



ACCOUNTABILITY  
ROUND TABLE

## ***Money & Politics,***

EDITED EXTRACT FROM *INTEGRITY NOW!* (DECEMBER 2021)

Submission to the Independent review of Victoria's electoral and political donations system

presented on behalf of The Accountability Round Table Ltd

by Adjunct Professor the Hon Dr Ken Coghill BVSc PhD

at the Public Forum, 1 Treasury Place, 11<sup>th</sup> July 2023

The central argument of this submission is that campaign finance expenditure caps are the most effective and necessary reforms; it also indicates complementary features affecting the integrity of the democratic system.

### **Money and Politics**

Most Australians believe in both democracy and the market. Both involve individual choice. However, the counting principles are different – one vote one value as opposed to one dollar one value. The ever-present danger is that those with more dollars may use them to buy votes for their preferred MPs (or employ them when they retire) and receive benefits in access and policy preferences. Where political campaigning is expensive (as in US and Japan), campaign finance is at the centre of their corruption systems.

Some may see that political donations are an exercise in free speech. ART emphatically rejects that notion.

- Money is not speech;
- Money enhances speech;

- Enhanced speech for some drowns out the speech of those with less money.

**Recommendation**

**Accountability of MPs and their parties via elections:** Public funds, resources and powers should not be used to create advantages for candidates or parties, whether manipulating electoral boundaries, election timing, government advertising, pork-barrelling or secret agreements between coalition parties.

Once the free speech argument has been parried, we can fully recognise that only a tiny number of corporations and other businesses make political donations and of those that do, a disproportionate number are beneficiaries of direct or indirect government approvals and contracts.

Political donations need to be regulated with: -

- disclosure in real time;
- limits on any single donor;
- retention of public funding for elections (this is actually cheaper as most of those who invest in politicians expect a high rate of return);
- bans on some donors such as foreign governments and corporations (as in US) and industries that have too much to gain from governmental decisions. There is a respectable case for banning corporate donations on the basis that they are either for corporate benefit (which makes them corrupt) or not (which makes them in breach of their duties to shareholders).<sup>1</sup> This argument does not technically apply to union donations but we would argue that there MUST be a level playing field and, if freed from the burden of funding political campaigns unions could concentrate on other needs of their members;
- broad coverage of entities to prevent avoidance through US style 'Super Pacs' and less spectacular Australian arrangements like the Greenfields Foundation;
- While charities should not be used to circumvent political donations' caps, those engaged in advocacy for the charitable purposes they were established to pursue should not have their charitable status threatened. The removal of charitable status should be subject to AAT merits review and judicial review. Any review should include, and possibly start with, the oldest charities engaging in politically relevant comment.

In-kind donations should also be considered: -

- Volunteering of time— from leafleting to *pro bono* legal work. This probably does not have to be changed

But what about provision of:

- office space;
- telephone banks (political call centres);
- seemingly endless column inches attacking one side of politics (this would be enormously expensive if a paid for advertisement which would not be as effective in swinging votes, Should these be treated as campaign donations with relevant expenses and forgone revenue denied tax deductibility?

However, one of the key drivers of political donations is the absence of caps on campaign expenditure. Caps restricting campaign spending release the pressure to solicit donations, as in New South Wales as well as in many countries including New Zealand, Canada and the United Kingdom. Australian federal election spending should be capped at the per-voter equivalent of the NSW levels.

#### **Recommendation**

**Money and Politics:** The expenditure of huge sums in the political campaign arms race drives the imperative to raise donations to at least be competitive if not outdo political rivals.

Putting a moderate cap on expenditure can reduce the pressure to raise funds and for senior political representatives to demean themselves and potentially breach the public trust principle.

Cash and in-kind Political donations be regulated with: disclosure in real time; limits on any single donor, retention of public funding for elections, anti avoidance mechanisms, bans on some donors such as foreign governments and corporations (as in US) and industries that have too much to gain from governmental decisions.

- Caps should apply according to common principles to candidates, political parties and third parties (e.g., charities, not-for profit organisations, industry associations and trade unions);
- The value of expenditure caps should initially be similar to those applying in New South Wales;
- Failure to comply with a cap should be an offence punishable by payment to the Victorian Electoral Commission of up to double the sum by which expenditure exceeds the cap.

#### **The Media as an Accountability Mechanism**

The media are a key accountability measure, not just at elections but between them as well. They are the '4<sup>th</sup> estate'.

The media are needed to expose lies and corruption and both provide and contribute to public debate on the merits of the promises and performance of parties competing to be entrusted with the people's power. To enable them to fulfil that role, they have, and seek, 'Freedom of the Press' and its various concrete manifestations (e.g., abrogated privacy, limits to defamation and non-revelation of sources).

Media institutions capable of reaching large numbers of citizens have generally been capital intensive so there have been significant barriers to new entrants. Even if the cost of printing has dropped massively and accessing the Internet is very cheap, regularly accessing large numbers of citizens is expensive and is regularly achieved only by those with large institutions and recognised 'mastheads'.

This gives media institutions a good deal of power. Like all power, it can be abused. They may play favourites in promoting some politicians over others or secure particular favours under the implied threat of the former. This is particularly dangerous where the favours sought lead to an increasing concentration of media ownership that increases the implied threat. Politicians have a joint but rarely concurrent shared interest in limiting such concentration. But the lure of support and the threat of its removal prevent them uniting. Where media is foreign owned there is a risk that coverage will reflect the interests of the country where the owner has chosen to live rather than Australia.<sup>2</sup>

In recent years, there has been an increasing concern that the lack of profitability of the press and other media has made it more difficult for media organisations to continue to fund investigative units. They are expensive in that many months of work may be required to produce one story or perhaps come to the conclusion that there is no story.

The option of government funding for journalism is seen by some as having the potential to give rise to conflicts of interest. In Australia, the reductions in funding to the ABC may reflect the Government's view that the ABC's investigative journalism is unwelcome. In Europe, several countries provide direct subsidies to newspapers apparently without raising concerns about press freedom.<sup>3</sup>

There are a number of ways these issues can be addressed: -

- Diverse ownership and editorial control, including multiple proprietors and encouragement of a diversity of views;
- 'Angel investors' who do not have an agenda but want to support quality news;
- Trust ownership (e.g. *The Guardian*);
- Supporting the ABC, financially and otherwise, as the quality standards-setter in Australian journalism;
- Adoption and enforcement of ABC style standards for all news media i.e. "the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism";
- Professionalisation of journalists and editors with editorial charters to ensure their independence from the views of owners, effectively transforming 'freedom of the press' into 'freedom for journalists'. Under this scenario the protections for media organisations (e.g. 'shield laws',

protection of sources and limitation on defamation) are increased, but only for those organisations in which boards, editors and journalists commit to professional standards and independent enforcement. The rest of the media can continue to operate (as, effectively, entertainment) but without the existing protections;

- Professional firms of journalists – with journalists who have won a high profile working in existing media companies to start electronic journals (see Alan Kohler’s various enterprises as a positive example);
- Financial support for investigative journalism. This idea is not new to Australia. For example, the Select Committee on the Future of Public Interest Journalism report (February 2018) recommended: ‘that the Commonwealth develop and implement a framework for extending deductible gift recipient (DGR) status to not-for-profit news media organisations in Australia that adhere to appropriate standards of practice for public interest journalism’.
- Funding for those who use journalist’s content: The ‘rivers of gold’ from classified advertising that once cross subsidized journalism have dried up. Larger ‘Amazonian’ rivers of gold have emerged that flow into the coffers of Google, Facebook and Amazon, part of which is based on the journalistic exertions of others. ART supports payments by those tech giants with the following additional requirements:
  - the recipient media organisations are not engaged in tax minimisation (which should not be an issue if they are so cash strapped)
  - the funding goes to fund professional journalism
  - the arrangements are legislated rather than negotiated between the parties. The idea that oligopolists in two related fields should be encouraged to sit down and bargain with each other to their mutual advantage is incredible. As Adam Smith put it: “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”
  - These arrangements are not an alternative for requiring that the tech giants pay tax on their Australian revenue.

It should be noted that shield laws would only apply to the professional journalists. Those protections would only be extended to platforms and media companies engaged in entertainment where they were either paying their own journalists or buying the protected content from the journalists (and agree to be bound to follow Press Council requirements for retractions etc).

**Recommendation**

**The Media as an Accountability Mechanism:** To ensure that the media play their roles in holding governments to account, professional journalism should be supported and concentration of media ownership should be reduced by diverse ownership, 'Angel investors' and charities which do not have an agenda but want to support quality news, Trust ownership (e.g. The Guardian); supporting the ABC, financially and otherwise, as the quality standards-setter in Australian journalism; adoption and enforcement of ABC style standards for all news media. Professionalisation of journalists and editors

## WHAT SHOULD WE DO?

### **Deploying the insights of many disciplines**

The litany of problems identified may lead some to despair but there is no shortage of proposed solutions. Unfortunately, too many are based on the perspective of single disciplines, each of which has a different view of the nature of institutions, their problems and solutions. When lawyers look at institutions, they see formal rules (either constitutions or networks of contracts). They see problems arising from poorly drafted rules and the answer lying in more and better rules. Ethicists look to informal norms and values. If there is a problem, it is that those values have not been clearly articulated or applied to those at the coalface and they see the answer lying in properly doing so. Economists see institutions in terms of incentives and disincentives. Problems arise from perverse incentives and the answers lie in aligning incentives with the behaviour required. Political scientists see institutions in terms of power and institutional problems arise from those who exercise it and or how they exercise it.<sup>4</sup>

All of these have important but limited insights into the nature, problems and solutions for institutions. No single discipline can solve institutional problems alone, but in combining their insights they go a long way towards developing necessary solutions. The suggestions ART makes in the Policy Paper *Integrity Now!* draw on all of these 'governance disciplines'. They start with clarity of values including values about means (the rule of law, public trust and accountability) and the ends for which politicians promise to deliver if entrusted with the people's power. This should provide the basis for considering the ethical standards officials should follow and the legal regulation and economic incentives to make it likely that those standards will be followed. The overall aim should be to make it: -

- clear what is the right thing to do (through clear norms and opportunities for ethical advice);
- easy to do the right thing (through the formal processes including human and electronic elements);
- hard to do the wrong thing (as above); and
- easy to find (through record keeping and auditing/investigatory institutions) those who choose to do the wrong thing.

### **Integrity Systems and an Enduring Governance Reform Commission**

The problems outlined above cannot be solved by the input of a single discipline, nor can they be solved within a single institution. A strong integrity commission (see above) based on the Hong Kong, NSW and Queensland models is needed. However, an integrity commission must be part of an integrity system in which other, complementary, institutions operate to suppress corruption and to enhance integrity. This

combination of mechanisms and public institutions and agencies (including courts, parliament, police, prosecutors), watchdog agencies (ombudsman, auditor general), NGOs, laws, norms and incentive mechanisms is primarily directed at pursuing the positive goal of good governance rather than the negative goal of limiting corruption. As indicated above, this combination has been called an ‘ethics regime’, an ‘ethics infrastructure’, a ‘National Integrity System’ and an ‘Integrity and Accountability System’. The reforms suggested in this Policy Paper will go a long way to addressing the inadequacies in Australia’s national integrity system. As in Queensland’s Fitzgerald reforms, the first new institution should be a world-class integrity commission. The other reforms we have suggested could be implemented quickly.

### **Governance Reform Commission**

However, in the medium term, ART strongly recommends establishing an enduring national Governance Reform Commission following the model of Queensland’s ‘Electoral and Administrative Reform Commission.’ EARC was tasked with reviewing every aspect of governance in Queensland and making recommendations to Parliament (recommendations that were generally very hard to ignore) and to develop an expertise in such reforms and a strong understanding of the need for new and reformed institutions to understand the other’s roles and the ways in which they could be mutually supportive.

#### **Recommendation**

**Governance Reform Commission:** An enduring national Governance Reform Commission (following the model of the Queensland ‘Electoral and Administrative Reform Commission’) would review all aspects of governance and make recommendations to Parliament (which would be very hard to ignore) and develop an expertise in such reforms and a strong understanding of the need for new and reformed institutions to understand each other’s roles and the ways they could be mutually

### **Culture**

Some see institutional nature, problems and solutions in terms of culture. It can be useful to recognise and compare different kinds of culture (ethics, compliance, risk, professional, service, sales, innovation and toxic cultures) and the mix of such cultures in institutions. All should certainly strive for an ethical or standards-based culture<sup>5</sup> and avoid a ‘sales’ culture and refuse to tolerate toxic cultures. However, ‘culture’ is a particularly ambiguous term. Raymond Williams sees it as one of the two or three most complicated terms in the English language. Hayne referred to it as “wrestling with a column of smoke”. Culture can appear to be a ‘black box’ that sits between attempts to reform an institution and improvements in institutional outcomes. If the attempted reforms do not produce the desired outcomes,



'culture' or lack thereof, can be an excuse for not achieving them. Culture can become an amorphous 'catch-all' concept that includes all that is resistant to change, a prediction that change will take a long time, and an explanation of a failure to change after that 'long time' has expired. For example, if employees continue to defy a particular rule, despite codified prohibitions, substantial penalties and tone from top executives and immediate supervisors, then it can be tempting to blame 'culture' as the 'something else' causing the misconduct. Something in the black box has gone wrong and the imagined black box makes it appear harder to see the breakdown that has caused it to go wrong. In such cases putting a box around various elements of an organisation and calling them 'culture' may amount to a mere distraction.

It is very hard to change culture directly. A more effective way is to change behaviour. The way to change behaviour is through changes to ethical standard setting, legal regulation, economic incentives, and institutional design. Civics education in schools and ethics education at all levels is also critically important in populating our institutions with staff who understand and value those institutions and want to deploy public power for the purposes it was created. But idealistic young graduates rarely change institutions by themselves. This brings us back to the concrete steps included in this Policy Paper. These concrete steps can be introduced quickly and can be effective. We need look no further than Queensland's five-year journey from an ethical laughing stock to global exemplar. For those who say that the Commonwealth is not nearly as bad as Queensland was, it should presumably be much quicker – one year, two years, or maybe as long as a 3 year parliamentary term. But why wait? For those who might think 'Please God, make me good, but not just yet'<sup>6</sup> electors are entitled to say 'make yourself good now or resign immediately! If you do not, you deserve the wrath of God if you believe in Him but the wrath of the Electors in any case.' It is our power you exercise not yours.

### **Ethical Leadership**

When institutions falter and fail us, when cultures turn toxic, we naturally blame leaders and demand new ones. That is what accountability is all about. But the change of leaders will not automatically fix institutional problems. If a barrel is full of rotten apples, replacing the apples at the top with fresh ones will not stop the rot of the apples below; it will not fix the barrel. The state of the barrel overall rests with the apples below or with our analogy, may well be the result of past leaders' unethical leadership.

- Ethical leaders are needed – as individuals and as institutional reformers. The two are closely related.<sup>7</sup>
- Individual Ethics involves asking hard questions about your values, giving honest and public answers and living by them. If you do, you have integrity. If you don't the first person you cheat is yourself because you are not the person you have claimed yourself to be.

As it is for individuals, so it is for Institutions: -

- institutional ethics involves asking hard questions about the values the institution stands for; giving honest and public answers and the institution living up to them. If so, can we say that the institution has integrity? (If not, the institution is ... insert your own words).

Of course the processes for asking for and answering values are different – with institutions having to pose questions and involve their members in debate and discussion. Living by individual values involves a number of personal qualities such as determination, sensitivity, courage, and strategic thought from an individual. For an institution it needs, as we have seen a combination of ethical standard setting, ‘political’ structures, economic incentives, and general institutional design.

Any ethical leader should be an exemplar of individual ethics and a leader in the process of identifying and embedding values in an institution.

It is important to recognize that this kind of leadership is not confined to those at the top. In many institutions, the most respected ethical leaders are those who have worked in that institution for many years. These are the long term MPs in Parliament and the dedicated public servants who value the institutions where they work and who should be valued by their leaders. It is also important to recognize the difference between transformational leaders who build and rescue institutions and those who develop those institutions by improving the values delivered by their institutions.

#### CONCLUSION

The Accountability Round Table sees it as essential that there is a broadly based response to reverse the decline in the public’s trust and engagement in our democracy. It must draw on the insights of many disciplines, enhance our integrity system and institutions, and embrace strong culture and leadership. Sustained change based on this approach will build on a shared understanding on the importance of the rule of law, transparency and accountability, and thereby improve the quality of government decisions and the wellbeing of all Australians.

#### NEXT STEPS

***IntegrityNow!*** is a dynamic text, that will be evolving and changing as our understanding and practice of the Rule of Law, Accountability and the Public Trust are shaped and reshaped by the multifaceted systems of which they are a part.

Because this is a dynamic text, this means it will be revised and updated from time to time. We invite comments and contributions from **Accountability Round Table** members and others who share its objectives:

**Money & Politics, Accountability Round Table, 2023**

*The Accountability Round Table is dedicated to improving standards of accountability, transparency, ethical behaviour and democratic practice in Commonwealth and State parliaments and governments across Australia.*

Please send your comments and contributions to: Professor Charles Sampford  
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## ENDNOTES

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<sup>1</sup> While we do not adhere to this strong view and consider that boards are entitled, even obligated, to take into account principles of corporate social responsibility there is a concern.

<sup>2</sup> Alastair Campbell's memoir reported that Rupert Murdoch phoned then UK PM Tony Blair and told him that, if he went to war he would have the full backing of his newspapers. Going to war is the most serious responsibility of any government, going to war illegally (which the vast majority of international lawyers say it was) is in flagrant breach of the UN Charter. The Australian refused to publish a letter from 43 experts in public international law arguing, as most international lawyers did, that the proposed war was illegal. On the day the war began, the Australian did have a piece from one of them (Prof Gillian Triggs) but brandished next to it a letter in support of the war signed by 21 lawyers whom the headline misleadingly referred to as international lawyers but of whom only 8 had ever practiced or taught public international law (the main claim to fame of one of them was in tax minimisation schemes).

<sup>3</sup> Tom Greenwell 2017 "Journalism is in peril. Can government help?" 29/6/2017 Inside Story)

<sup>4</sup> Sampford 2020 Submission to the Enquiry into Media Diversity by the Senate Standing Committees on Environment and Communications

<sup>5</sup> 'Ethical culture' refers to: *all the qualities and elements of the organisational culture that substantially bear on the organisation's ethical behaviour, risks, and outcomes—including the conduct of organisation members.* Ethical culture results "from the interplay among the formal (e.g., training efforts, codes of ethics and declared institutional purpose) and informal (e.g., peer behaviour, norms concerning ethics and beliefs about them) systems that potentially enhance the ethical behaviour among employees". See Pablo Ruiz-Palomino and Ricardo Martínez-Cañas, "Ethical Culture, Ethical Intent, and Organizational Citizenship Behavior: The Moderating and Mediating Role of Person-Organization Fit," *Journal of Business Ethics* 120 (2014): 96

<sup>6</sup> The modern version of St Augustine's request to defer chastity.

<sup>7</sup> Sampford Senate lecture, "Ethics and Politics", Canberra, November 13, 2009; published in "Parliament, Political Ethics and National Integrity Systems," *Australian Journal of Professional and Applied Ethics* (2011).