total of \$1,000, indexed to average earnings.

² i.e. the people who have significant control or influence over the entity (UK definition)

³ Professor Anne Twomey suggests this is likely to survive challenge in the High Court.

⁴ This is based on the Canadian model; it creates a more level playing field whereas the current Australian "votes received" model advantages incumbent major parties.

⁵ No increase in aggregate public funding is proposed as it is already quite high.