Political donation changes favour the rich and increase the risk of corruption

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It has been recently reported that the Special Minister of State, Senator Eric Abetz, is proposing to increase the threshold at which parties are required to disclose the identities of donors and the sums of donations from $1500 to $5000. The magic figure of $5000 has also put forth as the new maximum for tax-deductible political donations.¹

Both proposals are likely have the effect of tilting the political system even more in the favour of the wealthy, especially cashed-up political donors. The disclosure threshold proposal, in particular, will inject further secrecy into the political process and heighten the risk of corruption and undue influence.

Registered political parties are presently required to lodge annual returns disclosing their total income, expenditure and debts. For amounts received in excess of $1500, various details must be revealed including the amount of the donation, the identity and the address of the donor.² It is this threshold that the government is proposing to lift to $5000.

Even as it stands, the present disclosure scheme is riddled with problems. While it was enacted to ensure financial transparency in order to promote informed voting decisions as well as to prevent corruption and undue influence, it does not adequately fulfill either of these purposes. The aim of informed voter decision is supposed to be met by providing voters with information regarding the parties’ finances especially at election time. The information made available to voters is, however, dated due the cycles of disclosure and the timing of their release. Moreover, such information is not easily accessible at the time of voting. Added to these complications is the fact that

available information is not easily comprehensible. Senator Andrew Murray, a long-
time commentator on electoral matters, has said that ‘(a)s it stands, working through
the maze of political donations proves a daunting task even for highly skilled
academics and journalists’.\(^3\)

Importantly, the present disclosure scheme also fails to prevent corruption and undue
influence adequately. Foremost is the problem of compliance by the parties. The
Australian Electoral Commission (AEC) has, for instance, recently noted that ‘a major
concern remains in that political parties in particular are not always according
sufficient priority to the task of disclosure’.\(^4\) In the same report, the Commission
stated that in its experience ‘there has been unwillingness by some to comply with
disclosure’\(^5\).

Moreover, the scheme is a leaky sieve. For one, it appears that the disclosure
threshold applies \textit{separately} to each registered political party. In the context where the
national, State and Territory branches of the major political parties are \textit{each} treated as
a registered political party, this means that a major party constituted by the various
branches can have the cumulative benefit of nine thresholds. For instance, it is
seriously arguable that a company can presently donate $1499 to each State and
 Territory branch of the Labor Party as well as its national branch, a total of $13 491,
without the Labor Party having to reveal the identity of the donor. It is this problem of
donation splitting that has prompted the AEC to insist upon a low disclosure
threshold.\(^6\)

Increasing the disclosure threshold to $5000, on the other hand, will create such a gap
in the federal disclosure scheme that describing this as a ‘loophole’ seems almost
laughable. This proposal, if enacted, will mean that a donor can give a total of $44
991 to a major party without the party having to disclose the identity of the donor.
Having a high threshold like $5000 can only mean more secret donations.

\(^2\) \textit{Commonwealth Electoral Act 1918} (Cth) ss 314AB-AC.
\(^3\) Murray, Senator Andrew and Rock, Marilyn, 2000, ‘The Dangerous Art of Giving’, \textit{Australian
Quarterly}, 29 (32).
\(^5\) Australian Electoral Commission, 2000, para 1.5.
Secret donations erode democratic politics because citizens are voting without full knowledge of what the parties stand for: party platforms may mean very little when parties are beholden to covert influences. Moreover, there is an acute risk that the veil of secrecy surrounding political donations will tempt parties to favour the interests of donors over those of the public. As former High Court Chief Justice Brennan put it, the danger is that ‘public debate (becomes) a cloak for bartering away the public interest’.  

It is against these circumstances that the reasons given for the government’s proposal should be evaluated. Arguably, the key justification is that increasing the disclosure threshold will not encourage corruption or undue influence. Senator Abetz, for instance, has been reported as saying ‘I do not think many people would assert you can buy undue political influence for $1500’.  

This statement is hardly plausible: political access is, in fact, being bought for $1500 or less. For instance, the Victorian ALP has its own business fund-raising body, ‘Progressive Business’. Membership of this body, which costs $880-$1400 per annum, entitles companies to 12 ministerial briefings and a not inconsiderable chance to share a muffin with John Brumby. The website of ‘Progressive Business’ makes no secret of the fact that both political access and influence are being sold. It openly states that ‘(j)oining this influential group allows you to participate in the decision making process’. The New South Wales branch of the Liberal Party, on the other hand, runs a more high-powered vehicle for sale of access, the Millennium Forum. The Forum offers access to John Howard and his ministers in exchange for ‘sponsorship’ with sponsorship priced between $10000 and $19999.  

Senator Abetz has also justified the proposal to increase the disclosure threshold on the ground of the donors’ right to privacy especially small businesses that could be
exposed to intimidation by trade unions. Several things should be said in response. First, there is much to be said that only citizens have a right to privacy in this context. The provisions of the Commonwealth Constitution dealing with election of parliamentary representatives are directed at the ‘people of the Commonwealth’: they do not refer to companies. Several members of the High Court have similarly recognised that if there were a right to privacy at common law, it would only pertain to natural persons and not to corporations. Even if companies had some right to privacy, the broader interests of informed voter decisions and preventing corruption and undue influence would justify the limiting this right in relation to political donations. In short, the argument based on privacy of companies including small ones is far from convincing.

Second, the claim of intimidation by trade unions should be substantiated: is there, in fact, evidence of any such intimidation? If not, Senator Abetz would seem to be pandering to anti-union prejudices. Even if there were such evidence of such intimidation, there are more direct means to deal with this problem that do not carry the risk of secret donations and corruption. The Commonwealth Electoral Act, for instance, makes it illegal to intimidate a person on the ground that s/he has made a donation to a political party. Trade union intimidation that Senator Abetz alleges would clearly fall foul of this provision.

Turning to the proposal to increase the maximum amount for tax-deductible political donations, it should be said that the notion of public subsidies for political parties is not objectionable per se. Indeed, political parties are central to Australia’s parliamentary democracy because they perform, or ought to perform, crucial functions like representing citizens and governing the country. To adequately perform these functions, they need funds and one source of such funds is the public purse.

Public subventions must, however, promote or comply with the key democratic principle of political equality. Thus if there is to be any public assistance to political


\[12\text{ Commonwealth Constitution ss 7 & 24.}\]

\[13\text{ Australian Broadcasting Corporation } v\ \textit{Lenah Games Pty Ltd [2001] HCA 63}\ [132]\ (Gummow and Hayne JJ).\]
parties, such assistance must accord equal value to the voice and interests of each citizen. It is on this count that tax deductions for political donations fail. They fail because they favour the wealthy in two ways. Having more disposable income, the wealthy are more able to take advantage of these tax deductions. Further, for the same amount of political donations, the wealthy being subjected to higher income tax rates receive a greater amount of public subsidy.

With tax-deductibility capped at one hundred dollars, such iniquity, while troubling, might not be too objectionable. The same cannot be said of the government’s proposal to multiply the tax-deductibility cap by fifty-fold. This proposal, if enacted, would only serve to entrench a blatantly unfair subsidy in the tax system.

If the aim is to increase public support of political parties, there is a more appropriate method. Such increased support could be channelled through the present system of electoral funding. Under this system, parties are provided amounts which are calculated according to the number of first preference votes received. This is a far from perfect system, not least because of the 4 per cent threshold that discriminates against minor parties. At the same time, the method of calculating electoral funding does clearly embody the principle of political equality.

In sum, the government is suggesting retrograde proposals that should be abandoned. Instead, there should be a broader debate on how to improve the regulation of money in politics. With such a debate, there would be some hope of putting in place a regulatory framework that ensures parties are adequately funded to perform their functions, while avoiding or minimising the dangers such funding poses to Australia’s democracy.

14 Commonwealth Electoral Act 1918 (Cth) s 327(2)(c).
15 See Income Tax Assessment Act 1997 (Cth) s 30-15 (Table, item 3).
16 Commonwealth Electoral Act 1918 (Cth) ss 294, 297.
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