

Election funding and disclosure in Australia: a quick guide to recent reforms and current issues

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Overview

The Australian federal political funding and disclosure system has two main components:

- a disclosure scheme including annual disclosure of total receipts, total payments, total debts and donations above the disclosure threshold ([currently \\$13,500](#), indexed annually) for parties and [associated entities](#), annual returns for donors and third party campaigners, and election disclosures for candidates, which are [made public](#), and
- a public funding scheme where parties and candidates are paid an amount per vote ([currently 268.332 cents](#), indexed annually) when they receive over four per cent of the primary vote in their electorate.

History

The modern Australian federal funding and disclosure system, including the requirement for political parties to declare political donations, was [first legislated in 1983](#) as an amendment to the [Commonwealth Electoral Act 1918](#) (CEA). These provisions, now contained in [Part XX of the CEA](#), have evolved somewhat over time, although the basic operation of the system has remained similar.

The funding and disclosure provisions were introduced by the Hawke Labor Government in response to the September 1983 [First Report](#) of the Joint Select Committee on Electoral Reform (JSCER), the forerunner to the current [Joint Standing Committee on Electoral Matters \(JSCEM\)](#).

The JSCER's *First Report*, and the changes to the CEA that resulted from that report, largely created the modern federal electoral environment. Reforms included:

- the creation of the [Australian Electoral Commission](#) (AEC) as an independent statutory agency
- making the process of re-drawing electoral boundaries independent of the government of the day
- requiring the registration of political parties
- the introduction of public funding for political parties and
- the introduction of a disclosure scheme for political donations ('gifts' in the CEA).

The public funding scheme, originally 60 cents per vote for House of Representatives candidates and 30 cents for Senate candidates, [was only to the amount of electoral expenditure incurred](#). That is, it was a reimbursement for the amount the candidate or party spent on their election campaign, up to a certain amount.

The disclosure regime was explicitly linked to the provision of public funding to political parties. In the [Second Reading Speech](#) for the 1983 Bill, the Special Minister of State stated:

An essential corollary of public funding is disclosure. They are two sides of the same coin. Unless there is disclosure the whole point of public funding is destroyed. The legislation lays down that donations for Federal election purposes of \$200 or more to a candidate and \$1000 to a party be disclosed and the donor identified. Radio stations, television stations, printers and newspapers are required to report electoral expenditure to the Electoral Commission. These organisations must identify the source of the funds. Anonymous donations above the set limits cannot be accepted by candidates or parties.

As initially implemented, the amendments to the *CEA* required disclosure of all donations over \$1,000 to parties or \$200 to candidates (the 'disclosure threshold') within 15 weeks after an election.

In 1995 the [CEA was amended](#) by the Keating Labor Government to remove the requirement for parties to disclose details of their political expenditure, so that only total expenditure, income and debts was reported. The amendment also raised the [disclosure threshold to \\$1,500](#), and required annual reporting by donors. The changes also increased public funding to \$1.50 for each House of Representatives and Senate first preference vote and removed the link between public funding and electoral expenditure incurred by the candidate or party, meaning that public funding would now be paid at the maximum rate based on the vote received.

In 2006 the [CEA was amended](#) by the Howard Coalition Government to increase the [disclosure threshold to \\$10,000](#), indexed to CPI, and to require organisations or individuals incurring political expenditure over the threshold to submit an annual return to the AEC. This amendment also abolished the requirements for broadcasters and publishers to lodge disclosure returns.

The funding and disclosure system has undergone no substantial changes since 2006, other than annual CPI increases in the amount of public funding per vote and the disclosure threshold.

Recent reform efforts at the Commonwealth level

Prior to its [Inquiry into the 2016 Federal Election](#), the JSCEM last considered the issue of disclosure of political donations under the Gillard Labor Government in 2011. Some of the [recommendations of the Committee's 2011 Report](#) included:

- reducing the disclosure thresholds on donations to \$1,000 (non-indexed)
- amending the definition of 'gift' in the *CEA* to include fundraising events
- requiring political parties to aggregate donations of any value, not just values that exceed the disclosure threshold, making enforcement and identifying discrepancies more efficient and
- implementing detailed disclosure of expenditure by political parties and associated entities.

The [Coalition members of the Committee issued a Dissenting Report](#) arguing against reducing the disclosure threshold or amending the definition of 'gift' to incorporate other fundraising activities.

Prior to this, in 2008 the Rudd Labor Government produced the [Electoral Reform Green Paper: Donations, Funding and Expenditure](#) and flagged its intention to reform the funding and disclosure system. Labor subsequently introduced several pieces of legislation to reform the funding and disclosure system, none of which passed Parliament. [The Commonwealth Electoral Amendment \(Political Donations and Other Measures\) Bill 2008](#) sought to reduce the disclosure threshold to \$1,000 and would have banned donations of 'foreign property', but was not passed by the Parliament. A subsequent bill, the [Commonwealth Electoral Amendment \(Political Donations and Other Measures\) Bill 2009](#), lapsed at the end of the 42nd Parliament.

The 2009 Bill was essentially reintroduced in the 43rd Parliament as the [Commonwealth Electoral Amendment \(Political Donations and Other Measures\) Bill 2010, which](#) lapsed in the Senate at the end of the 43rd Parliament. A similar bill, the [Commonwealth Electoral Amendment \(Donations Reform and Transparency Bill\) 2016](#), was introduced by Labor into the Senate in November 2016, and in the House of Representatives in February 2017 as the [Commonwealth Electoral Amendment \(Donation Reform and Transparency\) Bill 2017](#). As of June 2017 both of these bills are currently before the Parliament, as is a [similar Bill](#) introduced into the Senate by the Greens.

In 2013 there was [reportedly an agreement](#) between the ALP and the Coalition to reduce the disclosure threshold to \$5,000 and introduce additional public funding to parties. This would have been the [Government's response to the 2011 JSCEM report](#). After negative reactions from the public (and some parliamentarians), [it was abandoned](#). There have been no subsequent attempts to change the disclosure threshold by the Government.

During its 2016 federal election inquiry the JSCEM released an [Interim Report](#) recommending banning foreign donations, including a ban on foreign donations to third parties engaged in political campaigning. The recommendations were not unanimous, with dissenting reports from [Senator Leyonhjelm](#), [Labor](#) and the [Greens](#). No legislation has been introduced by the Government to implement these recommendations.

Constitutional restrictions on regulating political donations

While the [Australian Constitution](#) says little directly about political funding and disclosure, a number of High Court cases in recent years have affected the scope of the system. The main points from the most relevant High Court cases are as outlined below.

From [Nationwide News](#) and [ACTV](#) (1992):

- There is an implied freedom of political communication, as it is a necessary part of a system of responsible government.
- A blanket prohibition on political TV and radio advertisements during elections was found invalid as it unjustifiably infringed the freedom.

From [Lange](#) (1997):

- The implied freedom of political communication is limited to what is needed for the operation of our system of government, as provided by the *Constitution*.
- The test is whether a law burdens the freedom, and if so is it reasonably appropriate and adapted, or proportionate, to serve a legitimate end?

From [Unions NSW](#) (2013):

- A NSW provision that banned political donations from anyone other than an individual on the electoral roll was found to be invalid because it restricted political communication and was not reasonably and appropriately adapted to achieving a legitimate aim such as preventing corruption or undue influence.
- A provision that aggregated the electoral advertising expenditure caps of parties and their affiliate organisations was similarly found invalid.

From [McCloy](#) (2015):

- Bans in NSW on donations from specified ‘prohibited donors’, particularly property developers; bans on indirect campaign contributions; and caps on donations were all found to be valid as they were proportional to the legitimate purpose of preventing corruption and undue influence.
- Affirmed that any provision that potentially infringes the implied freedom of political communication is valid if it serves a legitimate purpose in doing so and is proportional, or reasonably appropriate and adapted, to that legitimate purpose.

Advertising bans

While subsequent cases such as *Lange* and *McCloy* have expanded upon the test for determining if an infringement of the implied freedom of communication is valid or not, there has been no specific ruling on advertising bans since the ban struck down in *ACTV* in 1992.

In *ACTV*, as summarised in [McCloy](#):

The constitutional vice identified by Mason CJ was that the regulatory regime severely restricted freedom of speech by favouring the established political parties and their candidates. It also excluded from the electoral process action groups who wished to present their views to the community without putting forward candidates.

Notably, *ACTV* concerned a blanket ban on advertising during elections, combined with a requirement to give free time to established parties. A lesser curtailment of advertising could, possibly, be seen to be valid if it was a proportionate response to a legitimate purpose, but it would be up to the court to consider the approach on the facts of the case.

For example, in an early post-*ACTV* case, [Muldowney v South Australia \(1996\) 186 CLR 352](#), the High Court found that South Australian provisions prohibiting the advocacy of any non-prescribed method of voting were valid because the curtailment of the freedom caused by the provisions was appropriate and adapted to the purpose

of enhancing the democratic processes. Similarly, in *McCloy*, the general cap on donations was also seen as a proportionate response to the purpose of preventing corruption and undue influence.

Donation caps

In *McCloy* the High Court found that NSW legislation imposing a general cap on all donations was valid as a legitimate means of pursuing the objective of removing the risk and perception of corruption and undue influence. In *Unions NSW*, the Court found that a provision that aggregated the electoral advertising expenditure caps of parties and their affiliate organisations was invalid as it was not reasonably and appropriately adapted to achieving a legitimate aim such as preventing corruption or undue influence. The High Court also found in *Unions NSW* that a provision banning political donations from anyone other than an individual on the electoral roll was invalid.

In reaching this conclusion in *Unions NSW*, the High Court affirmed the role that organisations as well as individuals play in democratic communication, so any attempt to restrict donations from organisations, without a rational connection to a legitimate purpose (such as evidence of corruption) may be problematic. Responding to a 2016 statement from the Prime Minister envisaging restricting donations to persons on the electoral roll, Professor Anne Twomey [commented](#) that :

that suggestion would not be legal.

The High Court has held that corporations and unions and other bodies that are subject to laws do also have a role in political communication and influencing that through donations.

Therefore you couldn't do that, that's the one thing we can be sure about.

Labor and the Coalition have shown no inclination to include donation caps in their donation reform proposals, however the [Senate agreed to a motion in June 2017](#) that included a call for a cap on domestic donations.

Bans on foreign political donations

According to the [Political Finance Database](#) of the International Institute for Democracy and Electoral Assistance (International IDEA), Australia is one of the few countries where donations from foreign interests to political parties or candidates is not prohibited. In defining 'foreign interests', International IDEA includes entities that 'contribute directly or indirectly [and who] are governments, corporations, organizations or individuals who are not citizens; that do not reside in the country or have a large share of foreign ownership.'

Of comparable English-speaking democracies, only New Zealand allows overseas donations to parties, however such donations are capped at \$NZ 1,500. While a number of European countries do not prohibit donations to parties from foreign interests, at least some, such as Germany, Spain and Switzerland, do have some restrictions on such donations. Allowing donations from foreign interests to candidates is slightly more common internationally, but again when comparable English speaking democracies are considered, only New Zealand also allows such donations (again with a cap of \$NZ 1,500).

Similarly to donation caps, following *McCloy*, bans on foreign political donations are potentially constitutionally acceptable provided that the High Court can be persuaded that such a ban is valid as a proportional means of pursuing a legitimate objective such as removing the risk and perception of corruption and undue influence. Given that ASIO has warned Australian political parties on the [risk of taking donations from certain foreign donors](#), it seems possible that an argument relating to a risk of corruption and undue influence could be made in this context.

Campaign expenditure

Donations, disclosure and public funding do not exist in a policy vacuum, but rather interact with the political and campaign environment. A healthy democracy depends on active public political debate, and in most modern democracies this is carried out via the media. In Australia political advertising, particularly on television, likely makes up a significant proportion of the cost of an election campaign, although the true cost is not publicly known.

There is no accurate information on the costs of federal election campaigns in Australia, or how those costs are broken down. The *CEA* only requires parties to declare their total expenditure for each year—specific election costs are not separated out. It is therefore impossible to calculate exactly how much advertising campaigns cost in relation to the overall election costs, although the Liberal Party and Labor were estimated to have spent

[\\$6.9m and \\$4.9m respectively](#) on advertising in traditional media in the eight weeks of the 2016 election campaign.

In 1992 in the *ACTV* case the High Court struck down the amendments to the [Broadcasting Act 1942](#) put in place by the Hawke Labor Government's [Political Broadcasts and Political Disclosures Act 1991](#), which would have banned paid political advertising during election campaigns in Australia and required broadcasters to grant free time to political parties. The High Court stated that the [Constitution contained an implied right to political communication](#) and that the restrictions would have impinged upon those rights.

As such, there is little prospect of reducing the cost of Australian election campaigns via the route taken in the UK and New Zealand by banning political advertising on television and substituting it with free broadcast time. While it is likely that the costs of campaigns will continue to increase over time, online campaigns, such as Labor's 2016 campaign on Medicare, are [considerably cheaper than television campaigns](#).

In the absence of a way to contain the major costs of election campaigns, the money must come from somewhere—and under the current system this will inevitably be some combination of public funding and donations.

On the basis of the [2015–2016 annual returns](#), the major political parties in Australia reported the following total receipts and expenses. Not all of the receipts will be donations and not all of the expenses will be election-related, but the figures give some indication of the scale of the amounts involved:

Party	Total amount received	Total expenditure
Liberals and Nationals	\$95,826,360.00	\$78,014,006.00
ALP	\$60,973,958.00	\$49,136,883.00
Greens	\$15,914,547.00	\$14,502,922.00
Liberal Democratic Party	\$817,687.00	\$1,503,737.00
Nick Xenophon Team	\$1,103,317.00	\$678,791.00
Family First	\$439,012.00	\$453,048.00
Katter's Australian Party	\$555,412.00	\$499,612.00
Pauline Hanson's One Nation	\$333,198.00	\$294,870.00
Derryn Hinch's Justice Party	\$105,409.00	\$173,687.00
Jacqui Lambie Network	\$121,793.00	\$85,215.00
All others	\$11,861,420.00	\$10,779,236.00
Grand Total	\$188,052,113.00	\$156,122,007.00

Source: Compiled by the Parliamentary Library from AEC data

According to the AEC, [a total of \\$62,778,275.03 of public funding was paid to parties and candidates](#) as a result of the 2016 federal election (paid at a rate of 262.784 cents per House of Representatives and Senate vote). Seventy-five per cent of this (\$47,394,840.57) was paid to the Labor and Liberal parties. In Australian elections, public funding, even at almost \$63 million for the 2016 federal election, currently only contributes a small proportion of the total expenditure in an election year. The exact composition of the remainder is unknown, but will come largely from donations.

Assuming that the cost of elections is not going to decrease substantially, the main policy options in Australia for election finance reform would seem to relate to public funding and donation disclosure. These approaches have been attempted recently in relation to federal elections, but no changes have occurred.

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