



Accountability Round Table's response to Commitment 4.1 in the Federal Government's Draft Open Government Partnership (OGP) National Action Plan 2016-2018.

Setting the scene

The opening paragraph of Commitment 4.1 states that:

We will work with the parliament and the public to investigate the conduct of the 2016 election, use of technology in elections and the framework of donations to political parties and other political entities.

The focus of this response from a civil society organization, the Accountability Round Table (ART), is on the commitment to examine the 'framework of donations to political parties and other political entities'.

That framework, as any objective examination of it will instantly reveal, is in desperate need of reform. Under the heading 'Relevance', the Draft Plan states that Commitment 4.1 '... will advance the OGP values of **accountability**, **transparency** and **access to information** (emphasis in original document). But the present framework is neither accountable nor transparent. It follows that it also denies access to relevant information. And it likewise follows that it must be reformed.

But what principle should guide the reform process? ART submits that it is the long-standing ethical and common-law principle that public office is a public trust and that those engaged in discharging that public trust must always place the public interest ahead of any personal interests or other private interests (see ART submission http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions).

The public trust principle is of particular importance when, as here, the public officers are inevitably placed in a conflict of interest position when making decisions to reform one of the frameworks of Australia's democratic system.

Framework of donations to political parties and other political entities

Australia's existing federal political donations regime facilitates undemocratic behaviour by members of parliament, political parties and other political entities. It also fuels the perception that the political donations system is corrupted. It does so because the current regime enables 'undue influence' by those with the capacity to donate large sums of money to political parties, associated entities and third party entities, and bestows access to political decision-makers upon those who are able to pay thousands of dollars to dine with senior politicians from government and the opposition. Paying for access to senior politicians is referred to in the American and Canadian context as 'pay to play'.

This is a practice that totally undermines a key democratic cornerstone, namely equality. It is also the antithesis of the government's stated commitment, on page 39 of the Draft Plan, to advance OGP values by:

- reducing the risk of undemocratic behaviour and conduct, which leads to the perception or reality of corrupt behaviour by politicians and political parties; and
- increasing public confidence in Australian democracy.

In the introduction to its Draft Plan, the government states that it is seeking to 'be more responsive to the expectations of the community'. It is imperative that it does so - and quickly. Failure to respond in an appropriate manner to community expectations, especially in relation to reforming the federal political donations regime by lifting it from the lowest common denominator level at which it currently rests, will have the inevitable outcome of undermining even further the public's confidence in Australia's democracy. By contrast, quick, decisive and effective reform will go far towards a renewed confidence in democratic governance.

The trust deficit that exists between those who are granted the privilege to serve in parliament and those who bestow on them that privilege presents a real and present danger. Its elimination must be a first priority of all parliamentarians.

Reforms required to advance OGP values

The Accountability Round Table has made a submission to the inquiry currently being undertaken by the Joint Standing Committee on Electoral Matters (JSCEM) into the 2016 election campaign and the federal political funding framework. Rather than repeat all of the points raised in that submission, ART refers the Department of Prime Minister and Cabinet (PM&C) to its submission (number 84 – see link on previous page).

In that submission ART comments on and outlines reforms required in relation to:

- Bans on certain classes of donors
- Caps on donations
- Disclosure issues: thresholds and real-time disclosure of donations
- Third party entities and associated entities
- Public funding
- Limits on campaign spending

ART also refers the Department to the other 85 submissions received by JSCEM, as many provide an excellent opportunity to gauge civil society's attitude to the existing political donations framework and related matters.

Transforming the current system, which is opaque, denies speedy access to vital information and fails to ensure accountability, will go a long way to demonstrating the government's commitment to the OGP.

Reform delayed is reform denied

It is eight long years since the Federal Government enacted any reforms to this country's political donations regime. The neglect has resulted in Australia having some of the weakest political donations laws in the democratic world. Reports calling for reform appear to have been deliberately ignored and the revolving door approach to the chairing of the Joint Standing Committee on Electoral Matters over the past 15 months is, in a word, inexcusable. Over this period the Committee has had *SIX* chairpersons.

The decisions that led to this unjustifiable approach to JSCEM, reflects successive Federal Governments' lack of commitment to this important committee's work. Perhaps becoming a signatory to the Open Government

Partnership and embracing its values will ensure that this cavalier attitude to political donations and related issues never occurs again. Civil society, the other partner in the Open Government Partnership, is unlikely to tolerate any repetition.

The OGP provides an excellent opportunity to work toward addressing the troubling trust deficit between civil society and the political class. The government could do so by reforming Australia's political donations regime so that the system provides for an accountable, transparent regime that provides real-time access to information.

A handwritten signature in black ink, appearing to read 'Tim Smith', written in a cursive style.

Hon. Tim Smith QC
Chair, Accountability Round Table.
15 November 2016