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Secretary
Joint Standing Committee on Electoral Matters
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Dear Committee members,

This submission is made in a personal capacity. It is the second 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 addresses Terms of Reference 1c & 5 - in relation to **Public Funding & the Public Trust** - the integrity of the use of public funds in 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

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.



Submission: Public Funding & the Public Trust - Integrity in the Use of Public Funds in Political Campaign Financing.

This submission mirrors provisions proposed as part of the Australian Government's Open Government Partnership (OGP) first National Action Plan. 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.

This issue is related to JSCEM current Terms of Reference 1c & 5.

The common law obligation to put the public interest ahead of political private interests is at odds with the anomalous treatment of public funding of political parties. The larger political parties are unincorporated private associations. As such, they are not subject to the same legal protections of the public trust that apply to almost every other entity in receipt of public funds. Indeed, their constitutional documents intend that their actions are not justiciable.¹

This issue was examined by Schott, Tink & Watkins (2014) who reported:

The Panel strongly believes that public funding should be conditional on good governance practices and assurance that the public funds are expended and accounted for appropriately. This requirement is similar to that placed on other recipients of public funds. There are currently very few legislated governance standards or requirements on parties who receive public funds. This is exacerbated by the fact that the major parties are unincorporated (or voluntary) associations similar to community groups and sporting clubs. The major parties are not legal entities and as such they cannot be prosecuted or fined. At the same time the major parties are in receipt of millions of dollars of public funds. Their governance simply does not reflect the importance of their stature.²

¹ E.g. (Australian Labor Party, Victorian Branch)

RULES NOT ENFORCEABLE IN LAW

- 23.1 It is intended that these Rules and everything done in connection with them, all arrangements relating to them (whether express or implied) and any agreement or business entered into or payment made by or under them, will not bring about any legal relationship, rights, duties or outcome of any kind, or be enforceable by law, or be the subject of legal proceedings. Instead all arrangements, agreements and business are only binding in honour.
- 23.2 Without limiting Rule 23.1, it is further expressly intended that all disputes within the Party, or between one member and another that relate to the Party be resolved in accordance with these Rules and the National Constitution and not through legal proceedings.

By joining the Party and remaining members, all members of the Party consent to be bound by this Rule.

² Schott, K., Tink, A., & Watkins, J. (2014). Political Donations. Final report of Panel of Experts (Expert Panel on Political Donations), p.5. Retrieved from http://www.dpc.nsw.gov.au/data/assets/pdf_file/0004/167521/Volume_1_-_Final_Report.pdf

In his submission to that panel, Cavalier noted in relation to donations to political parties:

The problem is not with the givers of money. The problem is with who seeks the money. The problem in our political system is the political parties. The parties have, demonstrably, been corrupted. To be clear, it is not that they are run by dishonest people. Standards are now so debased that the doing of wrong is the standard inherited by those coming into party office. For more than a decade, party officials have been indifferent to the sources of donations to the parties.³

Furthermore, there are recurring complaints by members of each major political party that rules providing for the rights of the membership have been thwarted.

In addition, democracy requires political parties are constituted and operated within democratic principles. However, it is undesirable that democracy should be limited by the imposition of standard rules for political parties.

Accordingly, it is proposed that political parties accepting public funding should be bound by principles incorporated in NAP commitments to and for JSCEM recommendations to include (but not necessarily be limited to):

- (i) A party must be controlled by its membership.
- (ii) Unless a party can demonstrate (to the Australian Electoral Commission - AEC) membership control, it will not be eligible to receive public funding.
- (iii) Party rules and internal arrangements to create a legal relationship between members and between members and the party.
- (iv) Public funding be administered by the AEC, with far reaching powers of investigation with the force of law.
- (v) Every decision on candidate selection and the composition of selection bodies is a matter examinable by the AEC.
- (vi) Internal party tribunals must be quasi-judicial and meet contemporary standards ensuring procedural fairness.
- (vii) Members have a fundamental right to seek remedy in the civil courts.
- (viii) Corrupt behaviour associated with a political party, an associated entity, an official, employee or other person authorised to act on behalf of either or an endorsed candidate or member of parliament will subject to criminal law.
- (ix) The courts and the authority will be able to intervene to set aside a provision in a party's rules or administrative practice that is oppressive, unreasonable or unjust.
- (x) Public funding to operate strictly as a reimbursement scheme. Moneys should never be paid to any candidate, or party, unless documentation is provided to prove campaign expenditure has been incurred to at least an equivalent amount. That is, there should be no windfalls.

Application of these principles would enhance the integrity with which public funds are allocated to and used by: political parties; associated entities; officials, employees or other persons authorised to act on behalf of either such parties or entities; endorsed candidates; and members of parliament.

Note: A party that considers such oversight as too intrusive would not have to receive public funds.

³ Cavalier, R (2014) Submission No. 42 to the Expert Panel on Political Donations, p.8