



# **NGOs out in the cold: The Howard Government policy towards NGOs**

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## **Introduction**

The last decade since the Howard government came to power has seen a dramatic change in the democratic model underlying the relationship between NGOs and the government. However, to date, few in the NGO sector seem aware of the theoretical model which is impacting on them. As a result, there has been little discussion of this issue and its implications for Australian democracy.

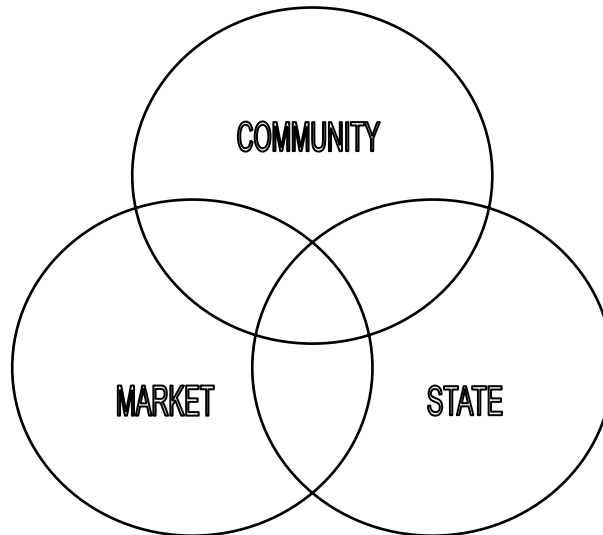
In 2004, Maddison, Denniss and Hamilton demonstrated that advocacy NGOs believe they are being pressured into silence by policies and practices of government, particularly of the Federal Government.<sup>1</sup> Lack of a sector awareness of the theory behind these often antagonistic policies and practices, may be due to many factors – the disparate nature of the sector, its volunteer structure and frequent change of personnel, its lack of resources, and general lack of an ‘NGO sector consciousness’ by the many players across a wide range of interest groups. Understanding the theory behind the changes in NGO/government relationship may be valuable for NGOs in making sense of the different attacks which they have experienced, in understanding the coherent nature of the attacks, and in formulating a strategic response. However, most importantly, its democratic implications are worthy of wider debate in the general community.

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<sup>1</sup> Sarah Maddison, Richard Denniss and Clive Hamilton, 2004, *Silencing Dissent: Non-government organisations and Australian democracy*, Discussion Paper Number 65, The Australia Institute, [www.tai.org.au](http://www.tai.org.au)

## Defining the sector and its importance

Social scientists typically divide society into three – the state, the market and the community.



A Venn diagram with its overlapping circles is a useful model often used to represent the complex nature of the intersection of the three sectors. Continuing change in our society has seen organisations in each sector develop hybrid features and move into the overlapping sections. For example, the activities of many utilities, which were formerly the function of government, are now performed by semi-independent corporations. Because of this complexity, this paper will rely on this diagram rather than attempt a verbal definition. It is on the sector identified as ‘community’ on which it will focus, and, in particular, on those in that sector which attempt to play a part in public policy formulation.<sup>2</sup>

The circle labelled ‘community’ has many names and those names change mainly depending on who is talking, rather than because of descriptive differences. In international circles and the UN, it is called civil society. In the UK and in some academic circles it is called ‘the third sector’. Indigenous and social justice people tend to call them community groups. Other common names are the non-profit sector,

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<sup>2</sup> There have been countless attempts to define the sector, all of which struggle with its complexity. Mark Lyons’, 2001, *The Third Sector*, Allen & Unwin, is probably the most comprehensive attempt at defining the sector in Australia. For coverage of the sector’s economic significance, see both Lyons’ book and Dalton and Lyons, 2005, ‘Representing the Disadvantaged in Australian Politics’, Report No 5, *Democratic Audit of Australia*, p.8.

the voluntary sector, in Europe the social economy and, increasingly in Australia, the non-government, or NGO, sector. This paper has chosen to use the term ‘NGO sector’ as it is the name most frequently used by practitioners in Australia.

A strong NGO sector has long been seen as integral to how a democracy operates. In most democratic models, the sector plays an important political role in shaping public advocacy. However, it also reflects a society back to itself through its social and sporting clubs, its cultural organisations, its social justice and environmental organisations. The richer and more diverse and vibrant a society is, so the organisations will reflect that richness. These organisations are the source of ideas on the society we might become, and of aspirations and ideas that should be contested and debated to provide a rich brew from which a vibrant society can develop. The sector is also ever-changing to reflect changes in interests, values and priorities of the society.

### **Public choice theory**

In 1991, just five years before the Howard Government came to power, the House of Representatives Standing Committee on Community Affairs brought down a report in which it commented on the role of non-government groups. The Committee said:

An integral part of the consultative and lobbying role of these organisations is to disagree with government policy where this is necessary in order to represent the interests of their constituents.<sup>3</sup>

Note that they said non-government organisations should ‘*disagree*’ with government where necessary. Contrast this Parliamentary Committee statement with John Howard’s Menzies Lecture, delivered in 1996, the year he came to power. The lecture was entitled, ‘The Liberal Tradition: The Beliefs and Values Which Guide the Federal Government’. In it, Howard referred to the NGO sector as ‘single-issue groups’, ‘special interests’ and ‘elites’ and he promised that his government would be ‘owned by no special interests, defending no special privileges and accountable only to the Australian people’.<sup>4</sup>

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<sup>3</sup> Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Community Affairs, 1991, ‘*You Have Your Moments’: A Report on Funding of Peak Health and Community Organisations*’, Canberra, AGPS

<sup>4</sup> John Howard, 1996, ‘The Liberal Tradition: The Beliefs and Values Which Guide the Federal Government’, *1996 Menzies Lecture*, Sir Robert Menzies Lecture Trust, [www.menzieslecture.org/1996](http://www.menzieslecture.org/1996)

This discursive shift represents a move to a model of democracy based on public choice theory, which is part of the neo-liberal paradigm. Public choice theory is also the neo-liberal theory that has developed the most detailed analysis of the role of NGOs. Federal government statements are now couched in public choice language, so it is crucial for understanding NGO/government relationships to understand the theoretical underpinning of the theory.

Public choice theory was developed by economists who were uncomfortable with what they saw as a lack of precision in political theory, which deals with the untidy complexity of human emotions, aspirations and ideas. They saw themselves as improving the analysis by removing that complexity and describing the world of politics and interest groups within the marketplace. Significantly, public choice theory claims that interest groups are predatory and will try to obtain benefits for their members that stifle economic growth. The theory denies the existence of altruism in the behaviour of NGOs. It also ignores the rich variety of theories in the disciplines of sociology and psychology, which seek to explain human motivation and behaviour in a more holistic manner, inclusive of our social, intellectual, sexual and spiritual needs. As well, it ignores the fact that NGOs can take a long-term perspective, even past the lifespan of the individuals and the life of the group.

The theory has been around for some 50 years. Its founder, Buchanan, received a Nobel Prize for economics in 1986 for the theory. However, its impact on public policy has been most pronounced during the past decade coinciding with a rise in the neo-liberal paradigm. Its influence has been strongest in Britain, New Zealand, Australia and the United States. In Australia, a seminal event was a visit from the key British public choice theorist, Mancur Olsen, in 1984, which assisted in raising interest in public choice theory and resulted in his writing, 'Australia in the Perspective of the Rise and Decline of Nations'.<sup>5</sup>

Public choice theorists reject the pluralist concept of many voices in society debating public policy to develop a consensus. For example, Mancur Olsen rejected this idea of

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<sup>5</sup> Mancur Olsen, 1984, *Australia in the Perspective of the Rise and Decline of Nations*, Discussion Paper no. 109, Canberra, Centre for Economic Policy Research, ANU

developing a public consensus, saying, 'Coherent national policies cannot be expected from a series of ad hoc concessions to diverse interest groups'.<sup>6</sup> There is some similarity with Howard's Menzies lecture where he stated that he wanted to govern for the 'mainstream' 'rather than an amalgamation of special interests',<sup>7</sup> and there are many instances where the language of public choice theory is found in that of Prime Minister Howard, his Ministers and neo-liberal think tanks, such as the Institute of Public Affairs.

Public choice theorists also reject any advocacy role for NGOs because they are seen to interfere with the marketplace and are predatory. It is claimed that the way interest groups do this is by, 'the disruptive effects of the pursuit of self interest' creating 'excessive expectations' on the economy. These 'excessive expectations' are greater than the ability of the economy to respond and this is described as a 'lack of accountability'.<sup>8</sup> An example of a pie is used to represent the economy. Environment groups may ask for various forests to be protected, ACOSS for more generous welfare payments, and so on, such that the total claims are greater than the pie, or greater than the economy's capacity to pay for these demands. Therefore, NGOs are behaving in a way that is not accountable. This is a very narrow view of representative democracy and a rejection of a pluralist or discursive model in which debate occurs in the media, and other public forums, as part of developing public policy.

In rejecting debate by NGOs about public policy, public choice theory says that only elected representatives are accountable through the election process. An emphasis on the lack of accountability of NGOs has been a consistent theme of the Howard government and neo-liberal think tanks. Both NGOs and academics have frequently interpreted this attack on their 'accountability' and legitimacy as being about their internal governance arrangements.<sup>9</sup> It is absolutely essential that NGOs have their

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<sup>6</sup> Mancur Olsen, 1965, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, Harvard University Press

<sup>7</sup> Howard, 'The Liberal Tradition'

<sup>8</sup> Olsen, *The Logic of Collective Action*

<sup>9</sup> The interpretation is pervasive throughout the sector and is reflected at the highest levels such as a spokesperson for the National Roundtable of Nonprofit Organisations - see R. Fitzgerald, 2004, 'Challenges Choices, and Opportunity for Nonprofit Organisations', address to the *Annual Conference of the Australian Council for International Development*, 14 September, Canberra, [www.acfid.asn.au](http://www.acfid.asn.au). Dalton and Lyons in their Democratic Audit report no 5, 'Representing the Disadvantaged in Australian Politics', would seem to take a similar interpretation.

houses in order and use robust, transparent and accountable arrangements in running their organisations. However, they may be mistaken if they believe that doing so will remove government criticism on the grounds of ‘accountability’. Accusing NGOs of not being accountable is a statement of a political world view, a public choice paradigm, in which only elected representatives are accountable to the people. Restructuring and internal governance reforms by NGOs cannot change this paradigm.

This is not the only aspect of the government/NGO relationship causing confusion to some in the sector. On the one hand, they are lauded if they fill the void caused by smaller government and do good works such as planting trees or housing the homeless, or develop community enterprises for the unemployed or develop ‘social capital’. They are also being encouraged to ‘come into the fold’ by joining government-NGO ‘partnerships’. The value of examining the *total* picture of government policy within the paradigm of public choice theory is to show that these relationships are consistent with public choice theory. However, they come at a cost – that of giving up the democratic role of contributing to the public policy debate. The Howard Government has been proactive since its inception in trying to enforce such a paradigm.

## **Decade overview of Howard Government actions against NGOs**

A range of mechanisms which undermine the legitimacy of NGOs have been apparent under the Howard Government. All are consistent with public choice theory. While each mechanism by itself may not be a threat to democratic process and freedom of speech, it is in the *totality* of the overall picture and in the coherent nature of the attacks, consistent with public choice theory, that there is the possibility of a threat to democracy as we have known it. De-funding is the best-known, but it is only one component in a suite of mechanisms.

### **De-funding**

The 1970s was a time of dynamic intellectual debate on how to create a just society. Emerging from that debate was government funding to assist unrepresented and poorly represented groups to be heard. With the assumption of power by the Howard

Government, the NGO sector experienced an intense period of de-funding. Marian Sawyer has pointed out that many of the groups that were de-funded in this period because of their criticism of government were some of the poorest and most disempowered Australians. Some were, for example, the Australian Federation of Pensioners and Superannuants, National Shelter, the Association of Civilian Widows, and the Australian Youth Policy and Action Coalition.<sup>10</sup>

In 2000-02, Rose Melville conducted a major study into peak groups in the area of social welfare, non-English speaking background, health, aged, disability, and women and children's peaks. She found that more than 50 per cent had lost significant amounts of funding and another 20 per cent had totally lost funding. She was able to demonstrate that nearly a third of these peak organisations had lost funding because of their public advocacy and related changes to government funding policy.<sup>11</sup>

It is the activity of *public advocacy* by NGOs that is significant in public choice theory and that is reflected in the actions of the Howard Government. NGO activity in relation to good works—feeding the homeless or planting trees—is commended. In fact, it is consistent with the Government's neo-liberal philosophy of smaller government. It is comment on public policy, or any attempt to influence public policy, that is seen as interfering with the market, or as public choice theorists say the 'disruptive effects of the pursuit of self interest' creating the pressure of 'excessive expectations' on the economy. So, NGOs are commended if they go about their activities filling in the gaps left by the withdrawal of government, but are criticised if they attempt to have any say in policy.

After the first round of de-funding, the process has continued. Many of the peaks surveyed by Melville no longer exist or exist in name only, and even during the 3 years of her study, 2000–02, over 20 nationally funded peaks were de-funded. The first five years of the Howard Government saw funding to environment organisations cut and exclusion from major advisory bodies, with 1999 the year when many of the

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<sup>10</sup> Marian Sawyer, 2002, 'Governing for the Mainstream: Implications for Community Representation', *Australian Journal of Public Administration*, 61(1)

<sup>11</sup> Ruth Melville, 2003, *Changing Roles for Community-Sector Peak Bodies in a Neo-liberal Policy Environment in Australia*, Institute of Social Change and Critical Enquiry, Faculty of Arts, University of Wollongong



larger organisations were completely de-funded because of their opposition to the weakening of the its major environmental legislation. That process continued in 2005 with funding withdrawn from many of the State Conservation Councils, which support hundreds of smaller groups. Instead, the money has been given to groups which do good works, but which do not engage in public advocacy.

### **Three more silencing methods**

De-funding has shut down many voices, but it is only a small part of the picture. At the same time as defunding of critical organisations, forced amalgamations have silenced alternative views, purchaser-provider contracts have brought NGOs closer to being an arm of government and confidentiality clauses are explicit restraints upon freedom of expression.

Firstly, forced amalgamations have weakened the advocacy of groups by subsuming specific interests. For example, in the women's area, those with a feminist perspective have been forced under threat of de-funding to amalgamate with non-gender specific groups. The Association of Non-English Speaking Background Women was de-funded and advised to 'mainstream' its advocacy through the Federation of Ethnic Councils. Yet it was created specifically because ethnic women felt they were having difficulty being heard through the male-dominated councils. Forced amalgamations have served to remove those whose advocacy does not fit the Government's 'family' and moral agenda, for example lesbian rights groups.<sup>12</sup>

Secondly, purchaser-provider contracts have replaced core funding which was to fund the representative role of organisations in providing informed advice to government. Core funding was especially important for peak groups in servicing a range of groups within a sub-sector, assisting them with information relevant to their administration and advocacy and in determining group positions on advocacy questions. In contrast, the purchaser-provider contracts require the delivery of specific outcomes directly related to government policy and objectives. Meeting the often onerous assessment processes in relation to outcomes, which are part of the government agenda, means there is very little capacity to advocate on behalf of members and their interests.

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<sup>12</sup> Sawyer, 'Governing for the Mainstream'

Thirdly, confidentiality clauses appeared at the same time that purchaser-provider contracts became the norm. They now appear in some form in most contracts that NGOs have with the Federal Government. These clauses have requirements that the organisation not speak to the media without first obtaining the approval of the appropriate department or minister. Some appear to forbid any public activity. Apart from the direct censorship involved, voices are likely to be silenced, even if a media release is approved, because delay risks lack of relevance with the speed of media stories today. Even groups working on habitat rehabilitation and feeding the homeless are now finding that any relationship with Government results in confidentiality clauses being imposed on them.

### **Wider mechanisms other than direct funding**

#### **Taxation measures**

In 2000, the Government began a Charities Definition Inquiry and its report supported NGOs being able to engage in advocacy.<sup>13</sup> However, when a draft Charities Bill was released following the Inquiry, it became clear that the definition of a charity was likely to have taxation deductibility implications for NGOs involved in lobbying on any government policy. Historically, Commonwealth taxation legislation which refers to ‘charities’ has been applied to a wide range of non-profit organisations receiving tax or other concessions and has been as wide as groups active in health, education, social or community welfare, childcare, religion, culture, natural environment, civil and human rights, reconciliation, public safety and animal welfare.

At the same time as he released the draft Charities Bill, the Treasurer referred it to the Board of Taxation for consultation as to its ‘workability’. The NGO sector was galvanised and 255 submissions were received, almost entirely from NGOs. The organisations represented were unanimous in their position that advocacy should be recognised as an established integral activity undertaken by not-for-profit organisations, and not be regarded as an exclusion. The NGO submissions received were from a wide range of organisations – large and small, and across many sub-sectors of the wider NGO sector. For example, groups represented included

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<sup>13</sup> *Charities Definition Inquiry*, 2001, [www.cdi.gov.au](http://www.cdi.gov.au)

Philanthropy Australia, National Council of Churches in Australia, the then Australian Council for Overseas Aid, the Australian Conservation Foundation, Christian Children's Fund Australia, Refugee Council of Australia, Women With Disabilities and YWCA Australia. Typical of their comments were those of the then Australian Council for Overseas Aid (ACFOA) which said, 'the advocacy role of charities should not be singled out for special attention as a cause of disqualification.....' and the Australian Council of Social Services (ACOSS) which said, 'the Bill seeks to impose outdated and counter-productive restrictions on the advocacy and lobbying activities of charities'.<sup>14</sup> However, it was not just advocacy NGOs who objected. Anglican Archbishop Peter Carnley described the Bill as the kind of thing one might expect from a quasi-totalitarian regime that was determined to control information and stifle public opinion.<sup>15</sup>

In reporting, the Board of Taxation recommended a number of changes and clarifications to the Bill. There were many aspects of the Bill that were unworkable, and the Board of Taxation recognised this by recommending some changes and clarification. An election was imminent, and combined with significant opposition from both NGOs and many churches, the Government decided in May 2004 not to continue with the legislation.

However, that did not mean abandoning the idea, and in 2005 two draft rulings from the Tax Office emerged, which, appeared partially to replace the discarded *Charities Bill 2003*, by restricting the ability of NGOs to receive tax deductibility, and affecting GST exemption and salary packaging, if they engaged in public advocacy. Strong submissions were received by the Tax Office from organisations such as the National Roundtable of Nonprofit Organisations representing 17 key NGOs. Like the Board of Taxation, the ATO found difficulties in defining charities and charitable activities and the final rulings released in late 2005 clarified some issues. However, there still appear to be restrictions that may affect the ability of many organisations to engage in

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<sup>14</sup> The Board's Report to the Treasurer and all 255 submissions are available on the Board's website, [www.taxboard.gov.au/content/charities.asp](http://www.taxboard.gov.au/content/charities.asp)

<sup>15</sup> R. Barnes and T. Clarke, 2003, 'Double Refugee Intake: Church Head', *Sydney Morning Herald*, 19 October

active public advocacy and not lose taxation benefits.<sup>16</sup> So, organisations that have tried to build up an income base free of government funding are finding themselves impacted by taxation measures.

### **Outsourcing welfare and the churches**

By outsourcing welfare, as part of a philosophy of ‘smaller government’, the Howard Government has also been able to extend its reach to silence another group. This appears to have been the effect on some churches, which did not have so much to lose before becoming dependent on large government contracts. Early in its term of office, the Howard Government replaced the government’s Commonwealth Employment Service with the private Job Network. By late 1999, the second round of successful tenders amounted to a total of \$3 billion. Of this amount, \$700 million was won by church employment services.<sup>17</sup>

One of the effects of this was that churches found it harder to criticise government policy.<sup>18</sup> Once an organisation, such as a church, has invested time, energy and money in setting up as a provider, issues such as dependency on government contracts and responsibility for their employees’ future welfare come into play. The conditions of these contracts increasingly entrap such agencies in the government’s systems, weakening their ability to offer independent critique and advice about the services concerned.<sup>19</sup> Increasingly, churches have also found that their employment service contracts include specific confidentiality clauses requiring them to refrain from criticism. Commenting on this in an interview with Radio National’s *Religion Report*, Melbourne City Mission Chief Executive Ray Cleary said that this contractual restraint against speaking out,

... eats at the very heart of the mission and the value base of church-based agencies, which are there to demonstrate God’s preferential or special interest for the marginalised and those at risk.<sup>20</sup>

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<sup>16</sup> See Taxation Ruling TR 2005/21 and TR 2005/22 for the rulings and a discussion of their interpretation. [www.ato.gov.au](http://www.ato.gov.au)

<sup>17</sup> K. Lawson and V. Burgess, 2000, ‘Fahey Spares Govt Jobs Agency’, *Canberra Times*, 10 February

<sup>18</sup> *Canberra Times*, 2000, ‘Churches Blur Roles on Jobless Deal’, 8 January

<sup>19</sup> Marion Maddox, 2005, *God Under Howard: The Rise of the Religious Right in Australian Politics*, Crows Nest NSW, Allen & Unwin, p. 234

<sup>20</sup> Ray Cleary, 1999, interview with the *Religion Report*, ABC Radio National, 24 March

At the same time, the Government has been discouraging the churches from public advocacy generally. On a number of occasions, Treasurer Costello, Foreign Minister Downer and Prime Minister Howard have each made it clear that they consider the role of the churches to be in personal, rather than social, transformation.<sup>21</sup> Yet, at the same time, elements of the Government close to the Prime Minister have been mobilising conservative, American-style evangelical and Pentecostal churches to promote neo-liberal political policies and politicians—as has been documented by Marion Maddox in her book, *God Under Howard*.<sup>22</sup>

### **Creating a ‘Government Non-Government Organisation’<sup>23</sup>**

In November 2003, the Prime Minister announced the creation of a peak NGO body with \$50000 from his Community Business partnership and called it the Not for Profit Council of Australia. The original hand-picked members included an art gallery, some service-provider organisations, and the Salvation Army and the Smith Family. The last two charities are primarily concerned with on-the-ground welfare and seem to have avoided political advocacy. It is possible the formation of the Government organisation was in response to the formation of the National Roundtable of Nonprofit Organisations, which is a genuine representative organisation formed the previous year by the key peak Australian NGOs. Its 17 members include the ACF, ACOSS, AFCID, ACA, the National Council of Churches, etc. This genuine roundtable has been concerned that creating a ‘puppet’ organisation with no representation from the major national NGO peaks might be used to legitimise Howard Government activities. There is clearly a need for the diverse parties of the NGO sector to come together for various reasons, and they have voluntarily done so in the National Roundtable of Nonprofit Organisations. So, it can be legitimately asked, why is the government creating another body and funding it?

### **Electoral and Referendum Amendment Bill 2006**

No sooner had the sector responded to the two ATO Draft Rulings than an attack came from another direction, when Special Minister of State, Senator Eric Abetz,

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<sup>21</sup> P. Starick, 2004, ‘Keep Quiet on Politics’, *Advertiser*, 16 February

<sup>22</sup> Maddox, *God under Howard*

<sup>23</sup> Paddy Manning, 2004, ‘Keeping Democracy in its Place’ in Margo Kingston, *Not Happy John!*, Camberwell, Vic, Penguin, p.274

flagged in October, 2004, that the government would use the Electoral Act to attempt to monitor NGOs' advocacy on a continuous basis. In December 2005, the Government introduced the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*. The Bill contained a number of provisions inimical to democratic involvement, including provisions relevant to NGOs which would result in most NGOs being continually monitored by Government. The crux of its proposals centred on a very broad definition of what constituted 'electoral matter'. As drafted, it cast a wide net, so that even those NGOs which do not engage in any overt public advocacy would have been deemed to be producing 'electoral matter' requiring them to track their expenditure and file an annual return on their activities.

The import of the Bill raised freedom of speech issues, with the likelihood of increased administrative costs for NGOs in its implementation, more reluctance of NGOs to speak out, and decreased donations. Moreover, it was not good law because it was likely to result in uneven compliance by NGOs, which can raise the problem of arbitrary enforcement by government.

The government agreed to introduce some minor amendments in early 2006 to decouple the disclosure requirements of third parties such as NGOs, from the definition of 'electoral matter'. However, the Bill is currently (June 2006) under consideration by the Parliament, and, as it stands, its intent is still to monitor and licence advocacy NGOs on an annual basis. It still requires disclosure of material that has no relationship to politics or to elections, and would seem to have some of the intent of calls by the IPA to 'licence' NGOs.<sup>24</sup>

### **Summary of government activities**

This discussion has covered de-funding, forced amalgamations and 'mainstreaming' which silences minority voices, purchaser-provider contracts which have NGOs delivering the Government's agenda, and confidentiality clauses which restrict or forbid NGOs speaking to the media. NGOs which try to exist outside any government funding are not untouched, with first the threat of the Charities Bill, and the recent

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<sup>24</sup> The progress of the Bill can be tracked on the Parliament of Australia website, [www.aph.gov.au](http://www.aph.gov.au), under the heading, Bills. See also the submission by the National Roundtable of Nonprofit Organisations on the same website under Senate Finance and Public Administration Committee Inquiry into the Bill.

ATO rulings likely to affect some NGO tax deductibility criteria. Other wider mechanisms that have silenced NGOs include outsourcing welfare which has particularly served to silence the welfare arms of churches. The Government also appears to have created its own peak NGO organisation, despite a representative body of genuine peak groups already existing. Finally, *the Electoral and Referendum Amendment Bill 2006* before Parliament in the first half of 2006 seems set to monitor and 'licence' significant numbers of NGOs on a continuous basis.

In their totality, these actions by the Howard Government are consistent with a public choice view that it is not legitimate for NGOs to engage in the public policy process. In their totality, they depict a government that is trying to discourage public advocacy by NGOs and create a society devoid of organised community input to public policy debate. NGOs that do good works which fill the void of government withdrawal from service provision are applauded. However, if NGOs try to participate in the essential democratic role of policy debate, they are attacked as being 'unaccountable' and lacking in political legitimacy, for being unelected as part of representative government.

### **Australian neo-liberal think tanks and the Institute of Public Affairs**

At the same time as government mechanisms have served to silence NGOs, there has been a strong, pro-active campaign to undermine the legitimacy of NGOs and promote a public choice agenda. It is to the *combination* of these two forces that we should look for a threat to the democratic process by changing the accepted Australian political paradigm. This strong, pro-active campaign has been most notable in the work of the neo-liberal think tanks, and in particular in the work of the Institute of Public Affairs (IPA).

There have been numerous analyses of neo-liberal think tanks in Australia.<sup>25</sup> Their influence on public policy is increasingly recognised. The Australian Financial Review reported in 2002, that, 'It is hard to overestimate the influence conservative

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<sup>25</sup> Philip Mendes, 2005, 'Neo-Liberal Think Tanks', *Journal of Australian Political Economy*, 52; Ian Marsh, 1994, 'The Development and Impact of Australia's "think tanks"', *Australian Journal of Management*, 19(2); Sharon Beder, 2002, *Global Spin: The Corporate Assault on Environmentalism*, Devon, Green Books

think tanks have had on the political agenda in Australia'.<sup>26</sup> Since the election of the Howard Government, they have been prominent supporters of the Government, advocates for policy that has been taken up by the Government, and key protagonists who have criticised elements seen to be opposed to a market view of the state.<sup>27</sup> The Institute for Public Affairs (IPA) and the Centre for Independent Studies (CIS) have probably been the most prominent of the Australian neo-liberal think tanks in the Australian context over the past decade.<sup>28</sup>

However, in recent years, as the hegemony of neo-liberal economics has taken hold, it is possible to discern a shift in specialisation occurring between the two organisations, with the CIS continuing to promote a broad range of specific programs within the neo-liberal paradigm, and the IPA particularly focussing on

...undermining the standing of its adversaries through generating and disseminating negative messages about their role in democracies, their motives and their integrity.<sup>29</sup>

The defeat in 1998 of the Multilateral Agreement on Investment (MAI), largely through the efforts of international NGOs, is credited with causing the shift in IPA's focus. In 2000, Michael Warby, of the IPA admitted there had been 'some shift in concern in general policy, and IPA activity away from economic focus to social and environmental concerns' and he noted that advocacy NGOs had changed the nature of politics.<sup>30</sup> This shift would seem to have created the situation where the IPA is now the major protagonist in Australia in attacking the legitimacy of NGOs, and the CIS the major engine of neo-liberal policy material for the Howard Government and general purveyor of the wider free market paradigm.<sup>31</sup> It is clearly a situation where the role of each complements the other.

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<sup>26</sup> Wilson Da Silva, 2002, 'Signal Drivers', *Australian Financial Review Magazine*, 22 June.

<sup>27</sup> Damien Cahill and Sharon Beder, 2005, 'Neo-Liberal Think Tanks and Neo-Liberal Restructuring', *Social Alternatives*, 24, 1.; see also Martin Mowbray, 2003, 'War on non profits "NGOs: What do we do about them?"', *Just Policy*, 30.

<sup>28</sup> Damien Cahill, 2002, 'Funding the Ideological Struggle', *Overland*, 168, Spring; see also T. Thornton, 2002, 'The Hydra Headed Monster: Australian non-government organisations as a danger to democracy', *Overland*, 161

<sup>29</sup> Mowbray, 'War on non profits', p 11

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.



The language of the IPA is neither measured nor temperate. In one article, Gary Johns, Director of its NGO Project, refers to ‘cashed up NGOs’, ‘a dictatorship of the articulate’, a ‘tyranny of the articulate’ and a ‘tyranny of the minorities’,<sup>32</sup> and in another to, ‘mail-order memberships of the wealthy left, content to buy their activism and get on with their consumer lifestyle’.<sup>33</sup> The IPA has repeatedly proposed withdrawal of financial and other support for NGOs which advocate environmental, social and industrial standards, even when the NGOs are privately funded. It has a clear public choice agenda aimed at stopping public advocacy. Consistent with this, it has urged stringent government provisions for inhibiting public advocacy by NGOs, including certifying or ‘licensing’ measures. De-funding, purchaser/provider contracts, confidentiality agreements, taxation disincentives, and the 2006 Electoral and Referendum Amendment Bill suggest that the government has been listening.

The pervasiveness of IPA ideas and comments can be seen by the frequency with which its staff write for and appear in major news outlets, generally without acknowledgement of their connection. The IPA website shows that in the 3 month period from the beginning of March to the end of May 2006, there were 44 articles published in key Australian media outlets by its staff. That is an average of over 3 articles a week, and this level of input has been continuing for many years. In June, 2006, the IPA website was citing some 900 such articles since 1998.<sup>34</sup>

Because of the IPA’s protracted, energetic and virulent campaign against NGOs, it was a source of dismay, astonishment and anger amongst NGOs when news emerged in 2003 that the Howard Government had commissioned the IPA to conduct a study into the relationship between Australian Government Departments and NGOs, and to also develop a ‘trial protocol’ for public disclosure of NGO standing with government.

There was no tender and no public announcement. Director of the IPA’s NGO unit, Garry Johns, headed the inquiry. Johns must be the most active critic of the role of NGOs in Australia today, and the Government was obviously fully aware of what it

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<sup>32</sup> Gary Johns, 2002, ‘Government and Civil Society: Which is virtuous?’, *Senate Occasional Lecture*, Canberra, Australian Senate, 22 August, p. 4-5

<sup>33</sup> Gary Johns, 1999, ‘NGOs: Lazy Activism’, *Australian Financial Review*, 6 December

<sup>34</sup> See the *IPA website*, ‘In the News’, [www.ipa.org.au](http://www.ipa.org.au)

was doing in its choice. Manning has pointed out that the National Audit Office guidelines require that when the government engages consultants it must determine the selection criteria and document the evaluation to ensure that the chosen consultants are of appropriate quality and that the process is transparent.<sup>35</sup> The irony of the IPA, which does not disclose its donors, contracting in secret to monitor NGOs for their transparency and accountability seems to have been lost on both Government and the IPA. Radio National's *Background Briefing* in March 2004, also pointed out that the IPA website declared it did not accept government funding at the same time as it was undertaking this \$50,000 contract for the Government, and that it actively engaged in public debate against NGOs on the Charities Bill, at the same time as it was working on the same contract.<sup>36</sup>

The Inquiry's report, delivered in 2004, and entitled, *The Protocol: Managing Relations with NGOs*, contained many of the elements previously suggested by Johns, particularly focussing on bureaucratic issues relevant to government department and NGO relationships. Threaded throughout is an implied criticism that NGOs have too much policy influence or 'special status',<sup>37</sup> which is consistent with public choice theory. There is no recognition of a model of democracy where many voices are appreciated in developing public policy, and there is no criticism of corporations being players in developing public policy.

The Protocol was received by the Government in an election year and was noted with a non-committal response by the relevant Minister. However, its proposals for 'protocols' to have government control of NGOs have not gone away, as noted earlier in relation to the *Electoral and Referendum Amendment Bill 2006*. The commissioning of the Protocol destroyed any pretence by the Government of accountable and independent policy review processes, and importantly, it threw into relief possible links between the Howard Government and the IPA. The nature of that relationship has been debated. However, there would seem to be circumstantial evidence that the IPA acts as a 'stalking horse' for the Government by promoting and

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<sup>35</sup> Manning, 'Keeping Democracy in its Place', p 282

<sup>36</sup> ABC Radio National, 2004, 'NGOs Watching NGOs', *Background Briefing*, 28 March

<sup>37</sup> Gary Johns and John Roskam, 2004, 'The Protocol: Managing Relations with NGOs', *Report to the Prime Minister's Community Business Partnership*

publicising negative information on advocacy NGOs to the public, while the Government remains at arms length.

The significance of the IPA's activities in relation to the promotion of a public choice paradigm needs to be placed against the many government silencing mechanisms described in this paper. At the same time as NGO voices have been shut down, there has been a concerted and strategic campaign to saturate the public sphere with a public choice perspective that serves to undermine the democratic legitimacy of NGOs. It is the two sides of this equation that together have had a dramatic effect on public perceptions of NGOs and on the removal of NGO voices from the development of public policy. Both sides of the picture are consistent with a public choice paradigm.

### **Corporate attacks and Gunns Limited**

This paper has focussed only on the Government and its close association with the IPA in the light of public choice perspectives. However, it should be noted that, over the past decade, there has been an increase in litigation against NGOs and their members by corporations in the form of SLAPP writs – strategic litigation against public participation. These are legal actions for the purpose of silencing public debate.<sup>38</sup>

As well, a number of NGOs and individuals, twenty in all, are currently facing a writ brought against them by the Tasmanian timber company, Gunns Limited, for almost \$7 million—a writ which, by mid-2006, the judge had twice told the company to go and rewrite because it was so poorly framed, and a writ which many lawyers assert has little merit. It is possible the increase in litigation against NGOs may be linked to the increased dominance of a public choice paradigm, with corporations feeling less constrained in the public choice environment.

### **Summary**

Public choice theory is part of the neo-liberal philosophy. It rejects a pluralist or discursive view of democracy and any role for NGOs in the development of public

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<sup>38</sup> Brian Walters, 2003, *Slapping on the Writs*, Sydney NSW, University of NSW Press

policy. The language of the Howard Government is consistent with this theory. Applying the theory to the history of government/NGO relationship over a decade of the Howard Government provides insights and clarity in understanding the significant change which has occurred in the relationship. On the one hand, the Government has employed a variety of mechanisms that serve to inhibit any public advocacy role for the NGO sector and to silence debate. On the other hand, there has been active dissemination of a public choice perspective on the role of NGOs by the Government and, particularly by the IPA.

The result of this two-pronged approach has brought about a fundamental systemic change in the role of the NGO sector in Australia. It has also changed the public perception of that role. The significance of this major change in our democratic processes cannot be underestimated in any assessment of the health of Australia's democracy.