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The Auditor-General's Role in Politics

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This is not about how auditors-general need to be apolitical – everyone knows and understands that. As with all in the profession, government auditors have to be coldly objective and ruthlessly non-partisan. But there is debate about the extent to which these officers should intrude into political issues, such as how ministers raise money for their parties and how governments use public funds for political advertising.

Some politicians argue that auditors-general ought to stay clear of contentious issues so that they can stay independent of (and above) the political fray. It is said that their criticising governments over politically sensitive matters will give them a political colour, and they might be seen as having being politicised.

There is much in this point of view, but the better argument is that auditors-general who avoid topics which fall within their mandate, just because they are contentious, fail the community. They ought to make lawful comment on matters which concern parliament and the public.

And in most of Australia's nine jurisdictions, auditors are the only appointed public officers who are empowered to make such a contribution. If they absent themselves, the topic is left to elected officers, politicians, whose views are often tainted by partisanship and too frequently by hypocrisy.

Ministers' Fund Raising

It still might seem odd to suggest that how ministers raise money for their political parties should concern auditors-general. After all, it is said that these moneys are not part of the public purse: they comprise contributions from citizens and private companies.
But that is a mere assertion. In fact that is the argument.

Most people involved with government agree that appointed public officers who charge for their speeches on government matters (they charge perhaps to ensure that their time is not wasted, perhaps to ensure that professional conference organisers pay for the resources they consume) should pay the collected moneys into the public revenue. These officers are only invited to attend because they have information and status which comes from their occupying government positions. It does not matter that the officers speak in their time or in their office's time: they remain public servants while they speak on matters which concern their office.

This principle is also applied to gifts made to public servants and parliamentarians. Minor gifts are of little concern, but most governments have rules for more expensive gifts which require the recipient either to pass the gift to the government or to pay government the market price if they wish to keep the gift.

If public officers accept money for speaking in their own time on matters which have no relation to their government position, there might be an argument that this is a private matter. However, this activity could constitute a second occupation. Having a second job is not allowed in many public services, unless particular permission has been granted, because these services are anxious to ensure that second jobs do not detract from an officer's principal responsibility. For obvious reasons, full-time senior public officers, whether they are in the public service or a government agency, should not have a second job.

It is also accepted that the public officers who receive money for speaking on matters which fall within their responsibilities cannot validly avoid their financial responsibilities

by passing the fee to their families. It is not permitted because families are treated as associated entities are treated in company law.

In most legislatures, ministers have to declare their own financial interests and those of associated entities, whether they are family trusts or interests held by close family members. It is understood that a minister benefits, directly or indirectly, when a family member prospers.

Nor can public officers pass their fee to a charity. It is not their fee to dispose of.

While this is well understood, when it comes to applying these principles to raising money for political parties, they become irrelevant. Ministers are apparently entitled to sell their time and their knowledge about government policies when invited to give speeches, as long as the proceeds of the sale are not kept for themselves but are directed to their political parties.

We understand that ministers in the Howard government, or their office staff, are entitled to sell, and do sell, ministerial appointments, as long as the money is directed to political parties. A former minister for communication, Senator Richard Alston, even though Jesuit trained, could not see the overwhelming problem in allowing persons employed by the private sector communication industry to purchase a place in the communication policy setting meetings organised by the Liberal Party. Perhaps the then Senator Alston hid behind the view that whatever party policies were formulated and whatever policies were influenced by these private sector participants were irrelevant because party policy is not binding on Liberal ministers.

In the lead up to the 1993-04 budget, the Australian Labor Party once advertised that the Prime Minister, Paul Keating, and the Treasurer, John Dawkins, would provide a budget briefing on budget night to those private sector businessmen who would pay a fee to the ALP. The only joy about this matter is that the government decided this arrangement was wrong.

There are two fundamental flaws in ministers accepting money from their participation in these events and directing those moneys to their political parties. The first is that this money is not for ministers to dispose of: it is public money. The second flaw is that a minister's political party is an associated entity. As politicians say, I support the party and the party supports me. In other words, what I give to the party the party returns for my benefit.

This is why these arrangements should inspire the intervention of auditors-general – ministers are forwarding moneys which are not theirs to entities to which they are related. No public servant or appointed public officer is entitled to do this, nor is any elected public officer. (In this one respect, opposition members and back bench members have an advantage over ministers because they do not occupy a government office.)

These arrangements also should attract the attention of anti-corruption bodies charged with oversighting the behaviour of government officials. And, indeed, the NSW Independent Commission Against Corruption, the ICAC, and the NSW auditor-general, at the request of the government, offered advice to the NSW government which reflected the thinking outlined above. (See: NSW auditor-generals' report for 1994, volume two.) In essence, the government was advised that under certain circumstances ministers could be found corrupt for raising money for political parties.

One might hope that this shot across the bow has restrained NSW ministers from the worse excesses currently seen in the Commonwealth government. In the absence of a federal anticorruption body, the Commonwealth auditor-general's office should be reporting about the use of public money earned by federal ministers to buttress political parties.

Government Advertising

It is evident that Australian governments have used advertising paid from public funds to support their political causes. A number of auditors-general have reported on the volume

and cost of advertising over time and have reported on a close correlation between growth in advertising and approaching general elections. (See: NSW Audit Office report, Government Advertising, November, 1995; and Victorian Auditor-General's Office report, Marketing Government Services, May, 1996.)

Partly in response to the NSW report the government decided that there would be no government advertising in the two months before general elections (in NSW these are held every four years on a fixed date) unless they were essential or related to government commercial undertakings.

The Commonwealth auditor-general has also reported on the need for better guidelines to help ensure that federal government advertising is not politicised. This recommendation has been ignored. And there are no government policies which casus advertising restraint in the lead up to elections.

Worse, Commonwealth advertising has become clearly political and has been used by a government to assist its re-election. This occurred in 1998 when the Howard government promised to introduce a goods and services tax if it was re-elected. In other words, the coalition government announced a policy (one which had been adopted by cabinet) but conceded that it would be a promise carried into the election period.

It was thus surprising to see that the government embarked on a GST advertising campaign, described as a $14 million community education and information campaign, notwithstanding that there was no legislation before parliament to explain.

As might be expected for expensive campaigns, the advertising consultants reported weekly on the outcome of focus groups to determine how successful the campaign was. Not surprisingly, given the political nature of this campaign, these results were provided to ministers. Not surprisingly, immediately after the focus group reports showed that there had been an increase in acceptance of a GST by more than 50 per cent of polled

persons, John Howard, the Prime Minister, advised the Governor-General to prorogue parliament and issue writs for a general election. The coalition won the election.

This was the awful precedent which permitted government to advertise all of its election promises using public monies, as long as those policies had been approved (not necessarily introduced) by cabinet. Although the federal auditor-general approved the campaign, eight auditors-general in the states and territories saw the advertisements as setting an unfortunate precedent.

It is also a matter of record that the GST envisaged by the government in 1998 was not the same as that introduced in 2000.

Similarly, in 2005 the Howard government undertook an advertising campaign on its industrial relations policies before it had introduced the relevant legislation. This campaign was not in the context of a general election but was undertaken to offset private sector advertisements which criticised the intended legislation.

The opposition and the ACTU took the matter to the High Court arguing that the annual appropriations passed by government did not authorise such spending on political advertisements. Of the three justices who considered the arguments advanced by the opposition and the government, two concluded that the spending was not authorised. The chief justice reported that the spending laws authorised the advertisements. The majority of the court, the remaining four justices, brought disrepute on the court by delivering a whimsical opinion which avoided the issue.

In the absence of government action to remedy policy, it seems that governments at the federal level may continue to plunder public moneys to help their re-election causes. No auditor and no court will stand in their way.