

RESEARCH REPORT NO 3

Putting the Cartel before the House? Public Funding of Parties in Queensland¹

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Introduction

Public funding of parties has returned to the forefront of debate about institutional reform and the law of politics in Australia. Ostensibly this has been driven by party finance scandals centred in New South Wales,² which have triggered proposals to ban private donations in favour full public funding of parties. Indeed both Labor and Liberal leaders, in NSW at least, have backed full public funding despite some expert opposition.³

Whilst full public funding is unlikely to eventuate - for a mix of practical and constitutional reason – this turn towards embracing *more* public funding represents a pivot away from the traditional public and media cynicism against taxpayer support.⁴ It is timely then to consider the origins, purposes and nature of public funding of parties.

Public funding, aka state subsidies or subventions, has taken three guises in Australia. All these methods are justified on the basis of injecting ‘clean’ money into the system. But all also involve elements of rewarding the stronger: the electorally successful, popular and those most able to attract donations. The predominant guise has been direct grants to parties in the form of post-election funding. This has typically been available on a ‘dollars-per-vote’ basis, subject to a minimum vote share. As we will see, other models include reimbursement on a sliding scale of actual campaign expenditure, and annual ‘administration’ funding throughout the parliamentary cycle, dependent on the level of electoral success.

Two other guises of taxpayer financial support for parties are not tied to electioneering. One is tax deductibility for donations, a federal rule treating registered parties as quasi-charities to encourage smaller scale donations.⁵ The other is a variety of supports to MPs and parliamentary caucuses (extra staff and even allowances), ostensibly to support legislative and constituency work, but whose benefit bleeds back to the party and to advocacy.

The Dawn of Public Funding

For 20 years, Queensland law has formally allocated some taxpayer funding to state political parties or candidates. From 1994 until 2011, those laws were simple and stable. They borrowed directly from the Commonwealth model – begun in 1983 but which itself drew from the pioneering NSW system of 1981.⁶ That model was limited to partial funding of electoral campaigns. After each triennial state poll, moneys would be paid to defray electioneering expenditure (unlike after national elections, Queensland persevered with a ‘reimbursement’ requirement that required receipts of actual expenditure).⁷

Money was ‘earned’ at a rate per first preference vote received. For Commonwealth elections, the funding has grown in generosity over time, as shown in appendicised figure 1. In Queensland it rose over time from \$1 to more than \$2 per vote. (Remembering that in unicameral Queensland, electors have a single vote but there are no upper house campaigns to fund). A party or candidate had to achieve 4% of the formal vote in a seat to qualify for payment for votes received in that seat.

Queensland’s adoption of public funding in 1994 stemmed from the recommendation of an independent Electoral and Administrative Review Commission,⁸ following an anti-corruption Royal Commission’s concerns about ‘the possibility of improper favour being shown or being seen to have been shown by the Government to political donors’.⁹ Labor supported public funding;¹⁰ whilst the Liberal and National Parties at the time opposed it, dubbing it an ‘attack on the fundamental freedom of the individual’,¹¹ and a ‘pollie tax’.¹² In this, the conservative parties were repeating their position on the introduction of Commonwealth public funding: they opposed it on principle, but would share in it once enacted.¹³

Public Funding’s Three Muses:

Resourcing Parties, Dampening Demand for Private Money, Political Equality

A pragmatic intention of public funding was to ensure parties were adequately resourced. Public funding was only introduced in Queensland because the nationwide ban on paid broadcast election advertising did not survive constitutional challenge.¹⁴ The loss of that measure to dampen the cost of electioneering was said to justify public funding to help bridge the cost of campaigning and sources of finance. This bears out Anika Gauja’s insight that, around the world, public funding has been ‘introduced, in part, as a mechanism to ensure parties’ survival in electoral democracies characterized by increasing campaign costs and declining party memberships.’¹⁵ It is also consonant with Zim Nwokora’s observation that parties, understood as ongoing entities as opposed to temporary legislative majorities/minorities, seek institutional measures that give them organisational security and predictability.¹⁶

The contemporaneous introduction of mandatory disclosure of larger donations and loans was also expected to dampen the 'supply' of private funds.¹⁷ The focus of reform was thus on the revenue side of party activities within a free 'market' for political money. Debate about capping electoral expenditure or donations would not emerge seriously until the late 2000s. This was despite caps on expenditure, for instance, having been imposed on Australian candidates for nearly a century until the 1970s,¹⁸ being part of the opt-in system of public funding of US presidential campaigns, and having been applied to Canadian parties since 1974.¹⁹

Public funding was also understood as a quid pro quo for the obligation to disclose donations and loans (although such disclosure applied to all parties, not all of whom would benefit from public funding). Disclosure, inversely, was seen as an 'essential corollary' of public funding:²⁰ it was the shining of sunlight onto private money in tandem with the injection of 'clean', no-strings attached, public money.

Aside from helping secure parties resources, the more noble aims of public funding related to political integrity and equality. In (over)selling the introduction of public funding of parties at the Commonwealth level, Minister Beazley claimed its cost was 'a small insurance to pay against the possibility of corruption', and that it 'ensures that different parties offering themselves for election have an equal opportunity to present their policies to the electorate'.²¹ Ideally, public funding inhibits demand for large-scale private donations, and can create a more level-playing field.²² In Australia generally, it has not worked well on the integrity measure, not least because of a general lack of expenditure caps to inhibit growth in electioneering expenditure. It has worked somewhat better in tempering the inequality between incumbents and outsiders, and between larger and smaller parties.

Political Equality in the Queensland Party Context

Commentators such as Tham have criticised existing means of public funding as 'both ineffectual and unfair'.²³ The 'unfairness' criticism tends to be overstated. Fairness must also consider citizen concerns about taxpayer money being directed into partisan politics. Election funding per vote is at least simple for citizens to comprehend, and fair in the sense that dollars follow their first-preference voting choices.²⁴ (What US reformers call 'voting with vouchers' or 'voting with dollars'.)²⁵ Oppositions, which attract fewer business donations than governments,²⁶ can also 'bank' on a certain level of funding; and the more popular minor parties and independents are rewarded.²⁷

Whilst not amounting to affirmative action in favour of smaller parties, with the exception of micro parties struggling to achieve the threshold, the amounts of public funding are highly proportional to electoral support. After the 2009 election, for instance, the Queensland ALP and LNP received almost 44% of public funding (on approximately 42% of the vote each), The Greens received almost 7.5% of public funding (on just over 8% of the vote) and independents collectively did better than their combined vote share (because

compared to micro parties, there are numerous popular local independent MPs and candidates).

Such rewards are particularly important given Queensland's electoral system is otherwise stacked against smaller parties seeking to grow organically. There is a majoritarian voting system and no upper house. The Greens and Australian Democrats have never held a seat at state level, and minor party MPs have mostly come from groups splintering from established, especially conservative, parties.²⁸

As appendicised figure 2 shows, the Queensland Greens, despite having a relatively robust grass-roots, receives between 65 and 80% of its revenue from public funding in years when it is available (typically after a state or Commonwealth election). This suggests even greater reliance on public funding than in the early 2000s when The Greens and Australian Democrats, Australia-wide, drew between 25 and 40% of their average revenue from public funding.²⁹ As smaller parties consolidate, their share of public funding improves as their vote share meets the threshold in more seats; but unless they acquire the balance of power and attune their ideology to that of corporate or union donors they cannot compete with the major parties in attracting big donations.³⁰

Whilst Queensland's electoral system is harsh on minor parties, its socio-demography is kinder on independents, who sometimes flourish in Queensland's decentralised regions.³¹ State-level examples such as the independent MPs for Nambour and Gladstone have held their seats for over 15 years and increased their majorities in the process. Independents elected to regional Queensland seats at federal level (Pauline Hanson (Ipswich), Bob Katter (north-western Queensland) and Clive Palmer (Sunshine Coast)) have even leveraged their status to found national political movements. Public funding was framed in Queensland, as it was nationally, with the parties insisting on controlling the funding through direct payments to them, rather than to the candidates who at least notionally 'earned' it. But independent candidates were nonetheless entitled to funding on an equal basis.

Sweeter Carrots; Sharper Sticks: the 2011 Queensland Labor Reforms

By 2011, after 20 almost consecutive years in power,³² the Queensland Labor government under Australia's first elected female Premier was coming to an end. It faced an election no later than March 2012, with opinion polls predicting a shellacking. (That wipeout came to pass, as the party won just 7 out of 89 seats at the election with under 27% of the primary vote). It had encountered criticism, including from former Royal Commissioner Fitzgerald, about a slippage in ethics and integrity in government, including the purchase of political access.³³ The Premier responded with a discussion paper, 'Integrity and Accountability in Queensland', in August 2009. Besides a self-imposed ban on Ministers selling access by attending fund-raising functions,³⁴ the paper suggested limiting electioneering expenditure and briefly flagged an intention to cap donations, explicitly implying a compensatory increase in public funding.³⁵

What ensued was a long period of internal brainstorming and policy-making before the release of a white paper 'Reforming Queensland's Electoral System', in mid-December.³⁶ The white paper foreshadowed, in outline form, a complex legislative model that appeared in a bill several months later. The model revolved around:

- (a) tightening disclosure (which Labor had already made more regular);
- (b) capping donations to parties to \$5000pa from a single source (at least for campaign as opposed to administrative purposes);
- (c) capping electioneering expenditure for parties and interest groups; and
- (d) dramatically increasing public funding.

NSW had, a year earlier, moved to cap donations and election expenses; and the ACT would do so a year later.³⁷ So Queensland in effect joined an eastern state wall erecting comprehensive political finance schemes for the first time in Australian history.³⁸

Public funding was sweetened indeed, especially from the major Queensland parties' perspectives. A sliding scale for reimbursement of certain campaign expenditures was to replace funding per vote. The scale was generous: up to 75% of the capped expenditure limit for centralised party spending, and up to 52.5% of the limit for candidate-level expenditure.³⁹ As only the major parties will normally even approach those caps, the system would reinforce their financial and hence campaign dominance, rather than addressing it in any affirmative action way. Smaller parties could benefit over their previous position, assuming they could attract well-off donors or guarantors; if so the system would be more competitive than one reimbursing purely on vote share. (This benefited the Katter Australia Party, which received almost \$1.4m in 2012, over 9% of the total public funding: less than its vote share of 11.5% but \$850 000 more than it would have received under the dollars-per-vote scheme).

The scheme also permitted 'advance payments' of public funding up to 50% of previous electoral entitlements.⁴⁰ This set up a particular benefit to the established parties and MPs, albeit in a way that might assist them rely on public funding per se, rather than having to raise sizeable donations upfront.

In addition, borrowing from another NSW innovation, bi-annual funding of party's administrative activities was proposed. The Queensland Minister sought to justify the public funding increases in familiar terms of resourcing ('it is expensive to have an election and it is expensive to have a democracy') and integrity ('that costs money – money which can come from either wealthy benefactors with special strings attached or public funding.')

The opposition and cross-benchers were not consulted in that policy-making process.⁴² The government consulted with the electoral commission. The timing of the white paper – Christmas Eve – was not auspicious for debate. Submissions closed in mid-February.

The poor timing was exacerbated by the floods which devastated most of the state in late January. Only nine public submissions were received, and they were never published.

Labor's reform bill was tabled in parliament for a month. Yet despite its complexity (it contained 90 pages of new political finance law alone) it was not subject to any committee scrutiny. The government then pushed the bill, itself subject to a series of intricate amendments, through in a single afternoon/evening's debate.

The conservative opposition objected to the bill as a whole. It did so on the grounds that an increase in public funding was not justified (especially as the State rebuilt after the floods) and that the bill had been drafted in haste. It specifically objected to a reimbursement scale rather than funding per vote, arguing that minor parties like The Greens might disproportionately benefit,⁴³ an argument which assumed minor parties could bankroll sizeable campaigns in the first place. For their part, The Greens objected to the bill as a 'windfall for the major parties'. The new stream of administrative funding was available only to parties with MPs or independent MPs. Despite that, the (five) independent MPs voted against the bill. In 2011-12 the new stream of administrative funding added \$4.16m in public funding,⁴⁴ most of it the two major parties.

Whilst the caps in the bill conformed to social democratic principles, there was widespread suspicion that the enhanced public funding and its generous sliding scale was a boondoggle for a Labor government facing electoral oblivion. Despite that wipeout coming to pass, Labor still received \$6m in public funding - over five times the amount it would have received had the system of funding per vote remained. It received 40% of the public funding, on not quite 27% of the vote. The Liberal National Party or LNP received over 44% of the funding on not quite 50% of the vote.⁴⁵ The minor parties did less well in their relative share of funding; but the rising tide of funding meant that, in absolute terms, all parties and candidates were better off.⁴⁶

No Quid Pro Quo: the 2014 Queensland Liberal-National Reforms

On assuming power with a vote share just under 50% and a record seat share of nearly 88%, the newly elected conservative government moved quickly to repeal the regular administrative funding of parties. It did so before the end of 2012,⁴⁷ as a cost-saving measure to address 'outrageous' payments to political parties. On 3 January 2013, it released an 'Electoral Reform: Discussion Paper'.⁴⁸ The paper read like a bland issues paper, without indicating the government's thinking on reform. Approximately two months were allowed for public submissions: at least, unlike its predecessor, the government published all (254) of them.

In July 2013 the government played some of its hand. Its 'Electoral Reform: Queensland Electoral Review Outcomes' paper recommended a complete revamp of the Queensland political funding landscape,⁴⁹ for the second time in three years. Consistent with libertarian philosophy, the government proposed abandoning limits on political donations and electoral expenditure. It also toyed with the idea of more regular disclosure of

donations, but later reversed this position, citing timorous legal advice that states should not demand more information from their political parties than the very modest national laws required.⁵⁰

On public funding, it proposed abandoning the sliding scale of reimbursement of actual party electioneering expenditure, and returning to the traditional dollars-per-vote model. Just as that model had insulated Labor through its historically calamitous loss of support in the 2012 election, reversing it would pose difficulties for Labor until its vote share was repaired. The government also proposed raising the vote-share threshold to earn public funding to 10%. This measure was guaranteed to nobble the three significant minor parties in Queensland, The Greens, Katter Australian Party and (to a lesser extent, given its founder was a multi-millionaire) the emerging Palmer United Party. When its legislation was introduced in late November 2013, the bill went further in discriminating against the non-major parties, by proposing that independents receive post-election funding at half the rate of the parties, \$1.45 compared to \$2.90 per vote. If anything, a reverse argument could be made that independent campaigns deserve higher rather than lower funding, as they lack the economies of scale and expertise of party campaigns.

The bill also proposed reintroducing inter-election funding of the parties, just a year after it had been abolished. This policy reversal not been canvassed in the public consultation or papers. This extra funding was to be denied not only to parties without MPs, but to independent MPs. The measure was dressed up as 'policy development funding'. Unlike the NSW or the former Queensland scheme there was no limit on a single party dominating this funding. In fact, during the life of the then parliament, the LNP would receive the majority of funds. (Because this new layer of funding was also to be based on vote share in the previous election, yet parties with widespread support but no MPs such as The Greens, as well as independent MPs, could not benefit from it). Also unlike the NSW or former Queensland scheme, there were no strings attached: in effect this funding will be regular funding for party administration, or even electioneering.

Most remarkably of all, in an Australian first the amount of funding would be set neither by parliament nor by an index, but by the Attorney-General from time to time. To the government's credit, it seemed genuine in wishing to reduce the total amount of public funding significantly, from an estimated potential of \$23m over a three year electoral cycle under Labor's short-lived scheme. How much that is achieved however will depend on the parsimony or otherwise of the Attorney-General. In addition, the free market in donations was also made retrospective to the tabling of the bill, and the raising of disclosure levels would also be effectively retrospective to the previous financial year. The major parties, and especially the incumbent government, thus began building war-chests for the 2015 election, an election in which campaign costs would again be unlimited.

The bill was scrutinised by a legislative committee dominated, given the makeup of parliament, by government MPs (5-2). The committee consulted over the Christmas-New Year period and received 180 submissions. It held a brief public hearing (one morning, on

a day devoted to numerous, unrelated bills) and delivered a report in late February which split on party lines.⁵¹ However on one point, government members objected, calling for the threshold to earn electoral funding to not be raised to 10% but to 6%. The government eventually agreed to that softening of the negative impact of that reform on the minor parties.

Outside the government, responses to the new political funding proposals were largely negative.⁵² Yet the Labor Party voted *with* the LNP government in favour of discriminating against independents in both the post-election and 'policy development' funding schemes.⁵³ It also supported the backdating the funding laws to the start of the previous financial year, so that open-slathe donations would overlap once more with annual payments to parties.⁵⁴ On neither matter did it (or the government) seek to justify its position in debate. Labor did however express opposition to raising the threshold to earn post-election funding even to 6%, arguing it was unnecessarily unfair on minor parties.⁵⁵

In contrast, all the cross-benchers – a group collectively larger than the official ALP opposition – opposed the enhanced public funding measures vociferously and viscerally. The disparate treatment of independents and moves to reduce election funding of minor parties were said to be 'offensive in the extreme' and reason to be 'disgusted'.⁵⁶ The annual 'policy development' payments favouring the major parties were a 'joke', 'disgusting', and a criteria-less 'slush fund'.⁵⁷ The funding scheme overall 'targets minor parties ... that want to grow organically' and undermined the important role of independents.⁵⁸ These voices represented two minor parties (the Katter Australia Party and Palmer United Party) and a brace of regional independents. The Greens, though they represent around 7% of Queensland voters, lacked a parliamentary voice; they also opposed the new law. One government MP spoke against, and abstained from voting for the laws, arguing that true liberalism required better disclosure and capping of donations. A day later he resigned from parliament citing the electoral finance laws as one reason he could not continue serving under the LNP.⁵⁹

Public Funding: Cleaning up Parties or Parties Cleaning up?

In the cartel thesis of party behaviour, parliamentary parties have incentives to forget their political rivalry and co-operate on electoral reforms. In theory, this is especially so between the major parties in majoritarian electoral systems like those in Australia. The argument is not that this motivation necessarily overrides competitive self-interest or principle, nor that it is universal irrespective of conditions,⁶⁰ but that cartel like behaviour can be expected. A prime example is in the very maintenance of majoritarian voting systems themselves.

Philosophical leanings or principled ideological accounts of the public interest, of course, are not irrelevant. They help ground debates about reform, along sometimes predictable lines: social democratic parties tend to hew to egalitarian approaches, and conservative parties tend to favour libertarian or free market approaches. In Nwokora's account of the

drivers motivating political finance law specifically, principled approaches are subject less to brute cartelism, and more to a nuanced and sometimes dichotomous party self-interest. This dichotomy is not a distinction between parties of the left and right, but a contrast between the interests of the party machine – in securing long-term organisational security – and that of a caucus of MPs and their parliamentary leadership to secure shorter term incumbency benefits.

Electoral law reform of course rarely happens without aligning with governing party self-interest, since by definition governments should be in control of what passes through the lower house. Exceptions can occur in hung parliaments (as when the ACT legislative assembly imposed restrictions on government advertising in 2009.)⁶¹ High profile scandals also occasionally act as fillips to reform, forcing parties to act against their philosophical leanings and even self-interest. This can happen cataclysmically, as in the case of Queensland after the governmental meltdown following the 1988 corruption Royal Commission, or in an unfolding response to a series of corrosive revelations, as has been happening in NSW over recent years.

What insight into these various theories does the Queensland public funding case study lend us? The initial period, until 1994, saw Queensland lagging behind the Commonwealth and NSW in not providing any public funding of parties. This was explicable in terms of the incumbency self-interest as well as 'open-for-business' mentality of the long-term National Party dominated government. The quasi-revolution of 1988-89 did not immediately see the Labor Party use its majority to try to sell let alone adopt public funding (unlike the Labor governments of 1981 in NSW and 1983 nationally). The Labor Party was well-funded by a still numerically strong trade union movement; it was also pledged to honour the independent reform process. But by 1994 pressures were building in the cost of campaigning to the point that Labor was happy to introduce post-election public funding. The then conservative opposition rejected it in principle, but in practice did not fight for a 'right' to opt-out of such funding. An implicit cartel-ish force can be seen at work here: each of the major party machines understood the security that public funding could bring, whilst each of their legislative wings also appreciated

In the very significant but short-lived Labor reforms of 2011, a very obvious case of abuse of incumbency power can be diagnosed, in the form of the massive ramping up of public funding on a reimbursement of campaign costs, rather than earned-by-vote-share basis and introduction of regular funding for party administration. This suited both the Labor party's administrative wing, and the about-to-be-outgoing parliamentary team (facing a rout and reliance on declining levels of union money relative to corporate largesse, which was now flooding back to the conservative parties as they approached power again). The 2011 reforms were also couched in terms of egalitarian measures to limit campaign expenditure and the size of campaign donations, which fitted social democratic principles. But even these came belatedly in a long term in government, and even then an exception was carved out for donations for party administrative purposes, one that reassured the party machines. The LNP opposition objected to the reforms, but happily shared in the money.

Finally back in power, the LNP government moved quickly to undo administrative funding of parties, consistent with its fiscal conservatism. Yet within a year, the government was restoring that regular pipeline of funding, and in a way that breaches the rule of law in two ways. One is by blatantly discriminating against independent MPs and parties like The Greens with substantial support but no MPs; the other is by leaving the amount of administrative funding to fluctuate depending on the whim of a Minister. The LNP also moved to deprive minor parties of post-election funding, by increasing the threshold by a net 150% (from 4% to 10% of vote share), an unprecedented move in Australia. Whilst it relented to its own backbench advice to reduce the increase to 50% (from 4% to 6% of vote share), it insisted on halving the rate at which independents earn such funding, a discrimination again unprecedented in Australia.

In all this, whilst the government and Labor opposition split on predictable ideological lines on the question of caps on donations and party expenditure, the opposition supported the extra lines of public funding and did not oppose the discrimination against independents. Whilst the 2013-14 reforms were less hasty than the 2011 reforms, and the consultation process formally better (it could hardly have been worse), in both cases the governing party acted in the certainty of a sizeable majority. In both instances, the independent and minor parties opposed the reforms (even though the 2011 changes, in raising the amount of public funding, stood to benefit all players in absolute monetary terms).

Queensland, it must be acknowledged, presents a somewhat special case, in lacking an upper house.⁶² With a unicameral parliament, and lacking any need to consult let alone negotiate with other parties in the design of the legislation, governments can legislate with impunity, and giddy legislative pendulums are far from unheard of. In South Australia, by contrast, across 2013 the Labor government, expected to face defeat (a defeat which did not eventuate), combined with both the Liberal opposition and The Greens, a key balance of upper house player, to negotiate multi-partisan political finance reform for the first time in modern Australian experience. The result was an opt-in public funding and expenditure limit system, with continuous donation disclosure but no donation caps.⁶³ Tellingly, the public funding scheme, based on dollars-per-vote was actually tilted towards, rather than against, newer and smaller players, with a higher value per vote allocated for the first 10% of the votes received by parties without MPs.

Also in contrast is the process in NSW, which is driven by ongoing political scandals. The process has not been free of self-serving incumbent behaviour: the outgoing Labor government imposed donation caps that did not apply to union affiliation fees; the incoming Liberal government sought to crack down on contributions by unions but fell foul of the High Court.⁶⁴ Nonetheless, the NSW parties are coalescing in agreement on a tightly regulated model, overcoming any conservative instincts to political finance libertarianism, under the pressure of media and public opinion. The cartel aspects apparent in Queensland's approach to public funding in recent years, putting the interests of the major parties before those of the broader interest of 'the house' or parliamentary balance, is thus not an inevitable force.

However as the overall ramping up of public funding in Queensland, and NSW's push for full public funding of election costs and even party administration overheads reveals, 'clean' money can also be a way of parties 'cleaning up'. This is not to say public funding is necessarily an evil. At least in the NSW model, with caps on donations and expenditure, the party finance system as a whole can seek to balance integrity, resourcing and equality aims. But whilst providing some stability for those minor parties which achieve significant popular support and thus compensating for their difficulties in attracting sizeable benefactors, with the possible exception of the new South Australian system public funding in Australia has tended to reinscribe the privileged position of the major parties.

Figure 1: Growth in Public Funding Rate (Commonwealth Elections)⁶⁵

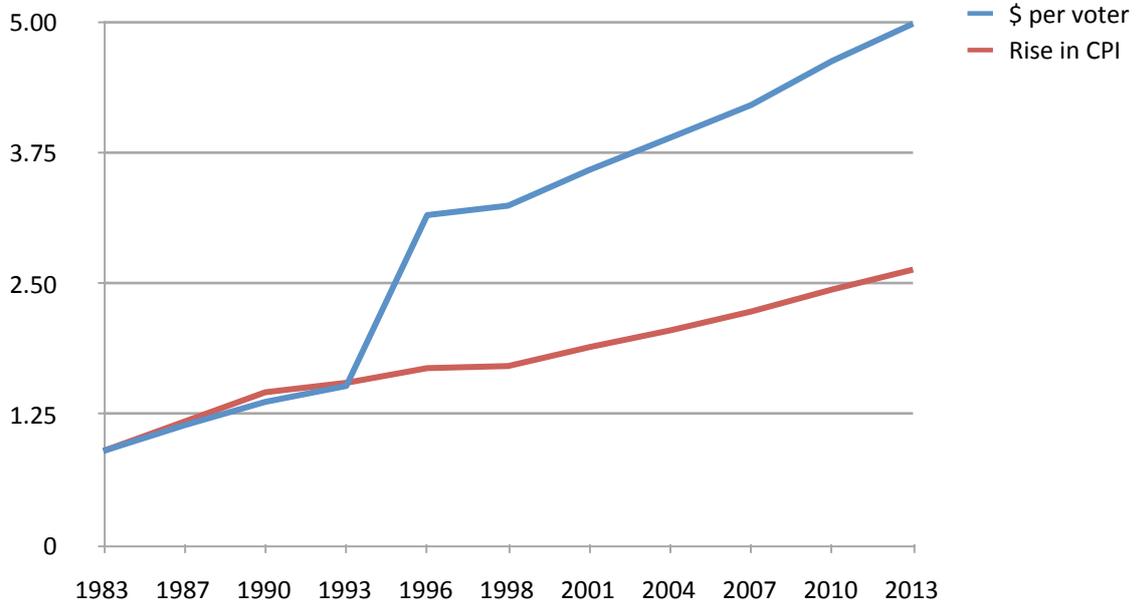
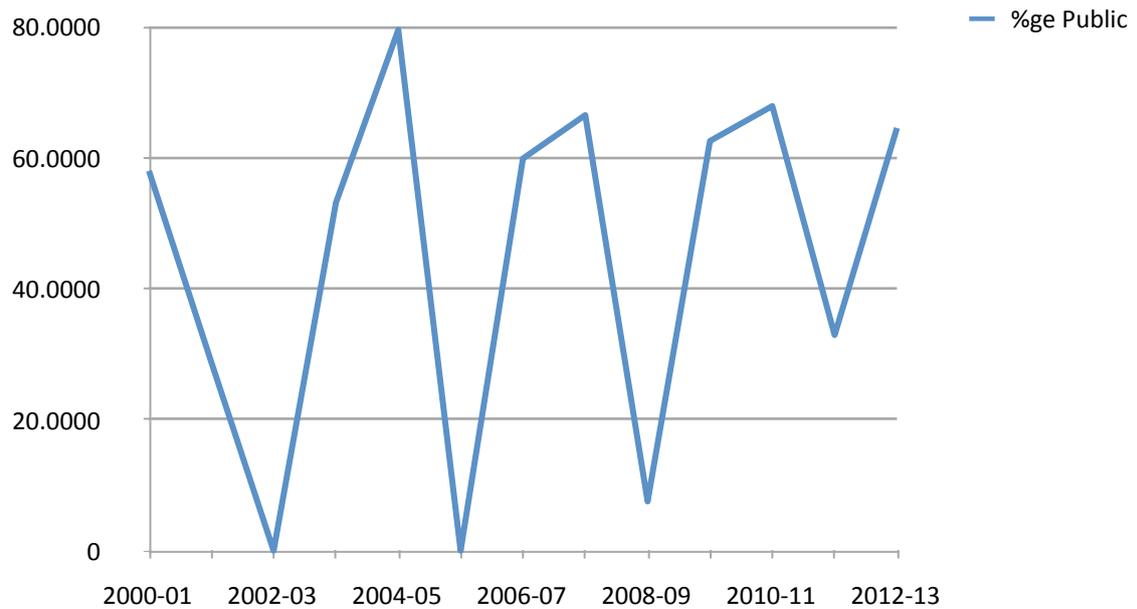


Figure 2: Proportion of Queensland Greens Income from Public Funding



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- ² The Independent Commission against Corruption's Operations Spicer and Credo: <<http://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>>
- ³ Premier Baird (Liberal) proposed the idea; previously floated by Premier Lemma (Labor) and supported in principle by Opposition Leader Robertson (Labor): Geoff Winestock and Scott Parker, 'Baird Announces Donations Crackdown but Not Until 2015', *Australian Financial Review*, 28 May 2014, 6. Contrast George Williams, 'Public Funding of Elections is Costly and Simply Unfair', *The Sydney Morning Herald*, 3 June 2014, 18 and Joo-Cheong Tham, 'Don't Ban Political Donors', *The Australian Financial Review*, 7 May 2014, 43.
- ⁴ Which permeated debate in recent decades, sometimes blocking moves to introduce public funding (until recently in Western Australia), sometimes blocking proposals to increase funding (the federal government withdrew a bill to increase funding in May 2013, when the opposition reneged on its support in the face of public unease).
- ⁵ There is partisan contention about the level and its application to corporate versus individual donors. Presently deductibility applies to the first \$1500 pa and corporate donors are included.
- ⁶ Ernest Chaples, 'Public Campaign Finance: New South Wales Bites the Bullet' (1981) 53 *Australian Quarterly* (Autumn) 4. The NSW scheme was capped so that no party could receive more than 50% of the funding, however electorally successful. It later expanded to include annual funding to defray parties' administrative costs.
- ⁷ This avoided occasional windfall profits.
- ⁸ Electoral and Administrative Review Commission, 'EARC' (Queensland), *Investigation of Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues* (1992).
- ⁹ *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, 1989, Report* (GE Fitzgerald QC Chair).
- ¹⁰ Queensland Parliament, Parliamentary Committee on Electoral and Administrative Review, 'PCEAR', *Investigation of Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues*, Report No 20 (Nov 1993).
- ¹¹ Ibid, para 3.12. That said, the Opposition was more concerned to champion the rights of union members to not indirectly fund the Labor Party, than to vigorously oppose public funding (paras 3.13-3.19).
- ¹² Parliamentary Debates (Qld), 24 November 1994, Mr Beanland (Liberal), 10809.
- ¹³ Australian Parliament, Joint Select Committee on Electoral Reform, 'JSCER', *First Report* (Sept 1983) paras 9.11–9.17.
- ¹⁴ EARC, above n , para 4.83.
- ¹⁵ Anika Gauja, *Political Parties and Elections: Legislating for Representative Democracy* (2010, Ashgate) 162.
- ¹⁶ Zim Nwokora, 'The Distinctive Politics of Campaign Finance Reform' (2012) *Party Politics* (online publication, 23 October 2012, doi: 10.1177/135406881246292).
- ¹⁷ EARC, above n , 111.

¹⁸ Deborah Cass and Sonia Burrows, 'Commonwealth Regulation of Campaign Finance – Public Funding, Disclosure and Expenditure Limits' (2000) 22 *Sydney Law Review* 477, 484-5 and 491-2.

¹⁹ *Election Finance Act 1974* (Canada): see Colin Feasby, 'Canadian Political Finance Regulation and Jurisprudence' in Keith D Ewing et al, *The Funding of Political Parties: Where Now?* (Routledge, 2011) 206, 206–7.

²⁰ Parliamentary Debates (House of Representatives), 2 November 1983, Mr Beazley (Labor), 2215.

²¹ Ibid.

²² EARC stressed the levelling-the-playing-field rationale: above n , paras 4.9, 4.15.

²³ Joo-Cheong Tham, *Money and Politics: The Democracy we Can't Afford* (UNSW Press, 2010) 127.

²⁴ JSCER, above n , para 9.27.

²⁵ What US reformers would call 'voting with vouchers' or 'voting with dollars': eg Bruce Ackerman and Ian Ayres, *Voting with Dollars: a New Paradigm for Campaign Finance* (2002) and Rick Hasen, 'Clipping Coupons for Democracy: An Egalitarian Choice Defense of Campaign Finance Vouchers' (1996) 84 *California Law Review* 1.

²⁶ Iain McMenamin, *If Money Talks, What Does it Say? Corruption and Business Financing of Political Parties* (OUP, 2013) 81–2.

²⁷ Eg Joo-Cheong Tham and David Grove on significance for The Greens and Australian Democrats (at turn of century).

²⁸ The Qld Labor Party and even North Queensland Labor Party in an earlier generation, and the One Nation Party (which itself splintered into a City-Country Alliance) in the 1990s. Today's Katter Australia Party and Palmer United Party are named after founders who served with the old National Party and both have relied on poaching Liberal-National MPs.

²⁹ Marian Sawyer et al, *Australia: the State of Democracy* (The Federation Press, 2009) 113; Joo-Cheong Tham and David Grove, 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections' (2004) 32 *Federal Law Review* 397–401.

³⁰ There are exceptions, such as philanthropist-entrepreneur Graeme Wood's record one-off \$1.6m gift to The Australian Greens in 2010.

³¹ Examples who leveraged their status to found national parties are Pauline Hanson (Ipswich), Bob Katter (north-western Queensland) and Clive Palmer (Sunshine Coast). Other state-level examples like the independent MPs for Nambour and Gladstone have not only held their seats for 15 years but increased their majorities in the process.

³² Allowing for a brief conservative interregnum in 1996–8.

³³ Tony Fitzgerald QC, 'Introductory Address: Inaugural Griffith University – Tony Fitzgerald Lecture' (28 July 2009) <http://www.griffith.edu.au/__data/assets/pdf_file/0020/156125/Tony-Fitzgerald---Arthurs-introduction---Griffith-lecture-web.pdf>

³⁴ See Brian Costar, 'Selling Access to Elected Officials: Beyond Regulation?', this workshop.

³⁵ Queensland Government, *Integrity and Accountability in Queensland* (August 2009) 14–15 <<http://www.premiers.qld.gov.au/publications/categories/reviews/integrity-and-accountability-reform/assets/integrity-and-accountability-paper.pdf>>.

³⁶ *Election Funding and Disclosures Amendment Act 2010* (NSW).

³⁷ *Electoral Amendment Act 2012* (ACT).

³⁸ National laws remain light-touch: Graeme Orr, *The Law of Politics: Elections, Parties and Money in Australia* (Federation Press, 2010) 239–40, 256–8.

³⁹ *Electoral Accountability Amendment Act 2011* (Qld) introducing new ss 177DA-DB to the *Electoral Act 1992* (Qld).

⁴⁰ *Ibid* introducing new ss 177DC to the *Electoral Act 1992* (Qld).

⁴¹ Parliamentary Debates (Qld), 11 May 2011, Mr Lucas (Labor), 1416.

⁴² *Ibid*, Mr Bleijie (LNP), 1413 ('This bill is a beast of the Labor Party that we had no input into and the Independents had no input into.')

⁴³ *Ibid*, 1423.

⁴⁴ Electoral Commission Queensland, *2011-12 Annual Report*, 12.

⁴⁵ Electoral Commission Queensland *2012-13 Annual Report*, 6.

⁴⁶ In all, \$15.15m was paid out in election funding: *ibid*.

⁴⁷ The repeal was tacked onto the *Guardianship and Administration and Other Legislation Amendment Act 2012* (Qld).

⁴⁸ Queensland Government, *Electoral Reform Discussion Paper* (January 2013).

⁴⁹ Queensland Government, *Electoral Reform: Queensland Electoral Review Outcomes* (July 2013).

⁵⁰ Timorous because there is no real inconsistency between a Commonwealth disclosure system, and a more revealing State disclosure system: on the contrary, constitutional principle requires that each level of government have autonomy over its own electoral system.

⁵¹ Legal Affairs and Community Safety Committee, *Electoral Reform Amendment Bill* (Report No 56, February 2014).

⁵² But for an opinion supporting a free market in donations and expenditure, but tight disclosure of both, see Anthony Gray, 'Political Finance Regulation is a Field Strewn with Pitfalls', *The Courier-Mail*, 19 May 2014, 20.

⁵³ Parliamentary Debates (QLD), 22 May 2014 (?), 1859, 1861.

⁵⁴ *Ibid* 1870.

⁵⁵ Parliamentary Debates (QLD) Ms Palasczuk, 21 May 2014 1738-9, 22 May 2014, 1858.

⁵⁶ Parliamentary Debates (QLD), 22 May 2014, Ms Cunningham (Ind) 1833-4 and Mr Knuth (KAP) 1842, respectively.

⁵⁷ *Ibid*, Mr Hopper (KAP) 1838, Mr Douglas (PUP) 1840-1, Mr Wellington (Ind) 18??, respectively.

⁵⁸ *Ibid*, Mr Katter (KAP) 1847-8.

⁵⁹ Parliamentary Debates (Qld), Mr Davis (LNP), 1846. A week earlier he had been sacked as an Assistant Minister for making comments against government policy.

⁶⁰ Richard S Katz and Peter Mair, 'Parties, Interest Groups and Cartels: A Comment' (2012) 18 *Party Politics* 107.

⁶¹ *Government Agencies (Campaign Advertising) Act 2009* (ACT).

⁶² See generally Nicholas Aroney et al (eds), *Restraining Elective Dictatorship: the Upper House Solution* (UWA Press, 2008).

⁶³ *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013* (SA), to take effect from mid-2015. Aside from the lack of donation caps, the system resembles the much-valourised New York city campaign finance model.

⁶⁴ *Unions NSW v NSW* [2013] HCA 58.

⁶⁵ The Commonwealth public funding model began tied to the basic postal rate – 90c per elector per general (including half Senate) election, or 3 stamps worth IC Harris, 'The Australian Joint Select Committee on Electoral Reform', ch VII in ???, 50, 52. The biggest rise came in the 1990s, when equal funding was given for a Senate vote as for a House vote, which both increased the pool of funds and improved the funding of minor parties.