

The Senate

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Select Committee into the Political  
Influence of Donations

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Political Influence of Donations

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# Contents

<b>List of Recommendations</b> .....	<b>v</b>
<b>Abbreviations</b> .....	<b>ix</b>
<b>Members</b> .....	<b>xi</b>
<b>Chapter 1 – Introduction</b> .....	<b>1</b>
Conduct of the inquiry .....	1
Structure of the report .....	2
Legislative definitions .....	2
Current federal regulation .....	4
State and territory regulation .....	8
<b>Chapter 2 – Background</b> .....	<b>11</b>
History .....	11
Sources of political party funding .....	16
Campaign expenditure .....	17
2016 Australian federal election .....	18
Push for reform .....	20
<b>Chapter 3 – Political donations: A corrupting influence?</b> .....	<b>21</b>
Failure of current political finance regime .....	22
Patterns suggesting undue influence .....	23
Motivations and reasons behind political donations .....	28
Consequences of the current regime .....	40
Committee view .....	43
<b>Chapter 4 – Third party regulation</b> .....	<b>45</b>
Current third party regulation .....	46
Options for increased regulation .....	48
Should all thirds parties be regulated the same? .....	52
Committee view .....	52
Charities as third party organisations .....	53
Committee view .....	58
<b>Chapter 5 – Barriers to transparency</b> .....	<b>59</b>
Calls for reform .....	59

Barriers to transparency .....	61
<b>Chapter 6—Safeguarding integrity.....</b>	<b>79</b>
Jurisdictional inconsistency .....	102
<b>Dissenting Report from Labor Senators.....</b>	<b>107</b>
<b>Dissenting Report from Coalition Senators.....</b>	<b>111</b>
<b>Appendix 1—Submissions, additional information, answers to questions on notice and tabled documents.....</b>	<b>115</b>
<b>Appendix 2—Public Hearings .....</b>	<b>119</b>

# List of Recommendations

## Recommendation 1

3.103 The committee recommends that the Australian Government amend the definition of 'gift' under the *Commonwealth Electoral Act 1918* to include payments made in return for membership subscriptions and attendance at events and fundraisers of candidates, political parties and associated entities.

## Recommendation 2

4.35 In recognition that expenditure caps on political parties and associated entities would likely divert donations into third parties, the committee recommends that the Australian Government ensure that any mechanism to limit third party expenditure would enable continued democratic participation and advocacy, while removing any unfair advantage that can be enjoyed by interest groups with the largest financial resources.

## Recommendation 3

5.44 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a fixed disclosure threshold of \$1,000, to be calculated cumulatively over a whole party group.

## Recommendation 4

5.56 The committee recommends that the annual return reporting for political parties and associated entities require much more detailed reporting with specific classifications for each type of income currently listed under 'other receipts' to ensure that income is categorised transparently.

## Recommendation 5

5.90 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to require online, continuous real-time disclosure to the Australian Electoral Commission of donations to political parties, candidates and associated entities.

## Recommendation 6

5.91 The committee recommends that the Australian Electoral Commission ensures that the presentation of political finance data on their website provides greater accessibility and functionality of files to facilitate public research and investigation.

## **Recommendation 7**

**6.24** The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a cap on donations to political parties, candidates and associated entities to a maximum value of \$3,000 per parliamentary term. Donations made by the same donor to the same recipient should be aggregated for the purpose of the cap.

## **Recommendation 8**

**6.56** The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a ban on foreign donations to political parties, candidates and associated entities. For the purpose of the ban, foreign donations should be defined as donations from a source that is not an Australian citizen or resident, or an entity registered in Australia.

## **Recommendation 9**

**6.57** The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a ban on donations from developers, banks, mining companies and the tobacco, liquor, gambling, defence and pharmaceutical industries to political parties, candidates and associated entities.

## **Recommendation 10**

**6.75** The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce caps on campaign expenditure by political parties, candidates and associated entities. Expenditure caps should be indexed to inflation and subject to periodic review.

## **Recommendation 11**

**6.93** The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to:

- increase the regulatory powers of the Australian Electoral Commission to monitor and enforce compliance with the political funding and disclosure regime;
- expand the regulatory powers of the Australian Electoral Commission to investigate and aggregate donations made below the disclosure threshold; and
- introduce strict sanctions and penalties for breaches of legislative requirements.

### **Recommendation 12**

**6.94 The committee recommends that the Australian Government establish a federal independent integrity commission.**

### **Recommendation 13**

**6.105 The committee recommends that the Australian Government implement a small increase in public funding to political parties given the significant loss in revenue that would occur from implementing donations caps.**

### **Recommendation 14**

**6.116 The committee recommends that the Australian Government initiate discussions between state and territory governments and the Commonwealth with regard to political donations regulation—including legislative definitions, allowable donors, disclosure thresholds and disclosure timeframes—with a view to developing harmonised laws within two years.**

# Abbreviations

ACF	Australian Conservation Foundation
ACFID	Australian Council for International Development
ACOSH	Australian Council on Smoking and Health
ACOSS	Australian Council of Social Service
AEC	Australian Electoral Commission
AHA	Australian Hotels Association
ALP	Australian Labor Party
CCA	Community Council for Australia
CEDAAR	Centre for Drug, Alcohol and Addiction Research
CPI	Consumer Price Index
Crown	Crown Resorts Limited
Dark Money report	<i>Dark Money: The Hidden Millions in Australia's Political Finance System</i>
EDS	Electronic Disclosure System
Electoral Act	<i>Commonwealth Electoral Act 1918</i>
Election Funding Act	<i>Election Funding, Expenditure and Disclosures Act 1981 (NSW)</i>
ECQ	Electoral Commission Queensland
FARE	Foundation for Alcohol Research and Education
FSC	Financial Services Council
Green Paper	<i>Electoral Reform Green Paper—Donations, Funding and Expenditure</i>
ICA	Insurance Council of Australia
ICAC	NSW Independent Commission Against Corruption
JSCEM	Joint Standing Committee on Electoral Matters
JSCER	Joint Select Committee on Electoral Reform
Liberal Party	Liberal Party of Australia
Macquarie	Macquarie Group
MCAAY	McCusker Centre of Action on Alcohol and Youth
MCA	Minerals Council of Australia
NAB	National Australia Bank
Nine	Nine Entertainment Co
NSW	New South Wales
OECD	Organisation for Economic Cooperation and Development
PAC	Political Action Committee
PHAA	Public Health Association of Australia
PwC	PricewaterhouseCoopers
St Vincent de Paul	St Vincent de Paul Society National Council
The Synod	Synod of Victoria and Tasmania, Uniting Church in Australia
TIA	Transparency International Australia
WET	Wine equalisation tax
Woodside	Woodside Energy Ltd

# Members

## Chair

Senator Richard Di Natale

AG, VIC

## Deputy Chair

Senator Chris Ketter

ALP, QLD

## Members

Senator Jim Molan AO, DSC (from Feb 2018)

LP, NSW

Senator Barry O'Sullivan

LNP, QLD

Senator Carol Brown (from Sep 2017)

ALP, TAS

Senator Peter Georgiou (from Sep 2017)

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Senator Jacqui Lambie (Sep 2017 to 14 Nov 2017)

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# Chapter 1

## Introduction

- 1.1 On 17 August 2017, the Senate established the Select Committee into the Political Influence of Donations to inquire into and report, on 15 November 2017, on the following matters:
- (a) the level of influence that political donations exert over the public policy decisions of political parties, Members of Parliament and Government administration;
  - (b) the motivations and reasons why entities give donations to political parties and political candidates;
  - (c) the use of shell companies, trusts and other vehicles to obscure the original source of political donations;
  - (d) how to improve the integrity of political decision-making through our political donations regime and the public funding of elections;
  - (e) any other related matters.<sup>1</sup>
- 1.2 The reporting date for the inquiry was extended on a number of occasions—initially to 7 December 2017 on 7 September 2017<sup>2</sup>; to the last sitting day in March 2018 on 27 November 2017<sup>3</sup>; to 10 May on 28 March 2018<sup>4</sup>; and finally to 6 June 2018 on 10 May 2018.<sup>5</sup>

### Conduct of the inquiry

- 1.3 The committee advertised the inquiry on its website and wrote to a number of individuals and organisations, inviting submissions by 9 October 2017. The committee continued to accept submissions after this date. In response, the committee received 36 submissions, as well as additional information and answers to questions on notice, which are listed at Appendix 1.
- 1.4 The committee held three public hearings for the inquiry. Public hearings were held on 2 November 2017 in Melbourne, 6 November 2017 in Canberra, and 30 January 2018 in Sydney. The witnesses who appeared before the committee are listed at Appendix 2.

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<sup>1</sup> *Journals of the Senate*, No. 55, 17 August 2017, pp. 1760–1761.

<sup>2</sup> *Journals of the Senate*, No. 59, 7 September 2017, p. 1898.

<sup>3</sup> *Journals of the Senate*, No. 72, 27 November 2017, p. 2283.

<sup>4</sup> *Journals of the Senate*, No. 94, 28 March 2018, p. 2982.

<sup>5</sup> *Journals of the Senate*, No. 97, 10 May 2018, p. 3097.

- 1.5 References to the Committee Hansard are to the Proof Hansard. Page numbers may vary between the Proof and Official Hansard transcripts.
- 1.6 The committee thanks all the individuals and organisations who made submissions and who gave evidence to assist the committee with its inquiry.

### **Structure of the report**

- 1.7 The report comprises six chapters, including this introductory chapter:
- Chapter 2 provides an overview of the history behind the federal political funding and disclosure regime.
  - Chapter 3 discusses the risk of corruption through undue influence that is posed by donations under the current federal political finance regime. Examples of patterns of donations suggesting undue influence are also examined, as well as the nature, motivations and reasons behind political donations from large corporate interests.
  - Chapter 4 explores the options for regulating third parties in relation to their political activity and associated expenditure.
  - Chapter 5 examines in detail the significant barriers to transparency of the current political funding and disclosure regime.
  - Chapter 6 explores proposed reform measures to the political finance regime to safeguard the integrity of political decision-making.

### **Legislative definitions**

- 1.8 There are various categories of participants in the political process with regard to funding and disclosure, as defined by the *Commonwealth Electoral Act 1918* (Electoral Act). These are outlined below.

#### *Political party*

- 1.9 A 'political party' is an organisation with the object or activity of promoting a candidate or candidates to the House of Representatives or the Senate. A 'registered political party' is a political party with at least one member in the Commonwealth Parliament or 500 members, and is registered under Part XI of the Electoral Act.<sup>6</sup>

#### *Candidates and Senate groups*

- 1.10 A 'candidate' is an Australian citizen over 18 years of age who is nominated for election.<sup>7</sup>
- 1.11 'Senate groups' consist of two or more candidates for a Senate election that have made a joint request that their names be grouped on the ballot papers.<sup>8</sup>

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<sup>6</sup> *Commonwealth Electoral Act 1918*, ss. 4(1).

<sup>7</sup> *Commonwealth Electoral Act 1918*, s. 162 and 163.

<sup>8</sup> *Commonwealth Electoral Act 1918*, s. 168.

*Donor*

1.12 A political 'donor' is a person or organisation who makes a donation to:

- a registered political party or the State branch of a registered political party;
- any person or body with the intention of benefiting a particular registered political party or the State branch of a registered political party;<sup>9</sup> or
- a candidate or a member of a Senate group during the disclosure period in relation to an election.<sup>10</sup>

*Associated entity*

1.13 An 'associated entity' is defined under section 287 of the Electoral Act as an entity:

- that is controlled by one or more registered political parties; or
- that operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or
- that is a financial member of a registered political party; or
- on whose behalf another person is a financial member of a registered political party; or
- that has voting rights in a registered political party; or
- on whose behalf another person has voting rights in a registered political party.<sup>11</sup>

1.14 Examples of associated entities include '500 clubs', 'think tanks', registered clubs, service companies, trade unions and corporate party members.<sup>12</sup>

*Third parties*

1.15 Presently, the Electoral Act does not explicitly define third parties. However, the Electoral Act requires that individuals or organisations that incur 'political expenditure' above the disclosure threshold lodge an annual return with the Australian Electoral Commission (AEC).

1.16 Subsection 314AEB(1) of the Electoral Act specifies those types of political expenditure which require an individual or organisation to provide an annual

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<sup>9</sup> If a donation is made to an associated entity with the intention of benefiting a particular registered political party, it is considered to be made to that political party.

<sup>10</sup> Australian Electoral Commission, *Donors*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/donors/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/donors/index.htm), (accessed 15 March 2018).

<sup>11</sup> *Commonwealth Electoral Act 1918*, ss. 287(1).

<sup>12</sup> Australian Electoral Commission, *Associated entities*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/associated-entities/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/associated-entities/index.htm), (accessed 15 March 2018).

return to the AEC.<sup>13</sup> Political expenditure is expenditure incurred by a person or organisation, by or with their authority, on:

- (i) the public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate by any means;
- (ii) the public expression of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election) by any means;
- (iii) the communicating of any electoral matter (not being matter referred to in subparagraph (i) or (ii)) for which particulars are required to be notified under section 321D;
- (iv) the broadcast of political matter (not being matter referred to in subparagraph (iii)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992;
- (v) the carrying out of an opinion poll, or other research, relating to an election (whether or not a writ has been issued for the election) or the voting intentions of electors.<sup>14</sup>

1.17 The committee notes that subparagraph 314AEB(1)(a)(ii) of the Electoral Act was amended in March 2018 with the commencement of the *Electoral and Other Legislation Amendment Act 2017*. The subparagraph had previously read 'the public expression of views on an issue in an election by any means'. As outlined in the Explanatory Memorandum for the bill, this amendment was intended to clarify that in order to give rise to the need for an annual return, the public expression of views must relate to an upcoming election rather than a past election.<sup>15</sup>

## **Current federal regulation**

1.18 Australia's federal political funding and disclosure regime is established under Part XX of the Electoral Act. The regime consists of two main components:

- a financial disclosure scheme that requires candidates, registered political parties, their state and territory branches, associated entities, donors and third parties to lodge annual or election period returns with the AEC; and
- a public funding scheme of political candidates and Senate groups that obtain at least four per cent of the formal first preference vote in the electoral division or the state or territory they contested.

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<sup>13</sup> Subsection 314AEB(1) of the Electoral Act was recently amended with the commencement of the *Electoral and Other Legislation Amendment Act 2017* on 14 March 2018 (passed by the Parliament on 11 September 2017).

<sup>14</sup> *Commonwealth Electoral Act 1918*, s. 314AEB.

<sup>15</sup> *Explanatory Memorandum*, Electoral and Other Legislation Amendment Bill 2017, p. 11.

- 1.19 The original intention behind the federal political funding and disclosure regime was twofold: the provision of public funding to reduce the reliance of political parties and candidates on private funding, such as donations; and to increase overall transparency and inform the public about the financial dealings of political parties, candidates and other participants in the electoral process.<sup>16</sup>
- 1.20 The public funding and disclosure schemes that comprise the current regime were explicitly linked to one another when the regime was first legislated by an amendment to the Electoral Act in 1983.<sup>17</sup> In his second reading speech, the then Special Minister of State, the Hon Kim Beazley MP, stated that:

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.<sup>18</sup>

### *Disclosure requirements*

- 1.21 Disclosure of certain information, such as details of 'gifts' and donations, is subject to a minimum threshold below which disclosure is not required. The prescribed disclosure threshold is indexed annually to the Consumer Price Index (CPI). The disclosure threshold for the period of 1 July 2017 to 30 June 2018 is \$13,500.<sup>19</sup>

- 1.22 A 'gift' is defined under the Electoral Act as:

...any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a payment under Division 3; or
- (b) an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person's membership of the party, branch or division.<sup>20</sup>

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<sup>16</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2; Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 9.

<sup>17</sup> See *Commonwealth Electoral Legislation Amendment Act 1983*.

<sup>18</sup> The Hon Kim Beazley MP, Special Minister of State, *House of Representatives Hansard*, 2 November 1983, p. 2215.

<sup>19</sup> Information about past disclosure threshold amounts is available on the AEC website at: [www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm)

<sup>20</sup> *Commonwealth Electoral Act 1918*, ss. 287(1).

1.23 The current funding and disclosure regime prevents the receipt of anonymous donations<sup>21</sup> above the disclosure threshold, but does not otherwise limit the amount of donations that can be received, nor does it place any limits on election expenditure or the industries able to make donations. Additionally, the Electoral Act does not currently restrict foreign citizens or corporations from making political donations.

#### **Annual returns**

1.24 Registered political parties and associated entities must lodge annual disclosure returns for the previous financial year with the AEC by 20 October each year.<sup>22</sup> For the purposes of disclosure, organised state or territory branches of registered political parties are treated as being separate to the registered party and must complete their own annual return.<sup>23</sup>

1.25 Annual disclosure returns for political parties and associated entities must show the total value of receipts, payments and debts, as well as details of any individual receipts (monetary and non-monetary) that exceed the disclosure threshold.<sup>24</sup>

1.26 Donors and third parties who incur political expenditure (see paragraph 1.16) above the disclosure threshold are also required to lodge an annual return with the AEC. Donor and third party annual returns must be lodged by 17 November each year.<sup>25</sup>

1.27 For donors, details of donations made to a political party, including gifts-in-kind, are aggregated for the purpose of annual returns. That is, if the total of donations made to one political party exceeds the disclosure threshold, all donations to that political party, regardless of their value, must be disclosed.

1.28 In the case of third parties, where a person or organisation has incurred expenditure more than the disclosure threshold for one or more of the five categories of political expenditure (see paragraph 1.16), the person or organisation must disclose the amount of political expenditure incurred for each category. Expenditure for purposes other than these categories is not

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<sup>21</sup> Section 306(1) of the Electoral Act provides that certain gifts (sometimes referred to as anonymous donations) made to or for the benefit of a political party or a person acting on behalf of a political party are unlawful unless the name and address of the person making the gift are known to the person receiving the gift.

<sup>22</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

<sup>23</sup> Australian Electoral Commission, *Political parties*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/political-parties/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/political-parties/index.htm) (accessed 15 March 2018).

<sup>24</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

<sup>25</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

political expenditure as defined by the Electoral Act and does not need to be reported.

- 1.29 Annual disclosure returns are made available for public inspection on the AEC website from the first working day in the following February.<sup>26</sup>

### **Election returns**

- 1.30 Political candidates and Senate groups are required to lodge election disclosure returns with the AEC before the expiration of 15 weeks after election day. Election returns must show the total value of donations and number of donors, details of individual donations received above the disclosure threshold, and total electoral expenditure incurred between the issue of the writ and election day.<sup>27</sup> Individuals or organisations who have made political donations in excess of the disclosure threshold must also lodge election returns.

- 1.31 Election returns are published on the AEC website 24 weeks after election day.<sup>28</sup>

### *Role of the Australian Electoral Commission*

- 1.32 The AEC is funded to deliver one key outcome:

Maintain an impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of polling services, and targeted education and public awareness programs.<sup>29</sup>

- 1.33 The AEC administers the political funding and disclosure regime in accordance with the requirements in Part XX of the Electoral Act.<sup>30</sup>

### *Public funding scheme*

- 1.34 By reducing reliance on private funding, the introduction of a public funding scheme aimed to 'level the playing field' and reduce the potential for corruption and undue influence on the electoral process.<sup>31</sup>

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<sup>26</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

<sup>27</sup> The issue of a writ triggers the election process. Writs are issued within 10 days of the dissolution of Parliament.

<sup>28</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

<sup>29</sup> Australian Electoral Commission, *Annual Report 2015–16*, p. 8.

<sup>30</sup> The Commonwealth electoral system was originally administered by a branch of the Department of Home Affairs in accordance with the *Commonwealth Electoral Act 1902*. The Australian Electoral Office was created in 1973, which then became Australian Electoral Commission in 1984 with the commencement of Part XX of the Electoral Act.

<sup>31</sup> Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 34.

- 1.35 As previously noted, a candidate or Senate group is eligible for public funding if they obtain at least four per cent of the formal first preference vote in the electoral division or the state or territory they contested. Under the current regime, public funding operates as a direct entitlement scheme; that is, candidates and Senate groups receive public funding based solely on the number of first preference votes they obtain and are not required to demonstrate matching campaign expenditure.
- 1.36 The amount of public funding payable is calculated by multiplying the number of first preference votes received by the applicable funding rate, which is indexed every six months in line with CPI.<sup>32</sup> The funding rate for the six months from 1 January 2018 to 30 June 2018 is \$2.70 for each eligible formal first preference vote received.<sup>33</sup>

### **State and territory regulation**

- 1.37 Under Australia's federal system of government, political funding and disclosure schemes operate not only at a Commonwealth level, but also at a state and territory level.
- 1.38 The various state and territory schemes that apply to elections and related activities within their relative jurisdictions are broadly similar to the federal regime in terms of their objectives and approach. However, some quite significant differences have evolved between the states and territories in response to local factors, particularly with regard to disclosure thresholds and the degree of regulation involved.
- 1.39 A number of initiatives to improve political funding and disclosure regulations have been undertaken at the state level; in particular, significant reforms have been implemented in New South Wales (NSW) and Queensland. NSW is generally considered to have the most comprehensive and stringent regulations of any state or territory.
- 1.40 In September 2017, the Victorian Labor Government announced that it would introduce legislative reforms to give the state the 'strictest and most transparent political donation laws in Australia'. The proposed reforms include:
- capping donations at \$4,000 over a four-year parliamentary term;
  - reducing the disclosure limit from \$13,500 to \$1,000 per financial year; and
  - banning foreign donations.<sup>34</sup>

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<sup>32</sup> Section 321 of the Electoral Act specifies the formula for calculating public funding.

<sup>33</sup> Information about the funding rates at previous federal elections is available on the AEC website at: [www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/Current\\_Funding\\_Rate.htm](http://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm)

<sup>34</sup> The Hon Daniel Andrews MP, Premier, *Victoria to have nation's strictest donation laws*, Media Release, 18 September 2017.

- 1.41 The Northern Territory Labor Government has also announced steps toward reforming its political funding and donations arrangements, establishing an inquiry into political donations in December 2016. The Hon Justice John Mansfield AM was appointed as Commissioner of the inquiry in June 2017.<sup>35</sup>
- 1.42 Issues posed by inconsistencies between the various state and territory and Commonwealth political finance regimes are discussed in Chapter 6.

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<sup>35</sup> The Hon Michael Gunner MLA, Chief Minister, *Restoring Trust—Justice Mansfield to Conduct Inquiry into Political Donations*, Media Release, 15 July 2017.



# Chapter 2

## Background

### History

- 2.1 Australia's present federal political funding and disclosure regime was first legislated in 1983 with the insertion of Part XX into the *Commonwealth Electoral Act 1918* (Electoral Act).<sup>1</sup>
- 2.2 The Joint Select Committee on Electoral Reform (JSCER), the predecessor to the Joint Standing Committee on Electoral Matters (JSCEM), was instrumental in the introduction of the existing public funding and disclosure arrangements.
- 2.3 In its '*First Report*', tabled in September 1983, the JSCER drew attention to the high cost of elections and public disquiet about the influence of political donations.<sup>2</sup> That report made numerous recommendations for reforms concerning public funding and disclosure, which provided for:
  - a system of public funding for political parties for election purposes;
  - funding to political candidates who secure a certain amount of votes;
  - disclosure of sources of funding or services;
  - candidates and parties to keep and submit records of expenditure on campaigns;
  - penalties for not adhering to disclosure requirements; and
  - the establishment of the Australian Electoral Commission (AEC) as an independent statutory authority.<sup>3</sup>

### *Legislative changes*

- 2.4 The federal political finance regime has undergone a number of changes since 1984; however, the basic operation of the regime has remained similar. There has been a general movement away from disclosure based mainly on election expenditure to more comprehensive annual disclosure for those involved in the electoral process.
- 2.5 When it was first introduced, the public funding scheme operated as a reimbursement scheme. Funding was calculated according to the number of formal first preference votes obtained, but was limited to reimbursing political parties, candidates and Senate groups for their actual documented expenditure up to a maximum entitlement.

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<sup>1</sup> Part XX of the Electoral Act was inserted by the *Commonwealth Electoral Legislation Amendment Act 1983* and commenced on 21 February 1984.

<sup>2</sup> Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 153.

<sup>3</sup> Joint Select Committee on Electoral Reform, *First Report*, September 1983, pp. 215–221.

- 2.6 In 1995, the public funding scheme was amended<sup>4</sup> by the Keating Labor Government such that political parties and candidates were no longer required to lodge a reimbursement claim with the AEC for electoral expenditure. A new direct entitlement scheme was introduced, meaning that public funding would now be based solely on the number of eligible first preference votes received.<sup>5</sup>
- 2.7 The Electoral Act was further amended in 2006 by the Howard Coalition Government to increase the prescribed disclosure threshold to 'more than \$10,000', indexed annually to the Consumer Price Index (CPI).<sup>6</sup> Prior to these changes, the disclosure threshold had been \$200 for candidates, \$1,000 for Senate groups, and \$1,500 for political parties. The 2006 amendments also introduced the requirement for individuals or organisations who incur political expenditure to lodge an annual return with the AEC.

### *Electoral Reform Green Paper*

- 2.8 In December 2008, the Rudd Labor Government released the *Electoral Reform Green Paper—Donations, Funding and Expenditure* (Green Paper). The Green Paper was the first part of a consultation process on electoral law reform, concentrating on donation and disclosure reform as well as the public funding of political parties and possible regulation of campaign expenditure.<sup>7</sup>
- 2.9 In introducing the Green Paper, the then Special Minister of State, Senator the Hon John Faulkner, outlined a number of 'new challenges' that Australia's democracy was facing:
- Spiralling costs of electioneering have created a campaigning 'arms race'—heightening the danger that fundraising pressures on political parties and candidates will open the door to donations that might attempt to buy access and influence.
  - New media and new technologies raise questions of whether our legislation and regulation remain appropriate and effective.
  - 'Third party' participants in the electoral process have played an increasing role, influencing the political contest without being subject to the same regulations which apply to political parties, raising concerns about accountability and transparency.

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<sup>4</sup> See *Commonwealth Electoral Amendment Act 1995*.

<sup>5</sup> The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, introduced by the Australian Government into the Senate on 7 December 2017, proposes to amend the Electoral Act to cap public funding to demonstrated electoral expenditure.

<sup>6</sup> See *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.

<sup>7</sup> Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 2.

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- Australia has overlapping electoral systems, regulating different levels of government, creating uncertainty and confusion.<sup>8</sup>
- 2.10 As noted in the Green Paper, the Rudd Labor Government had already acted to address some of these issues by introducing the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 into the Senate in May 2008. That bill sought to amend the political funding and disclosure provisions of the Electoral Act; including, reducing the disclosure threshold to \$1,000, prohibiting the receipt of gifts of foreign property, and limiting public funding to the lesser amount of either actual campaign expenditure or the amount awarded per eligible vote received.
- 2.11 However, the 2008 bill was not passed by Parliament, and a subsequent bill, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009, lapsed at the end of the 42nd Parliament.
- 2.12 The 2009 version of the bill was reintroduced in the 43rd Parliament as the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, but again lapsed in the Senate at the end of that Parliament.

#### *Joint Standing Committee on Electoral Matters (JSCEM)*

- 2.13 Over the past seven years, the JSCEM has conducted several inquiries into issues surrounding political funding and disclosure.
- 2.14 In November 2011, under the Gillard Labor Government, the JSCEM tabled its *Report on the funding of political parties and election campaigns*. The report made 30 recommendations, including:
- reducing the disclosure threshold on donations to \$1,000 and removing CPI indexation;
  - amending the definition of 'gift' in the Electoral Act to include fundraising events;
  - the introduction of a six-monthly disclosure reporting timeframe;
  - imposing a ban on anonymous donations above \$50;
  - requiring political parties to aggregate donations of any value, not just values that exceed the disclosure threshold; and
  - requiring detailed disclosure of expenditure by political parties and associated entities above the disclosure threshold.<sup>9</sup>
- 2.15 In 2012, at the request of the then Special Minister of State, the Hon Gary Gray MP, the JSCEM undertook an inquiry into the AEC's analysis of the Fair Work

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<sup>8</sup> Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 1.

<sup>9</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, November 2011, pp. xxvii–xxxiii.

Australia Report into the Health Services Union. The JSCEM inquiry report contained extensive discussion regarding a list of 17 items that been put forward by the AEC as possible measures to address limitations of Part XX of the Electoral Act.<sup>10</sup> The committee did not support all the possible measures, and a dissenting report by Coalition members rejected all but one.

- 2.16 On 15 October 2015, the Senate referred an inquiry into political donations to the JSCEM; however, the inquiry lapsed with the dissolution of the 44th Parliament.

### **Foreign donations**

- 2.17 During its inquiry into the conduct of the 2016 federal election, the JSCEM released a second interim report on foreign donations in March 2017. That report recommended that foreign donations to political actors be banned. Additionally, the report recommended banning foreign donations to both political actors who are currently regulated under the Electoral Act and those who are not.<sup>11</sup>

- 2.18 In its interim report, the JSCEM highlighted the complexity of political donations more generally and, on 22 August 2017, announced that it would conduct a wider review into political donations and disclosure.<sup>12</sup>

- 2.19 The Australian Government expressed its support for the JSCEM's recommendation to ban foreign donations, noting that the 'coalition government believes that it is important that only Australians and Australian entities can participate in our elections'.<sup>13</sup>

### *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*

- 2.20 On 5 December 2017, the Australian Government announced that it had finalised a comprehensive package of legislative reforms—the 'foreign influence and interference package'—targeting foreign interference and espionage.

- 2.21 The package is complemented by a bill on electoral reform to ban foreign political donations—the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017—which was introduced into the Senate on 7 December 2017. Described as 'an important step in protecting the integrity of

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<sup>10</sup> Joint Standing Committee on Electoral Matters, *Review of the AEC analysis of the FWA Report on the HSU*, September 2012, pp. 41–104.

<sup>11</sup> Joint Standing Committee on Electoral Matters, *Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations*, March 2017, pp. ix, 39–40.

<sup>12</sup> Joint Standing Committee on Electoral Matters, *Review of political donations commences*, Media Release, 22 August 2017.

<sup>13</sup> See Senator the Hon James McGrath, Assistant Minister to the Prime Minister, *Senate Hansard*, 20 June 2017, p. 4361.

Australia's electoral system and ensuring that only those with a meaningful connection to Australia can influence local politics'<sup>14</sup>, the bill responds to the JSCEM's second interim report on foreign donations.

2.22 The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 seeks to address potential foreign influence on Australian elections and ban donations from foreign bank accounts, non-citizens and foreign entities. Specifically, the bill proposes to amend the Electoral Act to:

- establish public registers for key non-party political actors;
- enhance the current financial disclosure scheme by requiring non-financial particulars, such as senior staff and discretionary government benefits, to be reported;
- prohibit donations from foreign governments and state-owned enterprises being used to finance public debate;
- require wholly political actors to verify that donations over \$250 come from an organisation incorporated in Australia, or with its head office or principal place of activity in Australia, or an Australian citizen or Commonwealth elector;
- prohibit other regulated political actors from using donations from foreign sources to fund reportable political expenditure;
- limit public election funding to demonstrated electoral spending;
- modernise the enforcement and compliance regime for political finance regulation; and
- enable the Electoral Commissioner to prescribe certain matters by legislative instrument.<sup>15</sup>

2.23 In anticipation of its introduction, the Minister for Finance, Senator the Hon Mathias Cormann, referred the bill to the JSCEM for inquiry and report on 6 December 2017.

2.24 The JSCEM tabled its 'Advisory report' on the bill on 9 April 2018, noting that it 'agrees in-principle' to the passage of the bill, subject to the Australian Government addressing the 15 recommendations made in the report.<sup>16</sup>

### *Other committee activity*

2.25 On 3 March 2016, the Senate referred the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016 to the Senate

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<sup>14</sup> The Hon Malcom Turnbull MP, Prime Minister of Australia, *Protecting Australia from foreign interference*, Media Release, 5 December 2017.

<sup>15</sup> *Explanatory Memorandum*, Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, pp. 3–4.

<sup>16</sup> Joint Standing Committee on Electoral Matters, *Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, April 2018, p. iii.

Finance and Public Administration Legislation Committee for inquiry and report. The inquiry lapsed with the dissolution of the 44th Parliament.

- 2.26 On 19 April 2016, the matter of Commonwealth legislative provisions relating to oversight of associated entities of political parties was referred to the Senate Finance and Public Administration References Committee for inquiry and report. The final report for the inquiry did not make any recommendations. However, the Committee did comment on the inadequacy of the provisions of the Electoral Act for dealing with associated entities.<sup>17</sup>

### *Non-government legislation before Parliament*

- 2.27 The Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2016 was introduced into the Senate by the Australian Labor Party in November 2016.<sup>18</sup> The bill is substantially similar to that which lapsed at the end of the 43rd Parliament.

- 2.28 This bill seeks to amend the political funding and disclosure provisions of the Electoral Act to:

- reduce the disclosure threshold to \$1,000;
- prohibit the receipt of a gift of foreign property and all anonymous gifts;
- provide that public funding of election campaigning is limited to declared expenditure incurred, or the sum payable calculated on the number of eligible first preference votes received; and
- introduce new offences and penalties, and increase penalties for existing offences.<sup>19</sup>

- 2.29 Also currently before the Parliament are two bills introduced by the Australian Greens: the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016, which is similar to those bills introduced by the Australian Labor Party, and the Commonwealth Electoral Amendment (Donations Reform) Bill 2014, which seeks to prohibit political donations from certain industries.

### **Sources of political party funding**

- 2.30 Political parties raise private funds through a range of means in addition to donations, such as through membership fees, fundraising activities, investments and loans. While donations above the disclosure threshold are

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<sup>17</sup> Finance and Public Administration References Committee, *Commonwealth legislative provisions relating to oversight of associated entities of political parties—Final Report*, May 2016, p. 25.

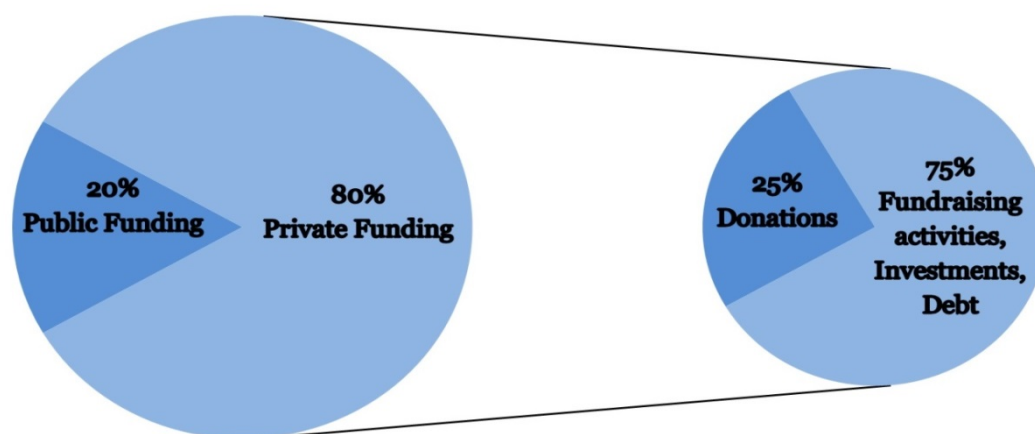
<sup>18</sup> The bill was also introduced into the House of Representatives in February 2017 as the Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2017. However, in accordance with Standing Order 42, was removed from the Notice Paper on 5 September 2017.

<sup>19</sup> *Explanatory Memorandum*, Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2016, [p. 2].

required to be fully accounted for by both donors and recipients, specific details of other sources of private funding are not required in either annual or election disclosure returns.

- 2.31 The Rudd Labor Government's 2008 Green Paper estimated that approximately 80 per cent of the major political parties' funds come from private sources and, of that private funding, approximately 25 percent comes from donations.<sup>20</sup>

**Figure 2.1** Estimated sources of funding of major political parties



## Campaign expenditure

- 2.32 As noted in Chapter 1, in 1995, the public funding scheme under the Electoral Act was amended so that political parties and candidates were no longer required to lodge a reimbursement claim with the AEC for electoral expenditure. Consequently, it is difficult to ascertain the true costs of Australian federal election campaigns, or how this is broken down into specific election costs.

- 2.33 In its 2011 *Report on the funding of political parties and election campaigns*, the JSCEM noted that increases in election expenditure 'has been a feature of election campaigning since the introduction of the funding and disclosure scheme in 1984', further commenting that:

While parties once campaigned only in the period immediately prior to an election, they now engage in continuous campaigning between elections, with a significant increase in campaign activity in the year before an election. Increased campaigning activity has been accompanied by an increase in overall amounts of expenditure by political parties and candidates.<sup>21</sup>

<sup>20</sup> Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 41.

<sup>21</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, November 2011, p. 91.

2.34 The JSCEM's recent *Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* also commented on the changing nature of election campaigning since the relevant provisions were introduced into the Electoral Act:

At the heart of this debate lies the fact that election campaigning today is very different from that in the mid-1980s when relevant provisions in the Electoral Act were written. The campaign period has moved well beyond the time in-between the issuing and return of the election writs. Today, campaigning is continuous and largely issues-based. Campaign messaging is also communicated via a wider range of mediums by a much wider range of entities, including charities, industry groups and religious institutions.<sup>22</sup>

### 2016 Australian federal election

2.35 Based on annual disclosure returns lodged with the AEC, Australian political parties reported the following total receipts and expenditure for 2015–16 (Table 2.1). Not all of the amount received is from donations, and not all of the expenditure is election-related, however the figures give an indication of the scale of amounts involved.<sup>23</sup>

**Table 2.1 Major political party returns for 2015–16**

Political Party	Total amount received (\$)	Total expenditure (\$)
Liberals and Nationals	95,826,360	78,014,006
Australian Labor Party	60,973,958	49,136,883
Australian Greens	15,914,547	14,502,922
Liberal Democratic Party	817,687	1,503,737
Nick Xenophon Team	1,103,317	678,791
Family First	439,012	453,048
Katter's Australian Party	555,412	499,612
Pauline Hanson's One Nation	333,198	294,870
Derryn Hinch's Justice Party	105,409	173,687

<sup>22</sup> Joint Standing Committee on Electoral Matters, *Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, April 2018, p. iii.

<sup>23</sup> Parliamentary Library, *Election funding and disclosure in Australia: a quick guide to recent reforms and current issues*, July 2017, p. 5.

Jacqui Lambie Network	121,793	85,215
All others	11,861,420	10,779,236
<b>Total</b>	<b>188,052,113</b>	<b>156,122,007</b>

Source: Compiled by the Parliamentary Library from AEC data

- 2.36 A total of almost \$62.8 million of public funding—\$2.63 for each eligible first preference vote—was paid to political parties and candidates as a result of the 2016 federal election (Table 2.2).<sup>24</sup> Of the total amount of public funding, 75 per cent of this (approximately \$47.4 million) was paid to the Liberal Party of Australia and Australian Labor Party.<sup>25</sup>

**Table 2.2 Public funding to political parties for the 2016 federal election<sup>26</sup>**

Political party	Total payment (\$)	Per cent of total payment
Liberal Party of Australia	24,203,154.00	38.55
Australian Labor Party	23,191,686.57	36.94
Australian Greens	6,717,055.98	10.70
National Party of Australia	3,261,589.61	5.20
Pauline Hanson's One Nation	1,745,369.28	2.78
Nick Xenophon Team	1,245,236.15	1.98
Derryn Hinch's Justice Party	581,186.24	0.93
Family First	222,940.69	0.36
Katter's Australian Party	159,346.96	0.25
Jacqui Lambie Network	73,963.18	0.12
Liberal Democratic Party	49,174.77	0.08
All others (incl. Independents)	1,327,571.60	2.11
<b>Total</b>	<b>62,778,275.03</b>	<b>100</b>

<sup>24</sup> Australian Electoral Commission, *Final 2016 federal election payment to political parties and candidates*, Media Release, 17 August 2016, available at: <http://www.aec.gov.au/media/media-releases/2016/08-17e.htm>

<sup>25</sup> Parliamentary Library, *Election funding and disclosure in Australia: a quick guide to recent reforms and current issues*, July 2017, p. 5.

<sup>26</sup> Australian Electoral Commission, *Final 2016 federal election payment to political parties and candidates*, Media Release, 17 August 2016.

### **Push for reform**

2.37 Despite considerable community debate and media coverage in recent years, Australia's federal political funding and disclosure regime has undergone no substantial changes since 2006.

2.38 The AEC highlighted some of the issues that are regularly raised in the ongoing public commentary relating to political funding and disclosure, including:

- the timeliness of annual and election disclosure by political parties and other participants in the electoral process;
- the value of the disclosure threshold;
- the clarity of definitions relating to disclosure, such as what constitutes a 'gift';
- the lack of harmonisation between state and territory disclosure schemes;
- the definition of associated entities and third parties under the Electoral Act, and how this affects the application of disclosure obligations;
- the absence of restrictions on foreign donations;
- the practice of 'donation splitting' by political parties; and
- the sanctions and penalties for incomplete or non-disclosure.<sup>27</sup>

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<sup>27</sup> Australian Electoral Commission, *Submission 2 – Attachment 1*, pp. 7–10.

## Chapter 3

# Political donations: A corrupting influence?

- 3.1 Recent revelations and media scrutiny in relation to political donations at both the Commonwealth and state and territory levels have brought the effectiveness of Australia's federal political funding and disclosure scheme squarely back into focus.<sup>1</sup> There is a growing concern about political donations made by vested interests and their influence on public policy.
- 3.2 In a properly functioning democracy, citizens can expect their elected representatives to be transparent and accountable in carrying out their public duties. Moreover, citizens can expect elected officials to act in the public interest, and to not partake in corrupt behaviours.
- 3.3 Political funding has the potential to undermine the fundamental principles of accountability and acting in the public interest, and by extension, the integrity of representative government, by 'leaving in its wake particular kinds of corruption'.<sup>2</sup>
- 3.4 Of specific interest to this inquiry is the risk that political funding; in particular, large donations from private interests, poses in terms of 'corruption through undue influence'. Such corruption constitutes a type of conflict of interest.
- 3.5 As explained by Associate Professor Joo-Cheong Tham, political donations can:
- ...create a conflict between private interests and public duty and, therefore, create the possibility that holders of public office will give undue weight to the interests of their financiers rather than deciding matters on their merits and in the public interest.<sup>3</sup>
- 3.6 Corruption through undue influence is arguably more insidious and damaging to the democratic process than explicit forms of corruption, where the receipt of private funds leads directly to political power being used to favour financial contributors. In contrast, corruption through undue influence:

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<sup>1</sup> In August 2016, the NSW Independent Commission Against Corruption published its report on its investigation into NSW Liberal Party electoral funding for the 2011 state election campaign (known as Operation Spicer). The investigation uncovered extensive evidence of corrupt conduct; including, the making of donations by 'prohibited donors' under NSW law, disguising the identity of donors by channelling donations through third parties, disguising donations as payments for services, and breaches of relevant funding and expenditure caps and disclosure requirements.

<sup>2</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 13.

<sup>3</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 15.

...does not require explicit bargains or that a specific act results from the receipt of funds. Rather, it arises when the structure of incentives facing public officials results in implicit bargains of favourable treatment or a culture of delivering preferential treatment to moneyed interests.<sup>4</sup>

3.7 Corruption through undue influence can be demonstrated in a variety of ways, and incentives are not necessarily always of a strictly monetary nature. However, in examining the issue of political donations, a typical and more flagrant form is the 'sale of political access' in which 'money may be given in return for access and the potential for undue influence on decision making and policy development'.<sup>5</sup>

3.8 As Professor Tham explained:

...some businesses secure favourable hearings by buying access and influence and also through the lingering effect of their contributions (a phone call from a big donor, for example, being more likely to be returned than one from a constituent). With perceptions of the merits of any issue invariably coloured by the arguments at hand, preferential hearings mean that when judging what is in the 'public interest', the minds of politicians will be skewed towards the interests of their financiers.<sup>6</sup>

3.9 The payment of political donations with the intention of 'buying access' to elected representatives and the risk this poses in terms of corruption through undue influence is discussed throughout the remainder of this chapter.

### **Failure of current political finance regime**

3.10 It can be said that a fundamental aim of any democratic political finance regime should be to maintain the integrity of representative government by facilitating accountability and acting in the public interest, and preventing all forms of corruption. In other words, political finance regimes should, when operating effectively, act as a transparency measure by enabling public scrutiny and reducing the likelihood of undue influence on political process.<sup>7</sup>

3.11 As recognised in 1983 by the then Special Minister of State, the Hon Kim Beazley MP, when introducing the legislation to enact the current political funding and disclosure scheme; '[i]t is essential for public confidence in the political process that no suggestion of favours for large donations can be sustained'.<sup>8</sup> Mr Beazley further noted:

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<sup>4</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 15.

<sup>5</sup> Professor George Williams AO, *Submission 1*, p. 1. See also Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 15.

<sup>6</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 15.

<sup>7</sup> See Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016.

<sup>8</sup> The Hon Kim Beazley MP, Special Minister of State, *House of Representatives Hansard*, 2 November 1983, p. 2213.

The whole process of political funding needs to be out in the open so that there can be no doubt in the public mind. Australians deserve to know who is giving money to political parties and how much.<sup>9</sup>

- 3.12 Many participants of the inquiry expressed strong concerns that the existing political funding and disclosure scheme does not effectively achieve the aim of preventing corruption and consequently, undermines the democratic process.
- 3.13 A more detailed discussion of the extensive problems afflicting the current federal political funding and disclosure regime and proposed measures for reform is set out in Chapter 5 and Chapter 6.

### **Patterns suggesting undue influence**

- 3.14 It is difficult to objectively establish the intent behind political donations and whether they have had any influence on government policy outcomes. However, strong indications of undue influence are provided by patterns between political donations over time and their proximity to key policy decisions.
- 3.15 As summarised by the Synod of Victoria and Tasmania, Uniting Church in Australia (the Synod) in its submission:

There is a pattern between large industry and organisation donations to political parties and associated organisations and a linear progression from donation, access to Ministers and government officials and policy changes that meet the vested interests of the donating industries and organisations.<sup>10</sup>

- 3.16 Submitters and witnesses pointed to trends in political donations from the gambling, alcohol, and mining industries as displaying patterns of possible undue influence. These are outlined below.

#### *ClubsNSW donations and Gillard-Wilkie gambling reforms*

- 3.17 Dr Charles Livingstone and Ms Maggie Johnson argued in their submission that '[t]he Australian gambling industry has utilised political donations as a mechanism to exert considerable influence over relevant public policy'.<sup>11</sup> In support of this argument, Dr Livingstone and Ms Johnson provided the committee with their interim report into gambling industry interests. The report focused on donations declared by ClubsNSW for the period from 1999–2000 to 2014–15.<sup>12</sup>

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<sup>9</sup> The Hon Kim Beazley MP, Special Minister of State, *House of Representatives Hansard*, 2 November 1983, p. 2215.

<sup>10</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 2.

<sup>11</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 2.

<sup>12</sup> See Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*.

- 3.18 The report found that during the period examined, ClubsNSW made donations totalling \$2,569,181 to the Australian Labor Party (ALP), the Coalition parties (Liberal Party of Australia and The Nationals), and their associated entities. The quantum of donations varied widely, ranging from just \$7,000 in 1999–2000 to a maximum of \$426,675 in 2010–11.<sup>13</sup>
- 3.19 As outlined in the report, the allocation of donations to the ALP and Coalition varied over the period, with the proportion of donations notably skewed toward the Coalition in certain years:

In 1999–2000 and 2000–01, ClubsNSW donated only to the ALP. However, in every year after that a proportion of donations was made to the Coalition as well as the ALP. In 2013–14, the Coalition received over 90% of ClubsNSW's total declared donations. In 2010–11, when ClubsNSW reported its maximum donation level over the period examined, the Coalition received 85%, or \$361,930 of the \$426,180 donated. The ALP received the remaining 15%, \$66,250.<sup>14</sup>

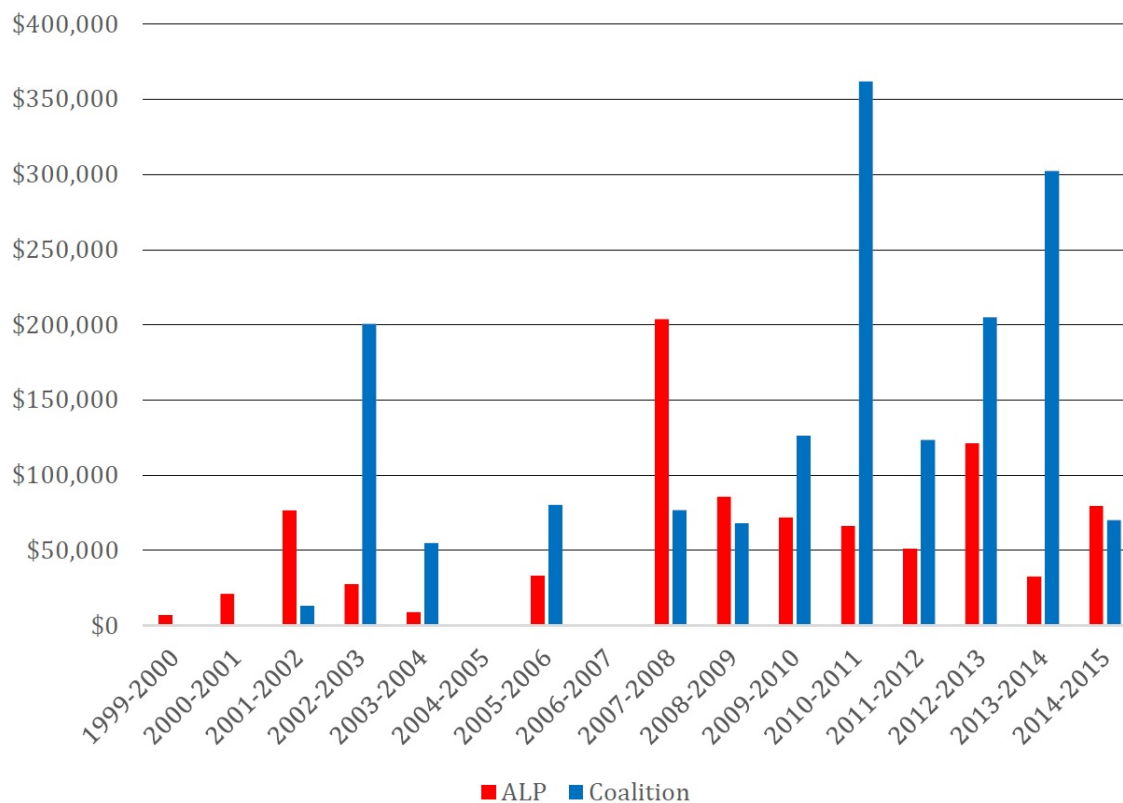
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<sup>13</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 2].

<sup>14</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 2].

3.20 Figure 3.1 shows the amounts donated to the ALP and Coalition parties during the period examined.

**Figure 3.1 Total donations from ClubsNSW to the ALP and Coalition parties, 1999–2000 to 2014–2015<sup>15</sup>**



3.21 The report noted that some 'patterns emerge from inspection of the data' and its comparison to political decisions and events.<sup>16</sup> The data showed that ClubsNSW allocated 'about twice as much in donations' to the Coalition as to the ALP over the period reviewed. As outlined in the report, this unequal division in donations:

...was particularly evident in the period since 2009-10, notable by the arrangements entered into between the ALP Prime Minister Julia Gillard and Mr Andrew Wilkie MP after the 2010 federal election. Under these arrangements Mr Wilkie sought the introduction of a system of electronic pre-commitment for the use of electronic gambling machines (EGMs). The members of ClubsNSW operate about 70,000 EGMs which collectively generate revenue for the Clubs of over \$3.5 billion p.a.<sup>17</sup>

3.22 Also noted in the report was the fact that until 2009-10, ClubsNSW's declared donations were made almost exclusively to NSW branches of the ALP and Coalition parties. Following 2010-11, ClubsNSW donations 'were increasingly

<sup>15</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 3].

<sup>16</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 7].

<sup>17</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 7].

made to federal campaign funds or to individual campaigns, in many cases to named political candidates'.<sup>18</sup> Reflecting on this change, the report argued:

At the level of Federal politics, it is clear that ClubsNSW sought to provide financial resources to the coalition parties, who opposed the Gillard Wilkie arrangements and whose frontbench representative on gambling policy prior to and after the election of the Abbott government in 2013 (Mr Kevin Andrews) was provided with campaign donations amounting to \$40,000 (\$30,000 in 2013–14 and \$10,000 in 2014–15).<sup>19</sup>

### *Wine Equalisation Tax and Rebate*

- 3.23 In its submission to the inquiry, the Foundation for Alcohol Research and Education (FARE) provided a case study relating to political donations from the alcohol industry and correlating trends with changes to the alcohol tax system; in particular, to the Wine Equalisation Tax (WET) and WET rebate.<sup>20</sup>
- 3.24 The WET is a tax of 29 per cent imposed on wine<sup>21</sup> made, imported, exported or sold by wholesale in Australia. Wine is taxed under the WET on the basis of its wholesale price, whereas other alcohol products are taxed on the basis of the volume of pure alcohol they contain.<sup>22</sup>
- 3.25 As explained by FARE, the WET favours larger wine producers, 'who benefit from greater economies of scale and are therefore able to produce cheaper bulk wine'. In 2004, the WET rebate was introduced with the intention of alleviating the impost of the WET on small rural wineries in Australia.<sup>23</sup> The WET rebate entitles wine producers to a rebate on the WET they have paid up to a maximum amount each financial year.
- 3.26 FARE's case study of political donations pointed to correlations between political donations from alcohol industry stakeholders and the introduction and subsequent reviews of the WET and WET rebate. Stakeholders noted in FARE's analysis include Southcorp, one of the largest wine producers in Australia in the period preceding the introduction of the WET, and the Australian Hotels Association (AHA); in particular, the AHA's South Australian branch. As argued by FARE, the South Australian branch of the

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<sup>18</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 7].

<sup>19</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18—Attachment 1*, [p. 7].

<sup>20</sup> See Foundation for Alcohol Research and Education, *Submission 25*, pp. 6–8.

<sup>21</sup> The WET applies to the following beverages where they contain more than 1.15 percent by volume of alcohol: grape wine, grape wine products, fruit and vegetable wines, cider and perry, mead, and sake.

<sup>22</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 6.

<sup>23</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 6.

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AHA 'has had particular interest in the WET and its rebate, as a major wine-producing region'.<sup>24</sup>

3.27 Findings from FARE's analysis included:

- A series of donations (totalling more than \$675,000 in 2015–16 terms) from Southcorp to the Liberal–National Coalition in the lead-up to and immediately following the introduction of the WET in 2000.
- Significant donations (totalling more than \$220,000 in 2015–16 terms) made by Southcorp in the 12-month period leading up to introduction of the WET.
- A marked increase in donations by the South Australian branch of the AHA in 2001–2002, predominately to the Howard Government, prior to the introduction of the WET rebate.
- A substantial increase in donations from the AHA in the two years to 2012–13, following the 2010 recommendations of the Henry Tax Review that all alcohol tax be moved to a volumetric system.
- An increase in donations from the industry in 2015–16, following the release of the Treasury discussion paper on reform and possible abolition of the WET rebate.<sup>25</sup>

*Political donations from the mining industry*

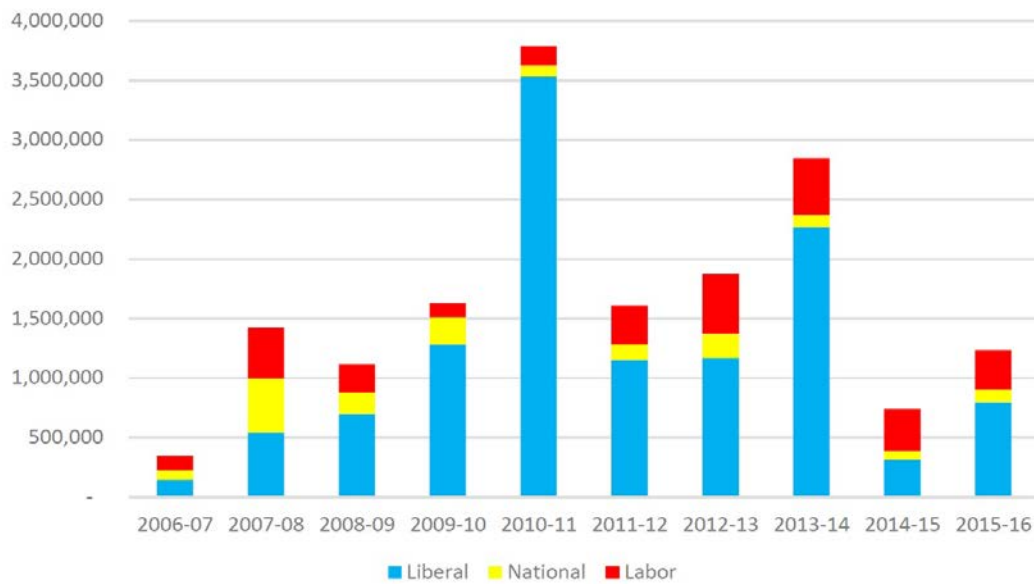
3.28 In September 2017, the Australia Institute published a report—*The tip of the iceberg: Political donations from the mining industry*—looking at patterns of political donations declared by the mining industry during the 10 years to 2016. Figure 3.2 illustrates the disclosed donations to the major parties from the resource sector during the period examined.

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<sup>24</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 7.

<sup>25</sup> Foundation for Alcohol Research and Education, *Submission 25*, pp. 7–8.

**Figure 3.2 Disclosed donations to major parties from resource sector 2006–2016<sup>26</sup>**



3.29 The report found that, from 2006 to 2016, the mining industry donated \$16.6 million to the major parties, with 71 per cent of those donations being made to the Liberal Party of Australia (Liberal Party).<sup>27</sup>

3.30 The report also found that donations from the mining industry over the period examined 'correlate with the election cycle, timelines on project approvals, and debates on key industry policies such as the mining tax and carbon price'.<sup>28</sup> Specifically, the report noted that:

Donations from the mining industry increased dramatically in the 2010–11 returns surrounding the 2010 federal election and mining tax debate, and again in the 2013–14 returns corresponding with the 2013 federal election, where the carbon tax featured prominently in the campaign.<sup>29</sup>

### **Motivations and reasons behind political donations**

3.31 Under its terms of reference, the committee sought to examine the motivations and reasons behind why entities give donations to political parties and candidates. In addition to evidence received through submissions and public hearings, the committee wrote to a number of organisations to inquire as to the nature of their political donations, as well as their motivations for, or for not,

<sup>26</sup> The Australia Institute, *The tip of the iceberg: Political donations from the mining industry*, September 2017, p. 9 (tabled 2 November 2017).

<sup>27</sup> The Australia Institute, *The tip of the iceberg: Political donations from the mining industry*, September 2017, p. 9 (tabled 2 November 2017).

<sup>28</sup> The Australia Institute, *The tip of the iceberg: Political donations from the mining industry*, September 2017, p. 4 (tabled 2 November 2017).

<sup>29</sup> The Australia Institute, *The tip of the iceberg: Political donations from the mining industry*, September 2017, pp. 9–10 (tabled 2 November 2017).

making political donations and what outcomes they have achieved, or expect from those activities.

- 3.32 The committee is grateful to those organisations that willingly engaged with the inquiry and contributed frankly and transparently to discussions. However, the committee also notes that there were a number who declined the committee's invitations to participate in the inquiry.

### *Nature of donations*

- 3.33 Responses to the committee's request for information highlighted the various forms that political donations can take as well as the different approaches organisations take to reporting their political expenditure.
- 3.34 The Minerals Council of Australia (MCA) submitted that it 'makes donations and contributions to political parties' and discloses contributions to the Australian Electoral Commission (AEC) in accordance with the *Commonwealth Electoral Act 1918* (Electoral Act).<sup>30</sup> In 2016–17, the MCA declared donations to federal and state and territory branches of political parties and their associated entities to a total value of \$57,345. The majority of the MCA's declared donations for 2016–17 (\$50,645) were made to the Liberal–National Coalition.<sup>31</sup>
- 3.35 ANZ advised that it 'makes a single, annual donation to each of the two major Federal parties' to a value determined by its Board each year.<sup>32</sup> ANZ disclosed donations to the Liberal Party and ALP of \$150,000 each in 2016–17.<sup>33</sup>
- 3.36 The Financial Services Council (FSC) stated that its Board 'has a policy to make equal financial contributions to each side of politics annually'.<sup>34</sup> In 2016–17, the FSC disclosed donations to a total value of \$89,570.75.<sup>35</sup> Of this total, comparable sums were donated to the federal and state and territory branches of the major political parties.<sup>36</sup>
- 3.37 Deloitte informed the committee that:

We prefer to make political donations primarily in the form of covering the cost of providing facilities and hosting functions (typically boardroom

<sup>30</sup> Minerals Council of Australia, *Additional Information 6*, received 22 November 2017, p. 1. See also Mr David Byers, Interim Chief Executive, Minerals Council of Australia, *Committee Hansard*, 30 January 2018, p. 28.

<sup>31</sup> Australian Electoral Commission, [Donor Annual Return 2016–17: Minerals Council of Australia](#), [p. 7].

<sup>32</sup> ANZ, *Additional Information 13*, received 27 November 2017, p. 1.

<sup>33</sup> Australian Electoral Commission, [Donor Annual Return 2016 – 17: ANZ Banking Group Limited](#), p. 3.

<sup>34</sup> Financial Services Council, *Additional Information 17*, received 30 December 2017, p. 1.

<sup>35</sup> Australian Electoral Commission, [Donor Annual Return 2016–17: Financial Services Council Limited](#), [p. 4].

<sup>36</sup> The Financial Services Council donated a total of \$43,101.40 to the Liberal Party and \$46,469.35 to the ALP in 2016–17.

style lunches, formal dinners or stand up events). These events are coordinated by the political parties including sourcing the guest speaker (typically a Minister, Shadow Minister or Member of Parliament), inviting the majority of guests and determining timing.<sup>37</sup>

### **Major party business forums and events**

3.38 Several donors highlighted membership subscriptions to the major parties' federal business forums (i.e. the Liberal Party's Australian Business Network and ALP's Federal Labor Business Forum) as making up a considerable proportion and, in some cases, the majority of their political contributions expenditure.<sup>38</sup>

3.39 For example, Macquarie Group (Macquarie) noted that it 'provides financial support to the Government and Opposition, primarily through paid attendance at events and membership of Government and Opposition business forums'. Macquarie further explained:

These fee-for-service expenditures have, for many years, formed the vast majority of Macquarie's political contributions. Direct donations constitute a very small percentage of Macquarie's political contributions expenditure. For example, in the 2015/2016 disclosure year, direct donations represented only seven per cent of overall expenditure.<sup>39</sup>

3.40 Similarly, Deloitte submitted that it includes the cost of attendance at political party events in its political donations. Deloitte also advised that '[w]here we make cash donations to political parties it is for the purpose of membership of political forums allowing the firm to attend certain events and presentations'.<sup>40</sup>

3.41 Nine Entertainment Co (Nine) informed the committee:

With regard to political donations Nine makes annual donations to the business forums of the Labor Party and the Liberal Party which provide informative policy briefings and networking events. On occasion we make donations to attend events hosted by members of Parliament and political parties outside these forums.<sup>41</sup>

3.42 Ms Navleen Prasad, Head of Government Relations at Macquarie, told the committee that the company subscribes to the federal business forums at an annual cost of \$33,000 to the Federal Labour Business Forum and \$27,500 to the

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<sup>37</sup> Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

<sup>38</sup> Under the Electoral Act, the current definition of what constitutes a 'gift' places no obligation on donors to lodge a return for payments such as membership subscriptions or attendance at fundraising events.

<sup>39</sup> Macquarie Group, *Additional Information 4*, received 21 November 2017, p. 1. See also Mr Anthony Michael Rutherford Abbott, Senior Vice President, Corporate and Legal, Woodside Energy Ltd, Committee Hansard, 2 November 2017, pp. 38–39.

<sup>40</sup> Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

<sup>41</sup> Nine Entertainment Co, *Additional Information 8*, received 23 November 2017, p. 1.

Australian Business Network. Macquarie also subscribes to The Nationals federal business forum (the National Policy Forum) for a \$22,000 subscription fee.<sup>42</sup>

3.43 The MCA reported that it has subscribed to both the major party federal business forums during 2017–18 at a cost of \$25,000 per subscription. The MCA also noted that its staff 'occasionally attend fundraising dinners hosted by individual members of parliament'.<sup>43</sup>

3.44 In providing further evidence to the committee at a public hearing, Mr David Byers, Interim Chief Executive of the MCA, explained that the organisation's \$25,000 subscription to each of the major party forums constitutes a 'base level' of membership, and entitles the MCA to partake in two federal policy briefing sessions and two boardroom-type events.<sup>44</sup>

3.45 Mr Byers also summarised the nature of such events in terms of who and how many people are generally involved:

A typical one could be with 100 people if it's a big event, or it could be in the nature of a smaller boardroom event where there are probably 14 to 16 people. They come from a variety of industries. It may well entail briefings with a couple of ministers or a couple of parliamentarians rather than just one person.<sup>45</sup>

3.46 Ms Prasad from Macquarie echoed these comments:

If I can give you a flavour of what those events look like, they will typically be an event that might have 15, 20, 30 or sometimes 100 people there. There'll be a discussion with the guest speaker. Depending on the size of the forum, the attendees—who come from a range of industries, and some of our competitors would attend as well—may have the opportunity to ask a question.<sup>46</sup>

3.47 The committee also heard evidence from Woodside Energy Ltd (Woodside) regarding their subscriptions to the major parties' business forums. Woodside told the committee that they subscribe to 'platinum level' memberships to both major party business forums at an annual cost of \$110,000 per subscription. Woodside includes these forum subscription fees in its annual disclosure returns to the AEC.

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<sup>42</sup> Ms Navleen Prasad, Head of Government Relations, Macquarie Group, *Committee Hansard*, 30 January 2018, pp. 37–38.

<sup>43</sup> Minerals Council of Australia, *Additional Information 6*, received 22 November 2017, p. 1.

<sup>44</sup> Mr David Byers, Interim Chief Executive, Minerals Council of Australia, *Committee Hansard*, 30 January 2018, p. 30.

<sup>45</sup> Mr David Byers, Interim Chief Executive, Minerals Council of Australia, *Committee Hansard*, 30 January 2018, p. 30.

<sup>46</sup> Ms Navleen Prasad, Head of Government Relations, Macquarie Group, *Committee Hansard*, 30 January 2018, p. 38.

3.48 Mrs Sandra McInnes, Vice President of Corporate Affairs at Woodside, outlined the different privileges that subscribers to each level of membership are entitled to:

**CHAIR:** The rate that you're charged, the \$110,000, is that a standard fee for anybody who wants to get annual access to one of these forums, or is it just charged depending on who's applying? Are there differential rates?

**Mrs McInnes:** They have different levels of membership. That is, I understand, the top tier of membership. The membership levels reduce from there but so does the access to events. That is the platinum, tier 1 level of membership. I don't know how many members they have that are subscribed at that level, but then they have a gold level and a silver level. With the different levels of membership, you will get different amounts of invites. You might only have one person being able to attend or you might not get invites to all of the events, just some of them.<sup>47</sup>

3.49 Woodside also provided the committee with information as to the number and type of events included in their membership subscriptions.

3.50 In 2017, Woodside's platinum level subscription to the Liberal Party's Australian Business Network entitled the company to two places at numerous federal parliamentary briefings and boardroom policy forums, two places at the 'Budget Night Dinner' in Canberra, and two places at two of the 'Prime Minister's Networking Dinners'.<sup>48</sup>

3.51 Woodside's membership package to the ALP's Federal Labor Business Forum for 2017 included:

- **Policy Briefing Sessions**—Two (2) Policy Briefing sessions, designed to address achievements, issues and challenges in key portfolio areas.
- **Leader Events**—tickets to Leader events in Perth.
- **Federal Budget Reply Dinner 2017**—Four (4) tickets on an opt-in basis.
- **Federal Labor Business Exchange Program 2017**—Two (2) tickets to the Federal Labor Business Exchange program, a two-day conference with Shadow Federal Ministers, to be held in Sydney in 2017. The program provides delegates with a unique opportunity to receive briefings on major policy areas, and to network with Federal Shadow Ministers.
- **End of Year Drinks with the Leader of the Opposition**—Five (5) tickets on an opt-in basis.
- **Federal Labor Business Forum Program**—Tickets to Boardroom events with Federal Shadow Ministers Australia-wide as they arise (Woodside

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<sup>47</sup> Mrs Sandra McInnes, Vice President, Corporate Affairs, Woodside Energy Ltd, *Committee Hansard*, 2 November 2017, p. 43.

<sup>48</sup> Woodside Energy Ltd, answers to questions on notice, 2 November 2017 (received 27 November 2017).

will be informed as events are announced, and can opt-in as part of this package).<sup>49</sup>

*Approach to disclosure*

3.52 Under the Electoral Act, the current definition of what constitutes a 'gift' places no obligation on donors to lodge a return for payments such as membership subscriptions or attendance at fundraising events.<sup>50</sup>

3.53 The committee heard from some donors that they take a conservative approach in reporting their political expenditure and include membership subscription fees in their annual returns to the AEC.<sup>51</sup>

3.54 For example, Mr Paul Marriott, Head of Corporate Communications at Macquarie, explained:

Macquarie has a long-standing and conservative approach of disclosing the contributions it makes to political parties to the Australian Electoral Commission each year without relying on any exclusions or exemptions. While the Commonwealth Electoral Act has disclosure thresholds and permits donors to exclude amounts such as payments to attend political party functions, we have for many years chosen not to utilise such exemptions and instead to declare all payments made to political parties.<sup>52</sup>

3.55 Representatives from the MCA also informed the committee:

The approach we've certainly taken in recent times, to my knowledge, is to just disclose everything...and not to look closely at those definitions. If it's attending a fundraiser or a lunch, we disclose it. Amongst other things, I think there's also a cumulative requirement. If you make a number of donations below the threshold but they accumulate to the threshold or greater, that triggers an obligations [sic]. We just want to avoid inadvertently breaching the obligations on us.<sup>53</sup>

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<sup>49</sup> Woodside Energy Ltd, answers to questions on notice, 2 November 2017 (received 27 November 2017).

<sup>50</sup> See Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

<sup>51</sup> See, for example, Mr Anthony Michael Rutherford Abbott, Senior Vice President, Corporate and Legal, Woodside Energy Ltd, Committee Hansard, 2 November 2017, pp. 38–39; Macquarie Group, *Additional Information 4*, received 21 November 2017, pp. 1–2.

<sup>52</sup> Mr Paul Marriott, Head of Corporate Communications, Macquarie Group, *Committee Hansard*, 30 January 2018, p. 36.

<sup>53</sup> Mr Mark Davis, Director, Strategy and Communications, Minerals Council of Australia, *Committee Hansard*, 30 January 2018, pp. 32–33.

## *Why donate?*

### **Supporting democratic and electoral process**

3.56 In response to the committee's request for information, a number of donors cited support of the democratic process as a main motivation behind their donations to political parties.

3.57 ANZ informed the committee that it 'considers that it has a role to play in supporting democracy by providing funding. Our donations are aimed at promoting the development of social and economic policies to benefit Australia'.<sup>54</sup>

3.58 Equally, the FSC submitted that 'our Board has historically taken the view that it is important to make a modest financial contribution in support of the democratic process'.<sup>55</sup>

3.59 PricewaterhouseCoopers (PwC) explained that:

PwC makes donations to Australian political parties to support the democratic process in Australia. Political parties are a key element of the Australian system of government, which provides the context in which our firm operates. An effective and stable system of government benefits business generally, including ours. Our policy is to provide similar levels of financial support to both major parties over time.<sup>56</sup>

3.60 Similarly, Crown Resorts Limited (Crown) submitted that it 'makes donations to registered political parties to support the democratic and electoral process in Australia'. Additionally, Crown pointed to the cost of election campaigns, noting that 'registered political parties in Australia rely heavily on donations in order to communicate their messages and policies to the Australian public'.<sup>57</sup>

3.61 The Insurance Council of Australia (ICA) also noted the cost of election campaigns:

The ICA donates to parties on both sides of the political spectrum at both federal and state level. This is done because we consider public funding is inadequate for parties to mount modern election campaigns and we wish to contribute to a stable political environment.<sup>58</sup>

### **Fostering and contributing to policy dialogue**

3.62 Some donors pointed to a need to engage in and contribute to policy discussions as a motivation for making political donations.

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<sup>54</sup> ANZ, *Additional Information 13*, received 27 November 2017, p. 1.

<sup>55</sup> Financial Services Council, *Additional Information 17*, received 30 December 2017, p. 1.

<sup>56</sup> PricewaterhouseCoopers, *Additional Information 15*, received 4 December 2017, p. 1.

<sup>57</sup> Crown Resorts Limited, *Additional Information 7*, received 23 November 2017, p. 1.

<sup>58</sup> Insurance Council of Australia, *Additional Information 9*, received 23 November 2017, p. 2.

3.63 Deloitte informed the committee:

Deloitte makes political donations to Australia's major political parties for the purpose of promoting and fostering political debate and the contribution of ideas by business and the broader community in the development and formation of policy, particularly as it relates to the economic prosperity of the country. Political donations are made at both Federal and State levels. Deloitte aims to contribute equally to Australia's major political parties.<sup>59</sup>

3.64 Macquarie explained that participation in policy and regulatory discussions 'better enables it to understand the relevant political and policy drivers impacting its operations and business activities, its employees, its clients, and the broader Australian community'.<sup>60</sup>

3.65 Woodside echoed this reasoning, submitting that attendance at paid political party events 'allows Woodside to understand the policy environment within which we operate and provides the opportunity to contribute and inform policy dialogue pertaining to our business'.<sup>61</sup>

3.66 Representatives from Woodside reiterated this point in further evidence to the committee:

We seek to have open and constructive relationships with governments of all countries where we have a presence, and we believe that the exchange of information and opinion is essential to inform decision-making. We contribute in a number of ways to the policy dialogue.<sup>62</sup>

**Privileged access?**

3.67 In addition to those motivations noted above, building and maintaining relationships with key political stakeholders was raised as a reason behind donors' political contributions. Donors noted that attendance at business forums and other political party and candidate events and fundraisers provides them with opportunities to engage with members of Parliament on matters relevant to their industry.

3.68 Ms Annabelle Herd, Chief Operating Officer at Network Ten, noted that 'we are a very high profile and very heavily regulated company', and pointed to using participation at events as a means of engaging with members of Parliament on regulatory priorities that impact their business:

Matters come up in the political and parliamentary process all the time around our business, so we like to have strong relationships with members of parliament and government decision-makers across all sides of politics.

<sup>59</sup> Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

<sup>60</sup> Macquarie Group, *Additional Information 4*, received 21 November 2017, p. 2.

<sup>61</sup> Woodside Energy Ltd, *Submission 16*, p. 1.

<sup>62</sup> Mr Anthony Michael Rutherford Abbott, Senior Vice President, Corporate and Legal, Woodside Energy Ltd, *Committee Hansard*, 2 November 2017, p. 38.

We use these events as an opportunity to further those relationships or to, as others have said, gather broader political information about what's happening in the legislative sphere, or what priorities there are in legislative terms so that we can understand how that impacts us and our regulatory priorities.<sup>63</sup>

3.69 Similarly, the ICA commented that attendance at political party events provides 'an opportunity to build new relationships, and further develop existing relationships, with key political stakeholders across the Federal and State Governments'.<sup>64</sup> The ICA continued:

It provides a platform for engagement and allows the ICA, and other organisations who attend, to learn about the priorities and challenges of the Government and Opposition across several jurisdictions.<sup>65</sup>

3.70 The MCA explained the motivations behind their donations to political parties, divulging that their contributions to attend events 'provide additional opportunities for the MCA to meet with members of parliament'. The MCA also commented that it 'uses these opportunities to update members of parliament about conditions in the Australian minerals industry and the policy priorities of the MCA'.<sup>66</sup>

### *Denial of undue influence*

3.71 The committee questioned donors as to whether their political donations, including paid subscriptions to the major parties' business forums, constitute a form of 'buying access' to elected representatives, and moreover, whether there was any expected benefit from such contributions. Donors sought to assure the committee that there is no expectation of preferential access or direct benefit.

3.72 ANZ assured the committee that 'other than generally benefiting from a robust and democratic political process', it 'does not expect, and has not received' any benefit from its political donations.<sup>67</sup>

3.73 Mr Byers of the MCA stressed that there is no expectation from membership to the major parties' business forums other than the capacity to attend in itself:

We have no expectation of obtaining any direct benefit from attendance at such functions. The only expectation is attendance at the event in question. In our view, these events can provide an efficient way to understand the policy environment and also to meet with members of parliament outside the rigors of busy parliamentary schedules and in view of the many meeting requests fielded by all politicians. Where we have specific matters

<sup>63</sup> Ms Annabelle Herd, Chief Operating Officer, Network Ten, *Committee Hansard*, 30 January 2018, p. 42.

<sup>64</sup> Insurance Council of Australia, *Additional Information 9*, received 23 November 2017, p. 2.

<sup>65</sup> Insurance Council of Australia, *Additional Information 9*, received 23 November 2017, p. 2.

<sup>66</sup> Minerals Council of Australia, *Additional Information 6*, received 22 November 2017, p. 1.

<sup>67</sup> ANZ, *Additional Information 13*, received 27 November 2017, p. 1.

to discuss, our normal practice is to arrange a meeting or make a written representation to the relevant parliamentarian in the usual way.<sup>68</sup>

3.74 The ICA expressed a similar argument, submitting that attendance at political party events 'does not influence or shape political or policy outcomes, it simply creates an environment in which there is an effective and valuable exchange of ideas and information'.<sup>69</sup>

3.75 Ms Herd vehemently denied that Network Ten donates to political parties to gain access to political representatives:

No. Absolutely not. I spend a lot of time in Canberra and we spend a lot of time talking to people about our policy issues. At the events that we go to through political donation you actually don't end up talking that much about your own political issues. It's more about understanding what the environment is and just general relationship-building and networking with other people that are at these events. But, no, we certainly don't rely on political donations to further our policy or regulatory cause.<sup>70</sup>

3.76 Likewise, Mr Marriott sought to assure the committee that Macquarie has no expectation of 'preferential access' to policymakers through its donations to attend political events, arguing that '[w]e wouldn't see it as preferential access; it's about being part of that conversation'.<sup>71</sup> The committee further questioned Macquarie as to how contributions of this kind could not be seen as constituting preferential access, particularly given that the general public is unlikely to be able to afford such expenditure:

**CHAIR:** You wouldn't say there's preferential access? Not many people can afford to spend that much money to attend forums with their political representatives.

**Mr Marriott:** The forums are specifically for business to engage with their political representatives. I think it's a matter for parliament and the political parties as to how they engage with the rest of the community and their constituents.<sup>72</sup>

### *Criticisms of donor motivations*

3.77 A number of participants were sceptical of donors' claims regarding the motivations behind their political donations, suggesting that the access to

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<sup>68</sup> Mr David Byers, Interim Chief Executive, Minerals Council of Australia, *Committee Hansard*, 30 January 2018, p. 28.

<sup>69</sup> Insurance Council of Australia, *Additional Information 9*, received 23 November 2017, p. 2.

<sup>70</sup> Ms Annabelle Herd, Chief Operating Officer, Network Ten, *Committee Hansard*, 30 January 2018, pp. 42–43.

<sup>71</sup> Mr Paul Marriott, Head of Corporate Communications, Macquarie Group, *Committee Hansard*, 30 January 2018, p. 40.

<sup>72</sup> Mr Paul Marriott, Head of Corporate Communications, Macquarie Group, *Committee Hansard*, 30 January 2018, p. 40.

elected representatives that is obtained through donations cannot be separated from the risk of undue influence.

3.78 The Synod put it plainly in its submission—'political donations buy access and influence'.<sup>73</sup>

3.79 Professor Peter Miller, Director of the Centre for Drug, Alcohol and Addiction Research (CEDAAR), expressed similar sentiments:

Overwhelmingly, the aim is to buy out influence, to purchase influence. When somebody gives you \$1,000, they are trying to support you. When they give you \$100,000, they are trying to buy you.<sup>74</sup>

3.80 Some submitters and witnesses argued that donors cannot claim to make political donations in support of the democratic process when they donate to both major parties.<sup>75</sup> Participants also highlighted that doing so with no expectation of benefit would be counter to a company's legal obligations to act in the best interests of its shareholders.

3.81 Professor Miller from CEDAAR expressed the view that when businesses 'support one political party, it's about ideology. When they support two political parties, it's about buying access. So it's very clear that the aim is to influence politics, not to show support for a political ideology'.<sup>76</sup>

3.82 Dr Belinda Edwards noted that her analysis of political donations data from the past 10 years gives strong indications of payments being made 'for access rather than being paid to support a political cause'.<sup>77</sup> Dr Edwards told the committee that:

This is evident in donors giving to both sides, and increasing payments to those in power. This is evidence of donors paying for access where they believe their business interests are served and they are more likely to get government decision-making to go their way, if they have made payments, significant payments, to whoever is in power. I would point out that it is illegal for businesses to make such payments to political parties if they do not expect the payments to advance the interests of their shareholders.<sup>78</sup>

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<sup>73</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 3.

<sup>74</sup> Professor Peter Miller, Director, Centre for Drug, Alcohol and Addiction Research, *Committee Hansard*, 6 November 2017, p. 21.

<sup>75</sup> See, for example, Public Health Association of Australia, *Submission 32*, p. 5; Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 6; Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 37; Foundation for Alcohol Research and Education, *Submission 25*, p. 9.

<sup>76</sup> Professor Peter Miller, Director, Centre for Drug, Alcohol and Addiction Research, *Committee Hansard*, 6 November 2017, p. 21.

<sup>77</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 1.

<sup>78</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 1.

3.83 Mr David Templeman, President of the Public Health Association of Australia (PHAA), observed that '[b]usinesses, by their very nature, usually have business rather than ideological interests'. Mr Templeman also highlighted company directors' legal responsibilities to shareholders under the *Corporations Act 2001*; that is, 'company directors must act in the best interests of the company and its shareholders and must not enter into risky transactions without any prospect of producing a benefit'.<sup>79</sup>

3.84 Mr Templeman further considered this point:

Logic suggests that, when one business is making donations to respective sides of politics simultaneously, it is not about supporting a political ideological position. Some don't even pretend but simply make equal donations to both. When those donations are worth hundreds of thousands of dollars or even millions of dollars, questions about the responsibilities to shareholders arise.

So, if donations are not about supporting an ideology with express commitment of the shareholders, what are they about? What could they be getting for their money which would be in the best interests of the shareholders and would not represent a risky investment? Responses to this question have been made publicly from several sources, and all have the same answer, which is about access and influence.<sup>80</sup>

### **Unconscious influence**

3.85 The committee heard evidence to suggest that political donations, and the privileged access they buy, can risk leading to undue influence whether or not the recipient is mindful of this effect.

3.86 For example, PHAA reflected on psychological evidence which argues that the receipt of a gift 'creates an obligation in the mind of the recipient, and creates a positive view of the giver'. PHAA elaborated on this point and its significance with regard to political donations:

Psychologists have long argued that 'pure gift' is impossible because of obligation and reciprocity being involved. More specifically, the reciprocity is not repaying the gift as such, but as expression of affirmation, and mutuality. In the realm of political donations, this would indicate that the multiple donations are setting up ongoing mutual relationships between the donor and the recipient.<sup>81</sup>

3.87 FARE also alluded to this unconscious risk of undue influence that political donations can pose:

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<sup>79</sup> Mr David Templeman, President, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 13.

<sup>80</sup> Mr David Templeman, President, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 13. See also Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 16.

<sup>81</sup> Public Health Association of Australia, *Submission 32*, p. 4.

Most of the time it is not possible to know whether or not a donation has actually affected decisions. The public is beholden to the good will of the political class to ensure that this does not occur. Even then, political donations purchase access to decision-makers, establishing relationships that may influence such decisions whether or not the decision-maker is aware of it.<sup>82</sup>

## Consequences of the current regime

### *Undermining political equality*

3.88 Some participants in the inquiry expressed concerns that the current federal political funding and disclosure regime undermines the fundamental principle of political equality—that each citizen has equal political status, irrespective of their economic and social class. In accordance with this principle, citizens are entitled to equal representation by their elected officials and should have a broadly equal opportunity of influencing government policy.<sup>83</sup>

3.89 However, as highlighted by Professor Tham, political equality 'is perhaps the most difficult challenge facing political finance regimes in capitalist economies like Australia':

The value of political freedoms will depend upon background inequalities. Specifically, significant social and economic inequalities will undermine the value of such freedoms for those who are marginalised—the poor, the disadvantaged, the powerless. In such contexts (as in the case of Australia), there is a serious likelihood that such freedoms, while formally available, cannot be meaningfully exercised by many.<sup>84</sup>

3.90 The McCusker Centre of Action on Alcohol and Youth (MCAAY) clearly summarised the current inequality that exists between wealthy political donors and everyday citizens—'Well-resourced donors can afford to buy influence in ways that others cannot'.<sup>85</sup>

3.91 Similarly, PHAA highlighted the exclusionary nature of political donations against ordinary citizens:

In permitting particular groups an unfair advantage in pushing their interests, in affording them inequitable capacity to influence or pressure candidates and elected representatives, and through allowing undue influence in the system, political donations weaken rather than strengthen democracy and the democratic process. Ordinary citizens, community groups and civil society without the financial capacity to purchase influence are further excluded, while the wealthy, big business, unions and

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<sup>82</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 9.

<sup>83</sup> See Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 19.

<sup>84</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 19.

<sup>85</sup> McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1.

lobby groups are invited in as special guests, whose interests should be looked after.<sup>86</sup>

- 3.92 Mr David Crosbie, CEO of the Community Council for Australia (CCA), a member-based organisation representing the charities and not-for-profit sector in Australia, described the donations made by large vested interests as being 'prohibitively expensive for the vast majority of charities'. Mr Crosbie further observed that:

If you want to be a special guest at the ALP annual conference, there's a fee of a certain amount, and it's in the thousands, I believe. Most charities are not going to spend that money to go, and they can't afford to...If you work in charities you don't have that kind of discretionary spend beyond what you're trying to do, and most charities, let alone the average citizen, cannot participate equally in that process.<sup>87</sup>

### *Damaging the democratic process*

- 3.93 A number of submitters argued that the damage caused to the democratic process due to the risk of corruption through undue influence arises regardless of whether that influence is real or perceived. The perception of undue influence can harm the public's trust and support for their elected representatives. Moreover, it can betray general public confidence and willingness to engage with democratic institutions.<sup>88</sup>
- 3.94 Dr Yee-Fui Ng clearly summarised this point, submitting that 'it is not just actual corruption that is the issue; even the perception of corruption can damage trust in the political system'.<sup>89</sup>
- 3.95 Mr Jon Shirley expressed a similar view, suggesting that 'it does not matter whether the risk of inappropriate influence of this funding model is actual or perceived, the damage is done: citizen disengagement with government and its institutions is the result'.<sup>90</sup>
- 3.96 The NSW Independent Commission Against Corruption (ICAC) expressed the firm view that 'using political donations to procure favourable government decision, or even favourable access to decision makers, causes serious damage to representative democracy'.<sup>91</sup> ICAC reiterated its opinion from its December 2014 report into the influence of political donations on the integrity of government decision-making:

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<sup>86</sup> Public Health Association of Australia, *Submission 32*, p. 4.

<sup>87</sup> Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 6 November 2017, p. 10.

<sup>88</sup> See, for example, Public Health Association of Australia, *Submission 32*, p. 4.

<sup>89</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>90</sup> Mr Jon Shirley, *Submission 19*, p. 1.

<sup>91</sup> NSW Independent Commission Against Corruption, *Submission 28*, p. 2.

A situation in which citizens believe elections can be bought or that there is some quid pro qua for helping a candidate win must be seen as seriously damaging to the proper functioning of a democratic government. A corrupt member of parliament can be voted out of office if elections are free and fair. But if there is a loss of trust in the election process, then the whole system of representative government is weakened.

- 3.97 The Anglican Church of Southern Queensland considered the 'corrosive effect' that the deficiencies of current political finance regimes across all levels of government can have, asserting that:

This presents us with a serious challenge to address, not just because of the individual cases of corruption that it might give rise to, but because of the corrosive effect it can have on our entire body politic, and the damage it can have for citizens' trust in Government. Indeed there may be an erosion of faith in our democratic system itself, particularly when the public perceives that money is buying influence.<sup>92</sup>

- 3.98 Transparency International Australia (TIA) also conveyed serious concerns, submitting that the current political funding and disclosure regime 'represents a serious corruption of the political and democratic process' and has 'contributed to a collapse of support for democratic institutions'.<sup>93</sup> TIA further contended that:

The public perception is that the present donations system suits the political parties and big money interests but betrays the community at large.<sup>94</sup>

- 3.99 In apparent support for this argument, National Australia Bank (NAB) noted that it ceased making political donations to all levels of government from May 2016.<sup>95</sup> In response to questions about the policy change during an appearance before the House of Representatives Standing Committee on Economics in October 2016, Mr Andrew Thorburn, CEO of NAB, pointed to unfavourable public perceptions as being the reason behind the decision:

**Mr Thorburn:** ...The reason why we felt that a change was needed comes back to the point around wanting to be respected as a bank and as a company, and for us to make sure that our community and our customers do not see conflict.

I think the things we are doing around remuneration are other examples of that but, in essence, we felt that the donations we were making to political parties was being misconstrued, misinterpreted, incorrectly.

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<sup>92</sup> Anglican Church Southern Queensland, *Submission 23*, p. 1.

<sup>93</sup> Transparency International Australia, *Submission 33*, p. 2.

<sup>94</sup> Transparency International Australia, *Submission 33*, p. 2.

<sup>95</sup> National Australia Bank, *Additional Information 16*, received 11 December 2017, p. 1.

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To be clean, direct and decisive, our board decided to stop making such political payments or payments to political parties, at Commonwealth, state and local level.<sup>96</sup>

### **Committee view**

- 3.100 The committee accepts and supports that all stakeholders have a right to have a legitimate say in the democratic process. However, there is significant public concern around the motivations of some donors, and that the influence they have on the decision-making of governments is disproportionate to the influence other citizens enjoy.
- 3.101 The committee heard compelling evidence that the current political funding and disclosure regime fails to provide the necessary safeguards to prevent corruption of the political process. The fact that the source of the significant majority of funding to those involved in the political process is undisclosed and unknown, is inimical to maintaining trust in the process.
- 3.102 There are obvious loopholes in the current regime around how some fundraising activities are defined. Political parties and their associated entities do not have to disclose all fundraising activities, including recent innovations such as membership of business forums, as donations. This allows for substantial sums to be raised, in circumstances that by their very nature, allow privileged access to those who subscribe to them. In the committee's view, there is no discernible reason why any category of fundraising activities should be excluded from the obligations to disclose them.

### **Recommendation 1**

- 3.103 The committee recommends that the Australian Government amend the definition of 'gift' under the *Commonwealth Electoral Act 1918* to include payments made in return for membership subscriptions and attendance at events and fundraisers of candidates, political parties and associated entities.**

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<sup>96</sup> Mr Andrew Thorburn, Chief Executive Officer, National Australia Bank, *Committee Hansard*, House of Representatives Standing Committee on Economics, 6 October 2016, p. 27.



# Chapter 4

## Third party regulation

- 4.1 Beyond the principal actors in political campaigns, third party organisations are integral to the political process, providing important context and commentary on the issues being decided on in an election.
- 4.2 Some third parties have also played an infamous role in recent corruption investigations, such as Operation Spicer in New South Wales (NSW), where the Independent Commission Against Corruption (ICAC) inquiry uncovered extensive evidence of illegal donations being channelled through third parties to circumvent electoral laws.
- 4.3 However, not all third parties are the same. There is range of entities that come under the broad definition of a third party, some of which are for profit organisations which have a specific political motivation, while others, such as charities, engage in the political sphere peripheral to their core function. The committee heard evidence that these differences should be reflected in the regulatory burden placed on them.
- 4.4 Submissions to various parliamentary inquiries by Professor Joo-Cheong Tham discuss the fundamental differences between political entities and third parties, and justify why they should be regulated differently:
- Political parties (or more accurately, their candidates) stand for office but not third parties;
  - Political parties are wholly political organisations whereas third parties tend not to be;
  - Political parties tend to rely upon donations to fund their campaigns whereas third parties have more varied sources of income;
  - The campaigns of political parties are invariably electoral campaigns (campaigns directly aimed at influencing voters and electoral outcomes) whereas third parties tend to engage in electoral and non-electoral campaigns;
  - The electoral campaigns of political parties tend to be based on express party and candidate advocacy whereas the electoral campaigns of third parties tend not to take such a character, but rather comprise provision of electoral information and/or issue advocacy; and
  - Because of their multiple organisational purposes, varied sources of income, and the fluid and multi-dimensional character of their campaigns, third

parties tend to face a more acute challenge of identifying which funds and spending are regulated by political funding laws.<sup>1</sup>

4.5 Professor Tham concluded that regulating third parties similar to political parties would be 'unfair to third parties that do not have a meaningful impact upon politics and especially elections, and also unduly burden political freedoms as the regulatory burden on less-resourced organisations might result in a "chilling" effect on political engagement.'<sup>2</sup>

4.6 This view was shared by the Australian Conservation Foundation (ACF), who distinguished between politicians and political parties and third parties in relation the level of risk of corruption and its potential impact:

[P]oliticians and political parties represent a much higher corruption risk than third parties. Third parties can only advocate for government (or voters) to take particular action. Politicians themselves stand to end up in positions where they control the levers of power. As such, the most urgent priority for reform of the Electoral Act should be placing appropriate restrictions on politicians and political parties. Overall, third parties should be subject to less stringent requirements, because the level of risk of corruption is also less.<sup>3</sup>

### **Current third party regulation**

4.7 As discussed in Chapter 1, presently, the Electoral Act does not explicitly define third parties. However, the Australian Electoral Commission (AEC) defines third parties as people or organisations (other than registered political parties, candidates and federal government agencies) that incur 'political expenditure' as defined in the *Commonwealth Electoral Act 1918* (Electoral Act).

4.8 Subsection 314AEB(1) of the Electoral Act specifies those types of political expenditure which require an individual or organisation to provide an annual return to the AEC. Political expenditure is expenditure incurred by a person or organisation, by or with their authority, on:

- (i) the public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate by any means;
- (ii) the public expression of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election) by any means;<sup>4</sup>

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<sup>1</sup> Professor Joo-Cheong Tham, *Additional Information 24—Attachment 2*, received 29 March 2018, p. 15.

<sup>2</sup> Professor Joo-Cheong Tham, *Additional Information 24—Attachment 2*, received 29 March 2018, p. 15.

<sup>3</sup> Australian Conservation Foundation, *Additional Information 29*, received 13 April 2018, p. 1.

<sup>4</sup> Subparagraph 314AEB(1)(a)(ii) of the Electoral Act was amended in March 2018 with the commencement of the *Electoral and Other Legislation Amendment Act 2017*. The subparagraph had previously read 'the public expression of views on an issue in an election by any means'. As

- (iii) the communicating of any electoral matter (not being matter referred to in subparagraph (i) or (ii)) for which particulars are required to be notified under section 321D;
- (iv) the broadcast of political matter (not being matter referred to in subparagraph (iii)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992;
- (v) the carrying out of an opinion poll, or other research, relating to an election (whether or not a writ has been issued for the election) or the voting intentions of electors.<sup>5</sup>

- 4.9 Third parties are covered by the Electoral Act requirement that individuals or organisations that incur 'political expenditure' above the disclosure threshold lodge an annual return with the AEC. The return must be lodged within 20 weeks of the end of the preceding financial year.<sup>6</sup>
- 4.10 Third parties are also required to disclose gifts/donations over the threshold, where they have been used to incur political expenditure.<sup>7</sup>
- 4.11 The committee heard from a number of contributors that the regulation of third parties under the current system is insufficient to prevent serious distortion of election or other political campaigns.
- 4.12 The Community Council for Australia (CCA) suggested that the current system rewards those who can spend the most in election, rather than any merit based approach to policies:

It appears to CCA that the current laws encourage all political parties to spend as much as they possibly can to win elections—the more spent the more likely parties can properly segment the market and target accordingly. E.g. a politician who can survey every voter in their electorate and directly or indirectly segment the market might then be able to produce fifteen different fliers, each targeting issues that they know are important to a particular part of their electorate, and have those fliers selectively distributed to the appropriate target group of voters. They may even have the resources to test each of their separate messages and employ people to call voters individually. This targeted approach is more likely to

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outlined in the Explanatory Memorandum for the bill, this amendment was intended to clarify that in order to give rise to the need for an annual return, the public expression of views must relate to an upcoming election rather than a past election.

<sup>5</sup> *Commonwealth Electoral Act 1918*, s. 314AEB.

<sup>6</sup> Australian Electoral Commission, *Financial Disclosure Guide for Third Parties Incurring Political Expenditure*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/third-parties/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/third-parties/index.htm), p. 6, (accessed 5 April 2018).

<sup>7</sup> Australian Electoral Commission, *Financial Disclosure Guide for Third Parties Incurring Political Expenditure*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/third-parties/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/third-parties/index.htm), p. 10, (accessed 5 April 2018).

resonate with voters than a politician who can only afford to produce one flier and relies on mass distribution of this single flier.<sup>8</sup>

- 4.13 St Vincent de Paul Society National Council (St Vincent de Paul) commented on the change made by the *Electoral and Other Legislation Amendment Act 2017* (see paragraph 1.17) to the scope of activity which would prompt an obligation to report. In their response to the committee's request for further information on third parties, the organisation said:

[O]ne of the consequences appears to be that the number of community organisations, including charities, who will have to submit an annual Third Party Return of Political Expenditure will be greatly expanded. This is because the new wording includes not only issues that are before electors in an election, but also issues that are likely to be before electors.<sup>9</sup>

- 4.14 St Vincent de Paul also contended that broadening the activity covered for reporting purposes will now encompass the day-to-day work of organisations and charities not previously covered, and for no real benefit:

For example, organisations that regularly make submissions to Federal Government inquiries will probably need to submit a return, because in order to make high quality submissions, organisations generally employ policy officers to research and coordinate responses. It does not take long to exceed the \$13,500 threshold. More broadly, any organisation that campaigns on an issue for a length of time will find that it needs to submit a return.

While the Third Party Return of Political Expenditure is not a particularly onerous document, it is a waste of time for the more than 1,000 charitable and not for profit organisations to be filling it out. It serves no real purpose and no meaningful or useful information will be gained.<sup>10</sup>

- 4.15 The Australian Council for International Development (ACFID) submitted that the recent change created a 'broad and ambiguous definition' of political expenditure which will severely impact public democratic engagement:

We are concerned that the current (updated March 2018) AEC regulations governing political expenditure, and the proposed Electoral Funding and Disclosure Reform Bill currently before Parliament, may have a chilling effect on legitimate and constructive advocacy and public debate, severely undermining Australia's open and democratic system of government—which we believe should encourage, not restrict, public engagement.<sup>11</sup>

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<sup>8</sup> Community Council of Australia, *Additional Information 31*, received 23 April 2018, p. 1.

<sup>9</sup> St Vincent de Paul Society National Council, *Additional Information 28*, received 13 April 2018, p. 4.

<sup>10</sup> St Vincent de Paul Society National Council, *Additional Information 28*, received 13 April 2018, p. 5.

<sup>11</sup> Australian Council for International Development, *Additional Information 30*, received 20 April 2018, p. 1.

## Options for increased regulation

4.16 As with its consideration of regulation for other actors in the political sphere, the committee received various contributions on third parties how should be regulated. Much of the evidence is of the view that any further regulation should reflect the role that third parties play in the political system, which is intrinsically different to parties, candidates and associated entities.

4.17 CCA suggested that a level playing field should be aspired to through the capping of political expenditure,<sup>12</sup> while ACF had the following suggestions for any regulation of third parties:

- The definition of 'political expenditure' should seek to capture expenditure that is intended to affect electoral contests, not expenditure for campaigning promoting an issue in the general sense.
- There should be finite and set period when the relevant disclosures and caps apply to third parties (e.g. three-six months out from polling day, rather than year around).
- It is crucial that clarity is provided around what is included and excluded from political expenditure (i.e. staff and office costs should be excluded for third parties).
- For donation disclosures and caps, only donations made with the intention (of the donor) to be spent on 'political expenditure' should be captured. When there is no nexus between a 'gift' and 'political expenditure', that gift should fall outside the regime. Philanthropic donations (that are a tax deductible 'gift' under Division 30 of the Income Tax Assessment Act 1997) to third parties should not be captured, unless such a donation is given to a third party specifically to be directed to political expenditure.
- Only third parties that incur significant political expenditure should be regulated. If the 'political expenditure' of a third party exceeds \$100,000 per annum, the third party should be subject to the coverage under the Act.<sup>13</sup>

4.18 Professor Tham's 'Ten Point Plan' includes a number of proposals specific to third parties. However, his suggestions are predicated on third parties only being subject to regulation if they incur political expenditure over \$100,000. The three central elements which would apply to third parties, as well as all other political actors are:

### Effective transparency of political funding

- Comprehensive: i) low disclosure threshold with amounts under threshold aggregated; ii) covers key political actors (including third parties).

<sup>12</sup> Community Council of Australia, *Additional Information 31*, received 23 April 2018, p. 1.

<sup>13</sup> Australian Conservation Foundation, *Additional Information 29*, received 13 April 2018, pp. 2–3.

### Caps on election spending

- Comprehensive: i) cover all 'electoral expenditure'; ii) covers key political actors (including third parties).
- Applies two years after previous election—allow limits to apply around six months.
- Two types of limits: i) national; ii) electorate.
- Level set through review and harmonised with levels of caps and public funding.

### Caps on political donations

- Comprehensive: i) cover all 'political donations; ii) covers key political actors (including third parties).
- Gradually phase in to set cap at \$2,000 per annum and private funding around 50 per cent of total party funding.
- Exemption for party membership (including organisational membership fees) with level at \$200 per member (like section 96D of *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*)<sup>14</sup>

4.19 Associate Professor Luke Beck argued against any attempt to cap political expenditure on constitutional grounds. He cites the *Unions v New South Wales* (2013) 304 ALR 266 case whereby the High held that legislation capping political expenditure by political parties did not serve a legitimate purpose, and contends that 'for the same reasons, capping political expenditure by third party campaigners for no particular reason would also be unconstitutional.'<sup>15</sup>

### *Expenditure caps for third parties*

4.20 Some participants stressed the importance of expenditure cap regulations applying to all political actors, including third parties. It was argued that not extending expenditure caps to third parties would risk election spending being transferred to these entities.<sup>16</sup>

4.21 Professor Tham's submission articulated this issue:

Alongside election spending limits being applied to political parties and candidates, there should also be limits on third party election spending. The first reason lies with preserving the integrity of the limits applied on parties and candidates. Without third party limits, political parties and candidates may be able to use front groups to engage in spending otherwise prohibited if they had done so directly.<sup>17</sup>

4.22 Similarly, Dr Livingstone told the committee that 'I think it's important that any system of regulation doesn't just transfer the problem of money going to

<sup>14</sup> Professor Joo-Cheong Tham, *Additional Information 24—Attachment 1*, received 29 March 2018, p. 2.

<sup>15</sup> Associate Professor Luke Beck, *Additional Information 25*, received 12 April 2018, p. 4.

<sup>16</sup> See, for example, Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 137.

<sup>17</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 137; Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 9.

political parties'. Dr Livingstone further contended that '[i]f you want to contribute to public debate, that's fine, but you should be subject to some reasonable regulation when you do it'.<sup>18</sup>

4.23 While supportive of extending limits on campaign spending to third parties, representatives from GetUp warned the committee that expenditure caps should not restrict the legitimate role of third parties to engage in elections:

...we've got to be really careful that those expenditure caps aren't used to diminish the important role that third parties play in advocacy, including at election times.<sup>19</sup>

4.24 Professor Tham also acknowledged that expenditure caps on third parties would need to account for the varied nature of third party organisations:

...the regulations that should apply to third parties are not necessarily the same as the regulations that should apply to political parties and candidates. Whatever regulations develop in the area need to be sensitive to the fact that third parties come in very different shapes and sizes and are, organisationally, quite different from political parties.<sup>20</sup>

### *Third parties and foreign donations*

4.25 There was some disagreement among participants as to whether a ban on foreign donations should extend to third parties.

4.26 Representatives from GetUp argued that a ban on foreign donations should not apply to third parties as donations made to such groups do not have a direct influence on government decision-making:

That's correct because the purpose of a foreign donation traditionally is to make sure that outside influences can't be placed on those people who have their hands on the ink strokes of government who can change laws, direct our military and so forth, which people outside the parliamentary system cannot do.<sup>21</sup>

4.27 Dr Ng submitted that banning foreign donations to third parties could be found to be unconstitutional due to the 'tenuous link between such groups and foreign influence on domestic policy, compared to political parties who are elected to government'.<sup>22</sup>

4.28 Dr Tham advised the committee that 'my general position is that if there is any regulatory measure that applies to political parties and candidates it should

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<sup>18</sup> Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 9.

<sup>19</sup> Mr Django Merope-Synge, Acting Economic Campaign Director, GetUp, *Committee Hansard*, 6 November 2017, p. 34.

<sup>20</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 8.

<sup>21</sup> Mr Paul Oosting, National Director, GetUp, *Committee Hansard*, 6 November 2017, p. 35.

<sup>22</sup> Dr Yee-Fui Ng, *Submission 11*, p. 4. See also Professor George Williams AO, *Committee Hansard*, 30 January 2018, p. 17.

also apply to third-party activity', however qualified that such measures should give 'due regard to the different organisational character of third parties'.<sup>23</sup>

- 4.29 When questioned by the committee about whether regulations relating to foreign donations should extend to third parties, Dr Livingstone expressed the view that:

...prohibitions on third-party donors, or third-party polemicists, if I can put it that way, should be generous and reasonable, but set at a level where the capacity to influence public debate is not exceptional. A mining industry campaign that costs \$20 million, for example, to my view, is influencing the public debate rather more than is reasonable in a robust democracy. I think the cap on policy advertising and advocacy should be higher of course than for individual donors but not set at a ridiculously higher level. So it should reflect the cost of getting your message out there, but not allowed domination of the airwaves, so to speak.<sup>24</sup>

### **Should all thirds parties be regulated the same?**

- 4.30 Associate Professor Beck is of the view that it is political activity that should be regulated, rather than the third parties themselves. According to his submission, this approach has a twofold benefit:

...political activity should be regulated and any differentiation in treatment should principally be a result of the amount of money involved. The focus on political activity ensures that any regulation targets the perceived mischief, which will reduce the chances of a successful constitutional challenge on the ground of disproportionate burdens on political communication.<sup>25</sup>

- 4.31 Professor Tham sought to distinguish between third parties by defining an entity in terms of its political expenditure. In his submission to the inquiry of the Joint Standing Committee on Electoral Matters into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, Professor Tham proposed that a person or an organisation with political expenditure above \$100,000 should be required to register as a 'third party campaigner', whereas a person or an organisation with expenditure above \$2,000,000 should be required to register as a 'political campaigner'.<sup>26</sup>

### **Committee view**

- 4.32 The committee received consistent evidence over the course of the inquiry that the recently amended legislation and current legislative proposals before parliament carry the very real danger of stifling the voice of third parties in the

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<sup>23</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 11.

<sup>24</sup> Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 10.

<sup>25</sup> Associate Professor Luke Beck, *Additional Information 25*, received 12 April 2018, p. 1.

<sup>26</sup> Professor Joo-Cheong Tham, *Additional Information 24—Attachment 2*, received 29 March 2018, p. 1.

delivery of their core purpose to advocate on specific issues. The committee is of the strong view that only activity by third parties that is seeking to directly influence elections should be regulated.

- 4.33 In relation to caps on donations and campaign expenditure, the committee heard views from many key stakeholders of the potentially corrosive impact of significant spending by third parties during election campaigns. Recent examples in Tasmania show how excessive and unregulated political expenditure can influence voters and materially affect the outcome of an election.
- 4.34 However, the committee is also aware that third parties themselves are very difficult to categorise, as is the type of activities they may engage in, political or otherwise. The committee therefore recommends that a thorough consultation exercise be carried out by the federal government before any detailed regulatory mechanisms are put in place.

## Recommendation 2

- 4.35 In recognition that expenditure caps on political parties and associated entities would likely divert donations into third parties, the committee recommends that the Australian Government ensure that any mechanism to limit third party expenditure would enable continued democratic participation and advocacy, while removing any unfair advantage that can be enjoyed by interest groups with the largest financial resources.**

## Charities as third party organisations

- 4.36 In Australia, a 'charity' is defined under the *Charities Act 2013* (Charities Act). To be recognised as a charity, an organisation must:
- be not-for-profit;
  - have only charitable purposes that are for the public benefit;
  - not have a disqualifying purpose; and
  - not be an individual, a political party or a government entity.<sup>27</sup>
- 4.37 Australian charities are regulated by the Australian Charities and Not-for-profits Commission (ACNC). The ACNC is established under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act). As part of its regulatory role, the ACNC registers charities, monitors compliance and

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<sup>27</sup> Australian Charities and Not-for-profits Commission, *Legal meaning of charity*, [https://www.acnc.gov.au/ACNC/Register\\_my\\_charity/Who\\_can\\_register/Char\\_def/ACNC/Edu/Edu\\_Char\\_def.aspx](https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Char_def/ACNC/Edu/Edu_Char_def.aspx), (accessed 22 March 2018).

manages non-compliance of registered charities with their obligations and responsibilities under the ACNC Act.<sup>28</sup>

4.38 To maintain their status as a charity in accordance with the definition under the Charities Act, a charity is not permitted to engage in activities for 'the purpose of promoting or opposing a political party or candidate for political office'.<sup>29</sup> Consequently, charities cannot make donations to or advocate directly for a political party or candidate.

4.39 Mr David Crosbie, CEO of the Community Council for Australia (CCA), highlighted these restrictions on registered charities with regard to political activities in his evidence to the committee:

**CHAIR:** ...Just to be clear: the act that governs charities prevents you from making donations to any political party?

**Mr Crosbie:** That would mean that you were acting as a political party or in support of a political party, and you can't do that as a charitable organisation. The 2013 definition of 'charity' excludes political activity.

**CHAIR:** It also prevents you from advocating directly for one political party or another?

**Mr Crosbie:** You cannot tell people to vote for a political party. You cannot tell people to provide how-to-vote cards.<sup>30</sup>

4.40 CCA further submitted that charities are already under a substantial regulatory burden and should be considered separately in any regulation of political actors:

CCA believe charities are in a separate category in relation to political influence primarily because all charities have to demonstrate a public benefit as well as satisfying a range of legal and regulatory requirements to establish and maintain their charitable status.<sup>31</sup>

### *Impact of political finance reform on the charity sector*

4.41 A number of inquiry participants cautioned the committee about the potential impact of proposed changes to the operation of the federal political finance regime with regard to charities in Australia.<sup>32</sup>

<sup>28</sup> Australian Charities and Not-for-profits Commission, *ACNC's Role*, [https://www.acnc.gov.au/ACNC/About\\_ACNC/ACNC\\_role/ACNC/Edu/ACNC\\_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe](https://www.acnc.gov.au/ACNC/About_ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe), (accessed 22 March 2018).

<sup>29</sup> *Charities Act 2013*, s. 11.

<sup>30</sup> Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 6 November 2017, p. 10.

<sup>31</sup> Community Council of Australia, *Additional Information 31*, received 23 April 2018, p. 2.

<sup>32</sup> See, for example, Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, 2 November 2017, pp. 12–13, 14, 17; Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 6 November 2017, pp. 11, 12.

4.42 The Australian Council of Social Service (ACOSS) promoted the unique role charities and not-for-profits have in Australia. In response to proposed legislative changes to regulate the activity of charities, they commented:

Charities and not-for-profits have a special place in the civic life of the nation. They speak for and with some of the most disadvantaged people and communities, and have played a leading role in the development of some of the rights, laws and policies that we take for granted today. Whether it is campaigning for people experiencing homelessness, mental health, women's rights or environmental justice, charities and not-for-profits play a key role in important debates and ensure that often marginalised voices are heard. It is vital for a vibrant civil society that additional red tape not stand in the way of charities and not for profits speaking out on issues that affect us all.<sup>33</sup>

4.43 Similarly, representatives from ACF implored the committee to consider the effect that reforms could have on the important advocacy role of charities:

The only thing that I would want the committee to look seriously at is not muzzling advocacy in Australia. Advocacy is lawful and very, very important for the future of all Australians. We wouldn't want to cap it to the extent that we are impacting advocacy.

4.44 When questioned by the committee about the CCA's position on proposals to limit or constrain the advocacy work of charities, Mr Crosbie commented:

It's bizarre. I don't know why anyone who is committed to having the strongest possible country and the strongest possible communities would seek to silence the voice of communities. And the most important input into national policy is often input from the community itself and the communities impacted by that policy.

...

I think that would be very damaging to Australia, and I fail to see that there is any justification of any kind.<sup>34</sup>

4.45 Ms Kelly O'Shanassy, CEO of ACF, reflected on how measures to reform political funding and disclosure regulation at the state and territory level have resulted in negative outcomes for the charity sector. Ms O'Shanassy warned that 'conflating donation management for charities with donations to political parties, candidates or associated entities has resulted and is right now in this country resulting in perverse outcomes'.<sup>35</sup>

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<sup>33</sup> Australian Council of Social Service, *Additional Information 26*, received 13 April 2018, p. 2.

<sup>34</sup> Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 6 November 2017, p. 11.

<sup>35</sup> Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, 2 November 2017, p. 12.

- 4.46 Ms O'Shanassy drew the committee's attention to recent political finance reforms in Queensland and the impact this will have on advocacy-based charity organisations:

I'll run you through the Queensland example—it requires the disclosure of donations and donors over \$1,000 over a disclosure period, which is the election period, for expenditure on an electoral matter. The problem is the definition of 'an electoral matter', which is defined as 'an issue that may be before an election'. Advocacy based charity organisations who want, in our case, to create healthy rivers and clean air must work with governments because governments set the policy and the rules that determine the health of the environment, so every issue that we work on could potentially be an electoral matter. That means that we have to disclose every single donor over \$1,000 over four years, which is around 7,000 people, none of whom have ever given us money to work on a Queensland election, because we haven't worked on a Queensland election for some time. We are planning to work on the next one. It's a nonsensical requirement that is impossible for us to implement and is actually giving misleading information, because it's saying that these people gave to us for an election, which is clearly not the case.<sup>36</sup>

- 4.47 Providing a further example, Ms O'Shanassy highlighted the proposed reforms to political finance laws in Victoria, arguing that such measures, if passed, would 'kill off advocacy based charities' that work in Victoria:

We mentioned earlier that in Victoria they're looking at putting caps on political donations. If they use the same definition as Queensland, not only would we have to disclose donors who give us up to \$1,000 over four years, but we wouldn't be able to get any higher donation than \$1,000 over four years, which would kill off advocacy based charities in Australia that work in Victoria. We cannot simply conflate donations to charities with donations to political parties without looking very carefully at the impact.<sup>37</sup>

### *Adequacy of current charity regulation*

- 4.48 Some inquiry participants noted the stringent regulation that already applies to the charity sector in Australia, including in relation to political activity, and argued that imposing further regulation on charities as part of political finance reforms is unnecessary.

- 4.49 For example, Mr Crosbie told the committee that:

I think the restrictions on charities are being enforced with a high level of diligence. Whether or not that kind of diligence would ever be imposed on any other group is very questionable. The fact is the charity sector have welcomed that level of accountability, because we trade in trust. Charities

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<sup>36</sup> Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, 2 November 2017, pp. 12–13.

<sup>37</sup> Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, 2 November 2017, p. 13.

rely on trust and transparency with their communities in order to receive their income and continue to do their work.<sup>38</sup>

- 4.50 Similarly, Ms O'Shanassy told the committee that 'charities are very heavily regulated in this country', further commenting that:

The charitable sector has clear governance regulation and law in this country such that we cannot be in any way partisan. We can try to influence a policy outcome, which is done through political parties, of course. But we would like all parties to adopt our policies, because we understand, based on the evidence, they are the best thing for the interests of Australians, which is why we'll advocate very strongly. And as I said, not letting the perfect get in the way of the good, the charitable sector is not causing problems in corruption in this country. So, we don't need to really conflate those two issues and we are already heavily regulated and managed.<sup>39</sup>

- 4.51 St Vincent de Paul were vehement in their response on the adequacy of current regulation on charities in terms of their political activities:

In this context, it should be noted that the *Charities Act 2013*, while recognising public policy advocacy in furtherance of a charity's purpose is legitimate, prohibits charities from having a 'purpose of promoting or opposing a political party or candidate for political office.' Given there is already this prohibition and regulation by the ACNC, no further requirements are necessary for charities and there is therefore little justification for the imposition of additional requirements under the *Commonwealth Electoral Act 1918*.<sup>40</sup>

- 4.52 In relation to the recent legislative changes, St Vincent de Paul argued that work on many of their purposes would now be considered 'political expenditure', and quoted the confirmation of this by the ACNC:

The changes to the *Commonwealth Electoral Act 1918*, however, introduce additional administrative burdens and legal ambiguities that ultimately serve to undermine the independence of charities, and muddle important regulatory distinctions between activities and purpose, as spelt out in charity law and case law.

Importantly, because of the changes to the *Commonwealth Electoral Act 1918* made in September 2017, expenditure on these purposes will now largely be defined as political expenditure, and this will have the immediate effect of increasing administrative burden. The ACNC has summed up the situation succinctly, 'Under the new definition (of political purpose which came into effect in March 2018) it is likely that more charities will be required to report to the AEC and the Bill (the Electoral Funding and Disclosure Reform Bill 2017) also increases the regulatory requirements for

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<sup>38</sup> Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 6 November 2017, p. 12.

<sup>39</sup> Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, 2 November 2017, p. 14.

<sup>40</sup> St Vincent de Paul Society National Council, *Additional Information 28*, received 13 April 2018, p. 8.

each individual charity engaged in political expenditure over the threshold amount.'<sup>41</sup>

**Committee view**

4.53 The committee heard almost universal views that the extensive regulatory regime that governs the operation of charities effectively makes any recent legislative proposals under electoral law redundant. The activities charities are able to undertake under the purview of the Australian Charities and Not-for-profits Commission are strictly governed and do not allow charities to promote or oppose a political party or candidate. The committee therefore sees no justification for imposing a further regulatory burden on charities.

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<sup>41</sup> St Vincent de Paul Society National Council, *Additional Information 28*, received 13 April 2018, p. 9.

# Chapter 5

## Barriers to transparency

### Calls for reform

5.1 Submitters and witnesses highlighted the urgent need for holistic reform of federal political finance laws, citing the broad lack of transparency of the current political donations system. As discussed in Chapter 3, the consequences of a continuation of the current system are significant.

5.2 Dr Livingstone and Ms Johnson described the current donations system as having 'numerous flaws from the perspective of transparency and support for policy that acts in the genuine interest of the public'.<sup>1</sup> Dr Livingstone reiterated this point at a public hearing, commenting that:

...the process of political donations at the moment, which, as we try to point out in our submission, is lacking transparency to a very significant extent, allows decisions to be made without any awareness by the public of the forces that might be at work on some of the decision-makers and clearly gives the impression, if not the substance, of favouritism in terms of those with the resources to make significant decisions.<sup>2</sup>

5.3 The Australian Conservation Foundation (ACF) argued that the 'opacity of the system is clearly a barrier to political accountability, especially when trying to map the direct influence of specific industries to specific policy makers'.<sup>3</sup>

5.4 Similarly, Dr Yee-Fui Ng submitted that '[t]he current political donations disclosure regime at the federal level is inadequate and riddled with loopholes'.<sup>4</sup>

5.5 Mr Paul Oosting, National Director of GetUp, characterised the political influence of donations as a 'crucial issue that goes to the heart of our democracy', further contending that:

It's no secret that Australia's system of political donations is broken. Corporations and wealthy individuals are able to pump millions of dollars into political party coffers. Yet there is no oversight and no accountability and the transparency provisions are becoming beyond a joke.<sup>5</sup>

5.6 The Hon Anthony Whealy QC, Chair of Transparency International Australia (TIA), summarised the organisation's position as 'one of concern about the way

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<sup>1</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, pp. 2, 8.

<sup>2</sup> Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 1.

<sup>3</sup> Australian Conservation Foundation, *Submission 10*, p. 8.

<sup>4</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>5</sup> Mr Paul Oosting, National Director, GetUp, *Committee Hansard*, 6 November 2017, p. 30.

our political donation system has evolved' and expressed the view that 'there is an urgent imperative to make changes'.<sup>6</sup>

- 5.7 Professor George Williams AO submitted that it 'is widely accepted among experts and others that Australia's system of political finance law is broken, and open to exploitation and undue influence'. Professor Williams also noted that:

The many problems with the current system have given rise to a large number of reports and recommendations. My view is that it is time now to act by way of bringing about holistic reform to federal campaign finance law.<sup>7</sup>

- 5.8 Dr Belinda Edwards, a politics academic, conceded to being 'a little disheartened' by the lack of progress with regard to political donations reform.<sup>8</sup>

- 5.9 In the same vein, Adjunct Professor Colleen Lewis argued that the 'time has come for action, not more words', also submitting that the 'public has repeatedly made its displeasure with the system and the conduct of some parliamentarians very clear'.<sup>9</sup>

- 5.10 Professor Tham expressed similar sentiments, pointing out to the committee that the 'need for fundamental reform has been apparent for a long time':

It was apparent in 2008 when Senator John Faulkner, then Special Minister of State, released a green paper emphasising the need for reform of political finance laws. It was apparent the next year when the present Prime Minister, Malcolm Turnbull, called for root-and-branch reform of the laws. And it's even more apparent now when there's open talk of a crisis of representation in developed democracies with deep public disaffection with our representative system, including strong perceptions and beliefs that government is no longer oriented towards a public interest and is hostage to vested interests, particularly money interests.<sup>10</sup>

- 5.11 Inquiry participants emphasised the need for a holistic approach to effectively address the current flaws in the federal political finance regime. Participants argued that changes that only target particular parts of the system will simply result in the evasion of regulations through the use of loopholes and re-channelling of funds.<sup>11</sup>

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<sup>6</sup> The Hon Anthony Whealy QC, Chair, Transparency International Australia, *Committee Hansard*, 2 November 2017, p. 23.

<sup>7</sup> Professor George Williams AO, *Submission 1*, p. 1.

<sup>8</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 3.

<sup>9</sup> Adjunct Professor Colleen Lewis, *Submission 30*, [p. 4].

<sup>10</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 3.

<sup>11</sup> See, for example, Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 10; Professor George Williams AO, *Committee Hansard*, 30 January 2018, p. 11; Adjunct Professor

5.12 Professor Williams clearly summarised this point:

One thing that is true here, as with overseas, is that money will find a way to evade any system unless it's holistic and comprehensive in dealing with the myriad of opportunities to influence a political process, whether it's through parties, associated entities or the like.

...

I think if we are serious about removing the problem here, then we need reform of this kind. If we don't have all the pieces, then it's too easy to evade.<sup>12</sup>

### **Barriers to transparency**

5.13 The committee heard strong evidence during the inquiry regarding the significant barriers to transparency of the current federal political finance system. Issues consistently highlighted by inquiry participants included:

- high levels of non-disclosure that is facilitated by the high disclosure threshold and use of donation splitting;
- the inconsistent and inappropriate use of the 'other receipts' category for categorising income on annual disclosure returns;
- the operation of associated entities such that the ultimate source of donations is obscured; and
- poor data accessibility resulting from delayed disclosure of donations and the presentation of Australian Electoral Commission (AEC) political finance data.

5.14 Witness and submitters argued that these issues create numerous means through which political actors can circumvent disclosure provisions and, in doing so, seriously impede the ability of the public to scrutinise political funding and the potential undue influence of donations on the political process.

#### *High levels of non-disclosure*

5.15 As previously noted, political party and associated entity annual disclosure returns lodged with the AEC must show the total value of receipts, payments and debts, as well as details of any donations received (monetary and non-monetary) that exceed the disclosure threshold. The disclosure threshold, indexed annually to the Consumer Price Index (CPI), is currently \$13,500 (2017–18).

5.16 While donations above the prescribed disclosure threshold are required to be fully accounted for in political parties' annual returns, specific details of

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Colleen Lewis, *Committee Hansard*, 30 January 2018, p. 20; Mr Paul Oosting, National Director, GetUp, *Committee Hansard*, 6 November 2017, p. 36.

<sup>12</sup> Professor George Williams AO, *Committee Hansard*, 30 January 2018, p. 11.

private funding below the threshold, either from donations or other sources, is not required to be disclosed. Consequently, it is not currently possible to determine the total annual figure of donations to political parties that are below the disclosure threshold.<sup>13</sup>

- 5.17 Dr Belinda Edwards' 2016 report—*Dark Money: The Hidden Millions in Australia's Political Finance System* (Dark Money report)—commissioned by GetUp found that, in the 2013–14 election year, 63 percent of the Liberal Party of Australia's (Liberal Party) private income and 50 percent of the Australian Labor Party's (ALP) private income was entirely undisclosed.<sup>14</sup> Similar levels of non-disclosure have been reported for the 2015–16 election year.<sup>15</sup>

### Disclosure threshold

- 5.18 There was a general consensus among participants that the present disclosure threshold is too high and undoubtedly compromises transparency by allowing for significant levels of non-disclosure.<sup>16</sup>
- 5.19 Professor Tham characterised the disclosure threshold as 'perhaps the most serious loophole of the federal disclosure scheme', noting that it permits an 'astonishing level of non-disclosure'.<sup>17</sup> In discussing the 2006 amendments to the *Commonwealth Electoral Act 1918* (Electoral Act) that gave effect to the current indexed threshold, Professor Tham contended that:

This change is less about public disclosure of donations and loans and more about the records kept by parties: it will mean that parties can legally accept larger sums without recording details of the donor. This potentially renders the old notion of disclosure thresholds meaningless.

...

At best, this change is an invitation to poor record keeping; at worst, it is a recipe for wholesale circumvention of the disclosure scheme.<sup>18</sup>

<sup>13</sup> See Australian Electoral Commission, answers to questions on notice, 30 January 2018 (received 14 February 2018).

<sup>14</sup> Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016. Study analysis was based on 2013–14 'party groups' data that includes financial disclosures of different branches from each political party. Intraparty and public funding payments were removed from the data.

<sup>15</sup> See Adam Gartrell, '[Dark money: \\$70 million in major party income is untraceable](#)', *Sydney Morning Herald*, 2 February 2017 (accessed 1 March 2018).

<sup>16</sup> See, for example, Dr Yee-Fui Ng, *Submission 11*, p. 2; Dr Luke Beck, *Submission 12*, p. 3; Australian Conservation Foundation, *Submission 10*, p. 7; Australian Greens, *Submission 7*, p. 2.

<sup>17</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 51.

<sup>18</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, pp. 52–53.

- 5.20 The Australian Greens submitted that '[t]he current indexed \$13,500 disclosure level encourages substantial anonymous donations and hides from the public who is buying political influence'.<sup>19</sup>
- 5.21 ACF expressed similar concerns, noting that '[s]ources of political donations to political parties and their associated entities are made opaque by the relatively high disclosure threshold'.<sup>20</sup>
- 5.22 The AEC observed that there is considerable debate concerning whether the current disclosure threshold is appropriate and commented that some political parties choose to disclose amounts below the current threshold 'to reflect a public expectation about the required level of disclosure'.<sup>21</sup> The AEC also noted that there are differing disclosure requirements across jurisdictions.<sup>22</sup>
- 5.23 Most states and territories in Australia currently have disclosure thresholds in place (Table 5.1), excluding Tasmania and Victoria.<sup>23</sup> The operation and amount of the threshold varies across the relevant jurisdictions, however the applicable threshold in all cases is substantially lower than the federal disclosure threshold.

**Table 5.1 Disclosure threshold in Australian states and territories<sup>24</sup>**

Federal	NSW	Vic.	SA	Qld	Tas.	WA	ACT	NT
\$13,500	\$1,000	X	\$5,000	\$1,000	X	\$2,300	\$1,000	\$1,500

*Figures compiled by the Parliamentary Library*

#### *Suggested disclosure threshold*

- 5.24 Submitters and witnesses were broadly supportive of a significant reduction to the disclosure threshold to improve transparency and reduce the risk of undue influence. Participants recommended that the threshold be reduced to \$1,000 or lower.<sup>25</sup>

<sup>19</sup> Australian Greens, *Submission 7*, p. 2.

<sup>20</sup> Australian Conservation Foundation, *Submission 10*, p. 7.

<sup>21</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

<sup>22</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

<sup>23</sup> In September 2017, the Victorian Government announced that it will reform Victoria's donations and disclosure laws, including a reduction of the disclosure threshold to \$1,000 per financial year.

<sup>24</sup> See Dr Damon Muller, *Election funding and disclosure in Australian states and territories: a quick guide*, Parliamentary Library, 9 November 2017.

<sup>25</sup> See, for example, GetUp, *Submission 21*, p. 3; Transparency International Australia, *Submission 33*, p. 2; Australian Greens, *Submission 7*, p. 2; Dr Belinda Edwards, *Submission 22*, p. 3; Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 8.

5.25 For example, the Synod of Victoria and Tasmania, Uniting Church in Australia (the Synod) contended that:

Public disclosure of any donations of \$1,000 and above and denial of anonymous donations over \$50 would tackle the issues of undue influence and policy capture that swirl around the current donations regime.<sup>26</sup>

5.26 Dr Ng submitted that the current disclosure threshold at the federal level is 'too high' and 'should be reduced to \$1,000 to increase the transparency of the system'.<sup>27</sup>

5.27 Associate Professor Luke Beck was also supportive of a reduction of the disclosure threshold to a value of \$500 to \$1,000. Professor Beck considered that a threshold at this level represents an appropriate balance in terms of avoiding administrative burden while ensuring that donations of a value with the potential to influence a recipient are publically disclosed:

You don't want to disclose \$2 raffle tickets, because that would be an administrative nightmare, and there's no real reason; \$2 is not going to influence any particular outcome. But you don't want a \$13,000 threshold, because \$10,000 speaks. If somebody puts \$10,000 in your campaign account, you notice that. So you would want a limit that is sufficiently low but not so low as to capture raffle tickets—so something like \$500 or perhaps \$1,000. But with any threshold above \$1,000 you're simply setting up a way to circumvent disclosure.<sup>28</sup>

#### *Anonymous donations*

5.28 The current funding and disclosure regime prevents the receipt of anonymous donations above the disclosure threshold. Some participants argued that the amount above which anonymous donations are prohibited should also be significantly reduced.

5.29 GetUp contended that all donations above an aggregated value of \$500, including those made to associated entities, should be publically disclosed.<sup>29</sup>

5.30 The Synod endorsed a lower threshold on anonymous donations, recommending that anonymous donations over a value of \$50 be prohibited.<sup>30</sup> In subsequent evidence to the committee, the Synod noted that '[w]e have been cautious about saying no anonymous donations at all' due to the increased administrative burden that would place on political parties:

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<sup>26</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 10.

<sup>27</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>28</sup> Associate Professor Luke Beck, *Committee Hansard*, 30 January 2018, p. 14. See also Dr Luke Beck, *Submission 12*, p. 3.

<sup>29</sup> GetUp, *Submission 21*, p. 3; Mr Paul Oosting, National Director, GetUp, *Committee Hansard*, 6 November 2017, p. 31.

<sup>30</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 10.

...for every tiny donation there would have to be records kept, which potentially could be quite an administrative struggle for some political parties.<sup>31</sup>

### Donation splitting

5.31 In addition to the high disclosure threshold, several participants highlighted the practice of 'donation splitting' as further facilitating non-disclosure and a means of circumventing disclosure requirements.<sup>32</sup>

5.32 The AEC broadly defined donation splitting as:

...where the sum of donations disclosed by a donor in a particular year, is over the disclosure threshold, but the party named by the donor does not disclose the same or any amount.<sup>33</sup>

5.33 Mr Tom Rogers, Electoral Commissioner of the AEC, informed the committee that there can be more than one reason for donation splitting to occur:

Under the current legislation there are many different contributors to donation splitting, and we've spoken about that at length. It can be as simple as, for example, a donor, out of an abundance of caution, declaring matters that they are not required to declare and then a party not declaring those matters, so it looks like donation splitting. It could be, under the current legislation, that a donor might provide something to an associated entity, the associated entity then provides something to a party, and the party might not even be aware that a donor had given that money to an associated entity.<sup>34</sup>

5.34 Under the Electoral Act, registered political parties are not currently required to provide details or a disaggregation of donations received that are under the disclosure threshold. Donations of a value below the threshold are included in a party's total receipts on their annual disclosure return. Donors are required to disclose donations ('gifts') made to the same political party or candidate where the sum of those donations totals more than the disclosure threshold.<sup>35</sup>

5.35 Mr Paul Pirani, Chief Legal Officer at the AEC, highlighted this difference in the present application of the disclosure threshold between political parties and donors as another reason for donation splitting to occur:

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<sup>31</sup> Dr Mark Zirnsak, Director, Social Justice, Synod of Victoria and Tasmania, Uniting Church in Australia, *Committee Hansard*, 2 November 2017, p. 19.

<sup>32</sup> See, for example, Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 52; Australian Conservation Foundation, *Submission 10*, p. 7; Public Health Association of Australia, *Submission 32*, p. 7; Synod of Victoria and Tasmania Uniting Church in Australia, *Submission 20*, p. 7.

<sup>33</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 10.

<sup>34</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 48.

<sup>35</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 10.

The other particular issue that we've got at the moment is the application of the threshold. At the moment the recipient political party only has to report where a single gift is above the threshold, while the donor has to accumulate all the small gifts et cetera they may make that may be underneath the threshold and then do a disclosure return once they hit the threshold. So, again, the current legislation is able to operate in such a way that donation splitting occurs, and you get a mismatch between what a donor might declare and what a recipient political party might declare.

- 5.36 Several participants pointed to the fact that, under the existing legislation, the disclosure threshold applies separately to each registered political party. The Electoral Act treats the national and each state and territory branch of the major political parties as a registered political party. As explained by Professor Tham, 'this means that a major party constituted by nine branches has the cumulative benefit of nine thresholds'.<sup>36</sup>
- 5.37 Some submitters and witnesses asserted that donors can use this separate application of the threshold in order to circumvent disclosure and conceal their identity, effectively hiding the potential influence of their donation from public scrutiny.<sup>37</sup>
- 5.38 For example, ACF submitted that:
- Furthermore, there is no requirement to disclose aggregated donations from a single entity in a single reporting period. A donor can effectively hide their political influence through 'splitting' donations; giving multiple amounts under the threshold, to multiple party-affiliated AEs and party branches, at different times in the reporting cycle.<sup>38</sup>
- 5.39 Mr Django Merope-Synge, Acting Economic Campaign Director at GetUp, argued that the capacity for corporate donors to 'split large donations between different branches of the same political party and then not disclose the fact that those donations have been made' is unacceptable. Mr Merope-Synge, further commented that '[e]ffectively, donors can easily circumvent the disclosure threshold and make large donations without any oversight'.<sup>39</sup>
- 5.40 Dr Edwards characterised the ability for donors to use this form of donation splitting as 'an enormous hole' in the current political finance regime, and summarised for the committee what it can look like in practice:

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<sup>36</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 52. See also Public Health Association of Australia, *Submission 32*, p. 7; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 7.

<sup>37</sup> See, for example, Australian Conservation Foundation, *Submission 10*, p. 7; Public Health Association of Australia, *Submission 32*, p. 7; Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, pp. 3, 6.

<sup>38</sup> Australian Conservation Foundation, *Submission 10*, p. 7.

<sup>39</sup> Mr Django Merope-Synge, Acting Economic Campaign Director, GetUp, *Committee Hansard*, 6 November 2017, p. 32.

**Dr Edwards:** ...At the moment, under the rules as they stand, somebody could give one of the major parties \$10,000, five days a week, 52 weeks a year, and the major parties don't need to disclose those payments at all. It is up to the donor to do the aggregation, to disclose. If the donor doesn't do that, there is actually nothing to flag to the AEC that wrongdoing has occurred; there is no indication of where to even look.

**CHAIR:** I wasn't aware of that. It's just the responsibility of the donor, and the party has no responsibility?

**Dr Edwards:** No, the party is not required to aggregate. And as you are probably aware if you've looked at the enormity of the discrepancies between what the parties declare and what the donors declare, it is pretty clear that donors are laissez-faire about whether they put in their disclosures. So that seems like an enormous hole.<sup>40</sup>

### Committee view

- 5.41 As many witnesses pointed out, there have been repeated calls over the years for substantial reform of the federal political finance regime. Many specific suggestions have been proposed in numerous policy papers, committee reports, and legislation. The committee is strongly of the view that the time has come for these changes to be implemented.
- 5.42 One of the cornerstones to a new regime is a substantial lowering of the disclosure threshold. The current donations threshold is high. It allows for the non-disclosure of significant amounts of donations, thus limiting the transparency of those who play a currently unrecognised role in the political process. The potential of donation splitting to further reduce visibility of donations is also an obvious concern.
- 5.43 Legislative changes in other jurisdictions in Australia have reduced the disclosure thresholds significantly. The committee heard evidence from a number of experts who sought to balance the administrative burden of disclosing donations, while ensuring that those donations that on paper have the potential to influence decision-making are fully disclosed. The broadly agreed figure was a threshold of \$1,000.

### Recommendation 3

- 5.44 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a fixed disclosure threshold of \$1,000, to be calculated cumulatively over a whole party group.**

#### *Inconsistent and inappropriate use of 'other receipts'*

- 5.45 Under the current AEC framework for annual disclosure returns, income is classified as either a 'donation' or an 'other receipt'. Income required to be classified as a 'donation' is that which meets the legislative definition of a 'gift'

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<sup>40</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 3.

under the Electoral Act. Theoretically, 'other receipts' do not meet the legislative definition of a gift and include revenue such as payments of public funding, interest on investments, income from real estate, union subscriptions, and fee-for-service payments.

- 5.46 Mr Pirani from the AEC explained the reasoning behind this reporting framework for annual disclosure returns:

In essence, when we get returns at the moment the actual approved form enables people to do it as a 'donation' or as 'other'. There are no requirements at law for them to be reporting that way, other than it is on the approved form. The reason it was put in there was that there were payments, for example, the payment of public funding that the AEC makes to political parties after an election, and people were seeing that appearing on these forms, the annual returns, and getting confused: 'Why is the AEC making a donation to a political party?' So what has developed over time is the political parties and candidates fill out the form. They put the gifts—which is what the definition is that they are required to disclose; gifts are required to be disclosed—and then they put these other amounts that come in, which might be interest, income from real estate that they might own or fee for services and other things like that.<sup>41</sup>

- 5.47 Dr Edwards' Dark Money report noted that receipts classified as 'donations' make up a 'small and declining proportion of the major parties' incomes'.<sup>42</sup>
- 5.48 Of the Liberal Party's total income of \$78.6 million in the 2013–14 election year, only 25 percent (\$19.3 million) was declared to the AEC as 'donations', including payments received from associated entities and known third parties. Income classified as 'other receipts' made up 11 per cent of the Liberal Party's total income.<sup>43</sup>
- 5.49 Declared 'donations' also made up only 25 per cent (\$11.6 million) of the ALP's total income of \$46.3 million for 2013–14. 'Other receipts' made up a further 26 per cent of the ALP's total income in the same year.<sup>44</sup>
- 5.50 The AEC provided the committee with the following information (Table 5.2) relating to the 2016–17 annual disclosure returns of the major political parties. Consistent with the analysis outlined above, the data shows that a notably small proportion of total receipts of major parties are disclosed as a 'donation'.

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<sup>41</sup> Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 50.

<sup>42</sup> Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016, p. 7.

<sup>43</sup> Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016, pp. 7–8.

<sup>44</sup> Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016, pp. 8–9.

**Table 5.2 Total receipts of major political parties and proportion disclosed as a 'donation' in 2016–17<sup>45</sup>**

Party Group	Total Receipts	Disclosed as 'donation' <sup>46</sup>
Liberals (including LNP)	95,087,608	7,635,675
ALP	70,775,135	4,105,469
Greens	16,269,836	544,865
Nationals	12,220,298	356,042

5.51 Some submitters and witnesses argued that the current framework for categorising income as either a 'donation' or 'other receipt' is a significant barrier to transparency. Participants noted that there are currently no legislative provisions to ensure political parties and associated entities accurately categorise their income and that, in practice, this results in under-reporting and inconsistency in how categories are applied.<sup>47</sup>

5.52 ACF submitted that:

The categorisation of income with the AEC system is an obstacle to analysing the relationships between the private sector, AEs [associated entities] and political parties.

...

In practice the distinctions between the two [donations and other receipts] are blurred and there is a lack of consistency as to how the two categories are applied.

5.53 Similarly, Professor Tham argued that the 'voluntary system of self-declaration' that results from political parties and associated not being legally required to accurately categorise receipts 'is a recipe for errors and under-reporting'.<sup>48</sup>

5.54 Dr Edwards suggested that a significant proportion of income categorised on annual disclosure returns as 'other receipts' should rightly be declared as 'donations', and that this framework for reporting therefore restricts capacity to effectively scrutinise political donations data:

<sup>45</sup> Australian Electoral Commission, answers to questions on notice, 30 January 2018 (received 14 February 2018).

<sup>46</sup> Only donations above the disclosure threshold (\$13,200 for 2016–17) are disclosed.

<sup>47</sup> See, for example, Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 51; Australian Conservation Foundation, *Submission 10*, p. 7; Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, pp. 5–6.

<sup>48</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 51.

**Dr Edwards:** The 'other receipts' category looks exactly like a collection of political donations.

**CHAIR:** So do you feel that that is just 'donations' by another name?

**Dr Edwards:** Unfortunately it is probably about 80 per cent that. Then there are some other payments in the mix.

**CHAIR:** How can you say that? I am just interested in where that comes from.

**Dr Edwards:** That's my instinctive sense of it. Occasionally you get, for example, things like the moneys out of the Cormack Foundation, which are returns on shares. You get big property sales. You get the occasional thing which is a legitimate other receipt. That confuses the data and makes it difficult to work out the trends. It's actually the mixing of fundraising in with other receipts that actually makes those trends so difficult to unpick. But certainly previous research by other scholars has concluded that, for analytical purposes, most other receipts should be considered donations.<sup>49</sup>

### **Committee view**

5.55 The committee accepts that there are some legitimate sources of income that are not donations, and that a category for these is required. However, the current regime allows for items to be included in the 'other receipts' category which for all intents and purposes are donations. The committee is therefore of the view that a comprehensive examination of how all income is classified is required.

### **Recommendation 4**

**5.56 The committee recommends that the annual return reporting for political parties and associated entities require much more detailed reporting with specific classifications for each type of income currently listed under 'other receipts' to ensure that income is categorised transparently.**

#### *Operation of associated entities*

5.57 Participants highlighted the operation of associated entities—that is, entities that are controlled by, or that operate wholly or to a significant extent for the benefit of one or more registered political parties (see paragraph 1.13)—as a contributing to the opacity of the current federal political finance regime.

5.58 In 2016–17, there were 192 associated entities registered with the AEC. Associated entities include a diverse range of organisations including trade unions, party investment vehicles, and state and local fundraising forums.

5.59 Dr Edwards' Dark Money report noted that for the 2014–15 financial year, payments from associated entities accounted for \$6.01 million of the Liberal

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<sup>49</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 5.

Party's \$10.3 million declared 'donations'. For the same year, \$5.4 million<sup>50</sup> of the ALP's declared donations of \$7.3 million were from associated entities.<sup>51</sup>

5.60 A number of submitters expressed concern that associated entities, by functioning as an intermediary between donors and political party recipients, are used by major political parties as a means of obscuring the original source of political donations. In this way, the relationships between donors and elected representatives, as well as the intent behind political donations, is effectively hidden from public scrutiny.<sup>52</sup>

5.61 The Synod argued that the transparency of political donations is frustrated by the use of associated entities, and observed that '[m]any of these arm's length organisations do not disclose the payments that are made to them, effectively concealing the origins of the money coming into the parties'.<sup>53</sup>

5.62 ACF also raised concerns regarding 'substantial sums' being funnelled to political parties through associated entities, submitting that:

Donations are effectively laundered as money flows between different entities in each party's fundraising ecosystem, making tracing donations from source to ultimate beneficiary effectively impossible.<sup>54</sup>

5.63 The Foundation for Alcohol Research and Education (FARE) expressed frustration at the ability of political parties to use associated entities:

The use of associated entities is unconscionable, and a clear indication that political parties are aware of apparent or real political influence associated with such donations. The use of associated entities also represents a deliberate attempt to obfuscate the source of donations, denying the public the ability to scrutinise relationships between corporations and their elected representatives.<sup>55</sup>

5.64 The use of associated entities to deliberately obscure the ultimate source of political donations has been clearly demonstrated at a state level. In August 2016, the NSW Independent Commission Against Corruption (ICAC) published its report on its investigation into NSW Liberal Party electoral funding for the 2011 state election campaign (Operation Spicer). The report found that, during November and December 2010, the Free Enterprise Foundation (an associated entity of the Liberal Party) was used to channel

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<sup>50</sup> Trade unions accounted for \$1.2 million of the \$5.4 million in donations made by associated entities to the ALP in 2014–15.

<sup>51</sup> Dr Belinda Edwards, *Dark Money: The hidden millions in Australia's political finance system*, 2016, p. 3.

<sup>52</sup> See, for example, Australian Conservation Foundation, *Submission 10*, pp. 4, 8; Foundation for Alcohol Research and Education, *Submission 25*, p. 10; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 5.

<sup>53</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 5.

<sup>54</sup> Australian Conservation Foundation, *Submission 10*, p. 8.

<sup>55</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 10.

donations from prohibited donors—in this case, property developers—to the NSW Liberal Party for its 2011 NSW state election campaign so that the identity of the true donors was disguised.<sup>56</sup>

- 5.65 ACF pointed to discrepancies in disclosures between donors, political parties and associated entities as an illustration of the opacity of donations made via associated entities. For example, ACF provided the example of disclosures relating to Wesfarmers:

In the 2015-16 cycle Wesfarmers declared \$43,000 of political donations. In the same period it was listed as a source of an additional \$5m worth of income by political parties and associated entities.<sup>57</sup>

- 5.66 Such discrepancies were notable in other evidence received by the committee. For example, as observed by ACF in its submission, in 2015–16, Woodside Energy Ltd (Woodside) was named a source of \$16,462 of income by Labor Holdings Pty Ltd, an associated entity of the ALP.<sup>58</sup> However, when asked to provide details on any donations made to Labor Holdings or any other associated entities, Woodside told the committee that:

To the best of its knowledge Woodside has not made any payments directly to associated entities (such as Labor Holdings). As reported by Woodside to the AEC, any donations or payments which Woodside has made has been to political parties (for example, the Liberal Party or National Party or the Labor Party) at State and/or Federal levels. Woodside is not privy to how these political parties remit or account for payments received from Woodside, including whether any amounts are remitted by political parties to associated entities.<sup>59</sup>

### **Committee view**

- 5.67 The committee understands the concern held by some around the utilisation of associated entities as fundraising vehicles by political parties. Under the current regime there is certainly the capacity for the albeit limited transparency of the source of donations to be further diluted. However, if the changes recommended throughout this report, and the principles underlying them are equally applied to associated entities, then the committee is satisfied that sufficient protections would be in place, while preserving the rights of organisations to play an active role in the political process.

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<sup>56</sup> NSW Independent Commission Against Corruption, *Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters*, August 2016, p. 18. See also, Mr Lewis Rangott, Executive Director, Corruption Prevention, NSW Independent Commission Against Corruption, *Committee Hansard*, 30 January 2018, p. 1.

<sup>57</sup> Australian Conservation Foundation, *Submission 10*, p. 4.

<sup>58</sup> See Australian Electoral Commission, [Associated Entity Annual Return 2015–16: Labor Holdings Pty Ltd](#), [pp. 8, 9], as cited in Australian Conservation Foundation, *Submission 10*, p. 4.

<sup>59</sup> Woodside Energy Ltd, answers to questions on notice, 2 November 2017 (received 27 November 2017).

### *Poor data accessibility*

5.68 Inquiry participants highlighted poor data accessibility as being a further barrier to transparency of political donations and the potential undue influence that affords. In particular, participants drew the committee's attention to the delayed disclosure of donations and the presentation of political finance data on the AEC's online database.

### **Delayed disclosure**

5.69 Currently under the Electoral Act, annual disclosure returns for the previous financial year are required to be lodged by 20 October (political parties and associated entities) or 17 November (donors and third parties) each year. Annual returns are made available for public inspection on the AEC website on the first working day in February the following financial year.

5.70 As explained by the AEC:

This means some donations disclosed may have been received up to 18 months prior to publication. In an election year, financial disclosure by parties and other participants may not be published until months after the event.<sup>60</sup>

5.71 Participants shared the view that the delayed disclosure of political donations data frustrates the aim of avoiding of undue influence. Submitters and witnesses also noted that the inability of the public to access disclosure information in a timely manner greatly restricts their ability to make informed voting decisions come election day.

5.72 Dr Livingstone and Ms Johnson described the once-yearly publication of disclosure returns as an 'annual dumping' of donations information, and commented that this 'has been heavily criticised as a method that enables donations to be effectively hidden'.<sup>61</sup>

5.73 Professor Tham contended that 'the dated nature of the returns means that voters do not have access to the relevant information when determining their voting choices'.<sup>62</sup>

5.74 Similarly, Mr Lewis Rangott, Executive Director, Corruption Prevention at ICAC, commented that:

Obviously it is desirable that when electors go to the polling booth they at least have an opportunity to understand who is funding whom. If donations are made on the eve of an election, you can only find out the

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<sup>60</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 7.

<sup>61</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 8.

<sup>62</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 51.

identity and the amount of those donations afterwards, and that's not desirable.<sup>63</sup>

- 5.75 Professor Beck argued that prompt disclosure is necessary if transparency of political donations is to be achieved. Underscoring this point, Professor Beck told the committee:

We need to see who's giving money and where that money's going. This requires not only full disclosure of sources of revenue for political parties and other political actors but also prompt disclosure and hopefully in as close to real time as possible. It's no good having disclosure handed down 12 months or 18 months after the money has been received. That's not very useful. That's a lot of time where things can happen and the public don't get to make an informed decision if they go to the polls.<sup>64</sup>

- 5.76 International IDEA was of the view that timely public disclosure of donations maximises transparency and accountability. It also incentivises adherence to the rules by exposing and deterring efforts to unduly influence the political process. International IDEA also expressed surprise that more timely disclosure processes for political finance data has not yet been implemented in Australia given that similar technological capacity has been introduced in other areas through online disclosure platforms:

The current rules in Australia whereby political parties submit annual reports, which are then published roughly seven months after the end of the financial year does not allow for timely disclosure. The lengthy period of time between when transactions take place and their disclosure to the public (seven and a half months after elections for candidates and third parties and seven to eighteen months for political parties and their endorsed candidates) stands out all the more considering that Australia already has the technology in place through its eReturns online reporting platform to enable real-time disclosure.<sup>65</sup>

- 5.77 Dr Edwards expressed a similar view:

I think in this day and age, where the ATO can give me an app on my phone which says, 'Every time you get a taxi receipt, put it on your tax deductions,' there is absolutely no issue that we shouldn't have that.<sup>66</sup>

- 5.78 The Australian Greens argued that the current delay in disclosure of political donations is 'inexcusable', submitting that '[m]odern technologies allow for the prompt disclosure of donations given and received'.<sup>67</sup> The Australian Greens also reflected on the importance of timely disclosure during election

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<sup>63</sup> Mr Lewis Rangott, Executive Director, Corruption Prevention, New South Wales Independent Commission Against Corruption, *Committee Hansard*, 30 January 2018, p. 2.

<sup>64</sup> Associate Professor Luke Beck, *Committee Hansard*, 30 January 2018, p. 9.

<sup>65</sup> International IDEA, *Submission 13*, p. 4.

<sup>66</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 3. See also Associate Professor Luke Beck, *Committee Hansard*, 30 January 2018, p. 14.

<sup>67</sup> Australian Greens, *Submission 7*, p. 2.

campaigns, 'when policy announcements and stakeholder pressure is at its greatest'.<sup>68</sup>

*Real-time disclosure*

5.79 Unsurprisingly, given the objections to delayed disclosure, there was a general consensus among inquiry participants that an online, continuous system for disclosure of political donations should be introduced. The information should then be made available for public scrutiny in as close to real time as technologically feasible.<sup>69</sup>

5.80 The Synod endorsed real-time disclosure of all donations above \$1,000, submitting that:

It is highly desirable that there be continuous 'real-time' disclosure of all donations above \$1,000 accepted by candidates, political parties and third parties. This is important so voters know as they are deciding between political parties and candidates who those parties and candidates are taking money from as this may be relevant to their decision making on who to vote for.<sup>70</sup>

5.81 Professor Williams, Professor Beck and GetUp recommended real-time disclosure of all donations with a value \$500 and above.<sup>71</sup> Professor Williams also suggested the 'possibility of such donations being made to the eventual recipient via the Australian Electoral Commission or other body'.<sup>72</sup>

5.82 'Real-time' disclosure has recently been implemented at a state level, with the Electoral Commission Queensland (ECQ) launching an Electronic Disclosure System (EDS) for political donations in February 2017. The EDS allows for gifts and loans to political entities to be reported to the ECQ within seven business days. This information is made public within 24 hours of it being reported.<sup>73</sup> The ECQ outlined the far reaching benefits of the EDS:

The EDS has not only replaced labour-intensive paper-based practices, it has increased transparency around political donations to minimise the influence, or the perception of influence, of donors on the political process and decision making of elected officials at both the State and local level.

The impact has been far reaching and the Commission acknowledges the importance of voters being able to make informed decisions and having

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<sup>68</sup> Australian Greens, *Submission 7*, p. 2.

<sup>69</sup> See, for example, Professor George Williams AO, *Submission 1*, p. 1; Transparency International Australia, *Submission 33*, p. 2; GetUp, *Submission 21*, p. 3; Dr Luke Beck, *Submission 12*, p. 3; Dr Belinda Edwards, *Submission 22*, p. 3; Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>70</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 10.

<sup>71</sup> Professor George Williams AO, *Submission 1*, p. 1; Dr Luke Beck, *Submission 12*, p. 3; GetUp, *Submission 21*, p. 3.

<sup>72</sup> Professor George Williams AO, *Submission 1*, p. 1.

<sup>73</sup> Electoral Commission Queensland, *Submission 24*, p. 2.

confidence in the knowledge about the financial arrangements of their candidates.<sup>74</sup>

### **AEC data presentation**

5.83 In addition to the accessibility issues caused by delayed disclosure, the current presentation of information on the AEC's database for disclosing political donations was highlighted by some participants as a significant obstacle to transparency of the current political finance system.

5.84 Dr Edwards expressed concern that 'the AEC data is adding a further barrier to transparency in an already opaque political donations landscape', and cautioned that the provision of disclosure data in a way that hampers public scrutiny of donations and their potential influence 'can be an effective form of concealment'.<sup>75</sup>

5.85 Dr Edwards summarised the challenges posed by the AEC data as it is currently presented:

The AEC data presents a number of challenges that can make it difficult to get a grasp of what is occurring the political donations landscape. There are thousands of lines of data, with limited means to sort or categorize the data. The aggregates that can be easily calculated are not meaningful. The AEC does not make any attempt to analyse aggregates and trends in the data. This means that journalists and those seeking to report on political donations matters struggle to piece together meaningful perspectives within the resources available to them.<sup>76</sup>

5.86 In support of this view, Mr Merope-Synge from Getup told the committee:

All of it is stored in PDF documents, not in a searchable database format. Many of these PDFs are filled out by hand, and some of the handwriting is terrible, so that makes it harder for them to be scanned and read by computers. In general, with the state of the data, it almost feels as though it's been set up to make it difficult to search and to get accurate information easily for voters.<sup>77</sup>

5.87 Mr Rogers, AEC Electoral Commissioner, acknowledged that the presentation of data in PDF format is 'probably not optimal', but noted that any change to the way in which disclosures data is presented would require a redevelopment of the IT systems currently in place.<sup>78</sup> Mr Rogers also stressed to the committee that the AEC is 'complying absolutely with the legislation that is in place at the

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<sup>74</sup> Electoral Commission Queensland, *Submission 24*, p. 2.

<sup>75</sup> Dr Belinda Edwards, *Submission 22*, pp. 1, 2.

<sup>76</sup> Dr Belinda Edwards, *Submission 22*, p. 1.

<sup>77</sup> Mr Django Merope-Synge, Acting Economic Campaign Director, GetUp, *Committee Hansard*, 6 November 2017, pp. 35–36.

<sup>78</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 48.

moment', which requires relevant stakeholders to submit a specified return.<sup>79</sup> Any upgrades to the data systems would require legislative change and would have financial implications for the AEC.<sup>80</sup>

### **Committee view**

- 5.88 Modern technological advances afford opportunities previously unavailable. The timeliness of donations and their subsequent disclosure are key elements in a transparent political finance regime. The current system, whereby donations can potentially be undisclosed for up to 18 months, is unacceptable. The committee strongly agrees with ICAC who said that voters deserve to know who is funding the parties or candidates when they walk into the polling booth.
- 5.89 On a similar technological theme, the ability for anyone to search through data to establish the sources of donations is a relatively small, but very important issue. The current useability of the AEC website to access data is poor, and requires significant upgrading.

### **Recommendation 5**

- 5.90 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to require online, continuous real-time disclosure to the Australian Electoral Commission of donations to political parties, candidates and associated entities.**

### **Recommendation 6**

- 5.91 The committee recommends that the Australian Electoral Commission ensures that the presentation of political finance data on their website provides greater accessibility and functionality of files to facilitate public research and investigation.**

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<sup>79</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, pp. 48–49.

<sup>80</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 49.



## Chapter 6

# Safeguarding integrity

- 6.1 Throughout the course of the inquiry, the committee heard from participants that transparency of political funding alone is insufficient against the risk of undue influence posed by political donations. Participants argued that if reforms to the federal political funding and disclosure regime are to be truly effective, additional measures need to be put in place to safeguard the integrity of political decision-making. Measures frequently highlighted by submitters and witnesses included:
- caps on the size of political donations;
  - restrictions on donations from certain sources;
  - caps on campaign expenditure;
  - enhanced compliance and enforcement mechanisms; and
  - an increase to public funding.
- 6.2 The need for greater harmonisation between federal and state and territory political funding and disclosure regimes was also raised by some participants as a means of enhancing the integrity of political finance regulation. This issue is discussed briefly at the end of this chapter.

### *Caps on donations*

- 6.3 Under the present federal political finance regime, there are no limits on the amount a donor can contribute to a political party, candidate, associated entity or third party. Several participants in the inquiry argued that this unfettered freedom to donate significantly increases the risk of corruption through undue influence. Submitters and witnesses contended that capping the amount donors can contribute will prevent wealthy interests from using political donations to secure disproportionate influence on the political process.<sup>1</sup>
- 6.4 The Synod of Victoria and Tasmania, Uniting Church in Australia (the Synod) was supportive of caps on donations, observing that the size of political donations appears to correlate with the level of access and influence a donor obtains:

The available anecdotal evidence strongly suggests that the size of political donations does make a difference to the level of access an organisation will have to a political party or candidate, with the larger the donation the greater the access and influence.<sup>2</sup>

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<sup>1</sup> See, for example, International IDEA, *Submission 13*, p. 2.

<sup>2</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 9.

6.5 Professor Tham expressed a similar view, noting that 'as the amount of money contributed by an individual increases, the risk of undue influence heightens' and therefore, 'bans on large contributions can directly deter corruption through undue influence'. Professor Tham further submitted that caps on donations promote political equality:

...such limits will promote fairness in politics as they prevent the wealthy from using their money to secure a disproportionate influence on the political process. The result is to promote the fair value of political freedoms despite limiting the formal freedom to contribute.<sup>3</sup>

6.6 Dr Lewis supported capping political donations as one way to address the dilemma attached to ascertaining the intent of a donor, commenting that doing so 'would minimise considerably the possibility of donations influencing public policy'.<sup>4</sup>

6.7 Similarly, Dr Ng expressed the view that caps on donations are the best way of entrenching equality in the political donations system and would 'ensure people do not have a larger voice just because they have a larger wallet'.<sup>5</sup>

6.8 International IDEA also advocated for limits on the amount donors can contribute, noting that by encouraging a greater proportion of smaller donations, caps on donations can have a diluting effect on the potential influence of large donors:

The proportion of large and small donations received also affects how much influence wealthy donors have. The greater the proportion of donations received in small amounts, the more the influence of large donors is diluted.<sup>6</sup>

#### *Other jurisdictions*

6.9 Limiting the amount that an individual donor can contribute is common practice internationally. International IDEA advised that currently, '35 per cent of countries worldwide limit donations to political parties and in Europe 57 per cent of parties do so'.<sup>7</sup>

6.10 In Canada, there is an annual limit on donations to each political party (\$1,575 for 2018), with the limit increased by \$25 on 1 January each year.<sup>8</sup> The United States of America has donation limits for election campaigns, however

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<sup>3</sup> Associate Professor Joo-Cheong Tham, *Submission 3–Attachment 2*, pp. 141–142.

<sup>4</sup> Adjunct Professor Colleen Lewis, *Submission 30*, [p. 3].

<sup>5</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>6</sup> International IDEA, *Submission 13*, pp. 2, 4.

<sup>7</sup> International IDEA, *Submission 13*, p. 2.

<sup>8</sup> Elections Canada, *Limits on Contributions*, <http://www.elections.ca/content.aspx?section=pol&dir=lim&document=index&lang=e> (accessed 11 March 2018).

differential limits apply depending on the recipient—an individual may give a maximum of: \$2,700 per election to a federal candidate; \$5,000 per calendar year to a political action committee (PAC)<sup>9</sup>; \$10,000 per calendar year to a State or local party committee; and \$33,900 per calendar year to a national party committee.<sup>10</sup>

- 6.11 In Australia, New South Wales (NSW) is currently the only state or territory to place caps on the amount that can be contributed to political parties and candidates.<sup>11</sup> Legislation imposing caps on political donations came into effect from 1 January 2011 following the passing of the Election Funding and Disclosures Amendment Bill 2010 by the NSW Parliament in November 2010.<sup>12</sup> Under the NSW scheme, political donations are capped for a financial year.<sup>13</sup> Caps vary for different recipients and are adjusted annually for inflation. For 2017–18, the applicable caps are \$6,100 for a political party and \$2,700 for candidates and third-party campaigners. Political donations made by the same donor to the same recipient are aggregated for the purpose of the caps.<sup>14</sup>
- 6.12 Professor Tham expressed the view that the NSW scheme of capping political donations 'provides an excellent model for federal measures'.<sup>15</sup> Moreover, as highlighted by several participants<sup>16</sup>, the caps on political donations imposed in NSW have been held to be legal and constitutionally valid by the High

<sup>9</sup> A political action committee (PAC) is neither a party committee nor a candidate committee. Some PACs are sponsored by corporations and unions—trade, industry and labour PACs. Other PACs, often ideological, do not have a corporate or labour sponsor and are therefore called non-connected PACs. PACs use donor contributions to make their own contributions to federal candidates and to fund other election-related activities.

<sup>10</sup> Federal Election Committee (US), Citizens' Guide, <https://transition.fec.gov/pages/brochures/citizens.shtml> (accessed 12 March 2018).

<sup>11</sup> In September 2017, the Victorian Government announced its intention to reform its political donations laws, including capping political donations at \$4,000 over a four-year parliamentary term.

<sup>12</sup> When initially introduced in January 2011, caps on political donations in NSW applied only to state elections. On 1 July 2016, the rules and regulations regarding donations caps were extended to NSW local government elections with the commencement of the *Local Government and Elections Legislation (Integrity) Act 2016* (NSW).

<sup>13</sup> See *Election Funding, Expenditure and Disclosure Act 1981* (NSW), s. 95A.

<sup>14</sup> Electoral Commission NSW, *Caps on Political Donations*, [http://www.elections.nsw.gov.au/fd/political\\_donations/caps\\_on\\_political\\_donations](http://www.elections.nsw.gov.au/fd/political_donations/caps_on_political_donations) (accessed 11 March 2018). See also Parliamentary Library, *Election funding and disclosure in Australian states and territories: a quick guide*, November 2017, p. 2.

<sup>15</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment*, p. 160. See also Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017 p. 1.

<sup>16</sup> See, for example, Professor George Williams AO, *Submission 1*, p. 1; Dr Luke Beck, *Submission 12*, p. 1; Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 11; Dr Yee-Fui Ng, *Committee Hansard*, 2 November 2017, p. 6.

Court of Australia and, therefore, establish parameters for similar reforms at the federal level.

6.13 In the case of *McCloy v New South Wales*<sup>17</sup>, the High Court held that while restrictions on political donations—including caps on the amount a donor can contribute—do constitute a burden on the freedom of political communication implied by the *Australian Constitution*, such restrictions are not invalid if there is a demonstrated justification for such selectivity.

6.14 Professor Beck summarised the High Court's judgement:

In *McCloy*, High Court held that appropriate caps on the value of donations a donor may make are not inconsistent with the implied freedom of political communication because they are appropriate and adapted to the purposes of (i) preventing corruption and undue influence in the administration of government, (ii) preventing perceptions of corruption and undue influence, and (ii) preventing wealthy donors having an unequal opportunity to participate in the political process. The High Court considers that these purposes are consistent with the maintenance of the system of representative and responsible government prescribed by the *Australian Constitution*.<sup>18</sup>

#### *Level of cap*

6.15 The issue of what amount a potential cap on political donations should be set at was raised throughout the course of the inquiry. Some participants did not have a particular view regarding a specific cap amount, however noted that any limit on political donations should aim to balance the freedom of individuals and corporations to express their political preferences while still effectively limiting the risk of undue influence.

6.16 International IDEA submitted that:

It is important that any limit is defined as encompassing the total amount of contributions made by the donor within a specified time period (normally 12 months). The amount of any limit is of course the crucial element here. The aim is to remove from the equation contributions from individuals (natural or legal) that because of their size risk quid pro quo arrangements or other undue forms of influence.<sup>19</sup>

6.17 Dr Ng recommended the introduction of 'caps on donations by individuals, unions and corporations of \$1,000 a year', noting that this would be consistent with the proposed Victorian reforms.<sup>20</sup> Dr Ng argued that caps which equally

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<sup>17</sup> *McCloy v New South Wales* [2015] HCA 34.

<sup>18</sup> Dr Luke Beck, *Submission 12*, p. 1.

<sup>19</sup> International IDEA, *Submission 13*, p. 2.

<sup>20</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2. See also Dr Yee-Fui Ng, *Committee Hansard*, 2 November 2017, p. 6.

target different types of donors avoids money being 'channelled through shady corporate structures or "associated entities" to evade the rules'.<sup>21</sup>

- 6.18 GetUp encouraged the committee to 'stop the money game', also recommending that the amount any individual or corporation can donate be capped at \$1,000 per financial year.<sup>22</sup>
- 6.19 Professor Williams suggested a cap of \$5,000 on all donations to political parties, candidates and third parties.<sup>23</sup>
- 6.20 This view was supported by Professor Beck, who recommended that the *Commonwealth Electoral Act 1918* (Electoral Act) 'be amended to provide that a donor may only make donations to candidates, political parties and third parties engaged in election advertising to a maximum value of \$5,000'.<sup>24</sup> Professor Beck further commented that:

I believe this amount [\$5,000] appropriately balances the benefits of limiting the influence of money in elections and a donor's potential desire to make a single large donation or a number of smaller donations to multiple recipients.<sup>25</sup>

- 6.21 Professor Tham's submission underscored that reforms to introduce caps on political donations are likely to result in significant objections from across the political spectrum. Professor Tham explained that, most importantly, 'instituting such limits by themselves will leave the parties seriously underfunded given that they are presently heavily reliant on large contributions'.<sup>26</sup> However, Professor Tham submitted that these objections are 'not insurmountable', arguing that the funding shortfall created by caps on donations can be ameliorated by complimentary reforms to the political finance regime; including caps on campaign expenditure and increases to public funding (discussed below).<sup>27</sup>

### **Committee view**

- 6.22 Arguably the key element of any overhaul of the federal political finance regime is the limiting of the actual amount that any individual or organisation can contribute to a political entity. The rationale for introducing a cap is simple; it reduces the capacity for political entities to be influenced by large donations. NSW has introduced a cap, and Victoria has proposed a similar cap

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<sup>21</sup> Dr Yee-Fui Ng, *Submission 11*, p. 2.

<sup>22</sup> Get Up, *Submission 21*, p. 2.

<sup>23</sup> Professor George Williams AO, *Submission 1*, p. 1.

<sup>24</sup> Dr Luke Beck, *Submission 12*, p. 1.

<sup>25</sup> Dr Luke Beck, *Submission 12*, p. 1.

<sup>26</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 142.

<sup>27</sup> Associate Professor Joo-Cheong Tham, *Submission 3 – Attachment 2*, p. 142.

for this reason. The constitutionality of a cap on donations was considered in the case of *McCloy v New South Wales*, where the High Court of Australia held that such a cap was justified as a legitimate tool in preventing corruption of the political process.

- 6.23 The committee is convinced of the need for a cap. The question of where that cap should be set was the subject of considered debate amongst contributors. While some favoured relatively low caps of around \$1,000 per financial year, others were more generous.

### **Recommendation 7**

- 6.24 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a cap on donations to political parties, candidates and associated entities to a maximum value of \$3,000 per parliamentary term. Donations made by the same donor to the same recipient should be aggregated for the purpose of the cap.**

#### *Restrictions on who can donate*

- 6.25 The Electoral Act does not currently contain any restrictions on the source of political donations. As noted by International IDEA, countries often ban donations from certain sources in order to protect the integrity of political decision-making.<sup>28</sup> Several inquiry participants raised the issue of banning political donations from certain sources; in particular, from foreign interests and consumption industries such as the tobacco, alcohol and gambling industries.

#### **Ban on foreign donations**

- 6.26 In terms of international practice, the most widespread ban in relation to political donations is on donations from foreign interests. International IDEA's Political Finance Database shows that:

...almost two thirds (63%) of countries have a ban on donations from foreign interests to political parties, while half (49%) have a ban on foreign donations to candidates.<sup>29</sup>

- 6.27 The issue of foreign political donations and their potential to exert undue influence on Australian politics has been the subject of recent public and political debate. As discussed in Chapter 2 (see paragraphs 2.20–2.24), in December 2017, the Australian Government introduced legislation—the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017—to ban foreign political donations.

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<sup>28</sup> International IDEA, *Submission 13*, p. 2.

<sup>29</sup> International IDEA, *Submission 13*, pp. 2–3.

6.28 As noted in the Joint Standing Committee on Electoral Matters' Advisory report on the above bill:

There is a broad consensus amongst political and civil society groups on the need to remove actual, and the potential for, foreign influence in our electoral system. However, the means by which to achieve this, and to whom the regulatory framework should apply, has been robustly debated.<sup>30</sup>

6.29 Submitters and witnesses to this inquiry were also broadly supportive of introducing a ban on foreign donations in Australia. However, participants cautioned the committee that the scope of such a ban would need to be carefully defined such that it applied only to sources that are exclusively foreign; that is, a ban on foreign donations should only extend to a source that is not an Australian citizen or resident, or entities not registered in Australia.<sup>31</sup> Some participants suggested that this would ensure a ban on foreign donations does not impinge on the implied political freedoms in the *Australian Constitution*.<sup>32</sup>

#### *National sovereignty and enforceability*

6.30 Inquiry participants presented two overarching justifications for a ban on donations from exclusively foreign sources. First, participants highlighted the issue of national sovereignty and preventing foreign interests—in particular, foreign governments—having an influence on public policy matters in Australia.

6.31 Secondly, participants underlined the inability to enforce the requirements under the Electoral Act extra-territorially and the implications this has on accountability. The Australian Electoral Commission (AEC) summarised this issue in its submission:

The Electoral Act contains no restrictions on donations by foreign donors and does not have extra-territorial application. That is, while the AEC can seek voluntary compliance with the disclosure requirements, overseas donors cannot be compelled to comply with Australian law.<sup>33</sup>

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<sup>30</sup> Joint Standing Committee on Electoral Matters, *Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, April 2018, p. 9.

<sup>31</sup> See, for example, Professor George Williams AO, *Submission 1*, p. 2; Dr Luke Beck, *Submission 12*, p. 2; Australian Conservation Foundation, *Submission 10*, p. 9; Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 9; GetUp, *Submission 21*, p. 3.

<sup>32</sup> See The Hon. Anthony Whealy QC, Chair, Transparency International Australia, *Committee Hansard*, 2 November 2017.

<sup>33</sup> Australian Electoral Commission, *Submission 2—Attachment 1*, p. 9.

6.32 Underscoring the above issues, Professor Tham told the committee that 'I think there's only a justification for a ban on foreign political donations from foreign governments and offshore donations'.<sup>34</sup> Professor Tham explained:

...the problem of foreign political donations is not about noncitizens, it's not about permanent residents. In that particular case, it's about the influence of foreign governments. So I would support a ban on contributions from foreign governments, whether directly or indirectly, say, from state-owned enterprises of the Chinese government. I would also support a ban on overseas-sourced donations. What I mean by that is money coming from accounts that are geographically outside the territory of Australia. The rationale there is a bit different. With foreign governments, the rationale is clear: it's about the threat to national sovereignty. The rationale for banning overseas-sourced donations is the problem of compliance. It's hard to know whether it comes from overseas and, because the reach of the Electoral Commission or our enforcement authorities does not extend that far, it's hard to know whether the laws are being complied with.<sup>35</sup>

6.33 The committee heard support for this view from Dr Livingstone:

The problem with offshore donations, in my opinion, is both the sovereignty issue, which my colleague has pointed out before, and the fact that enforcement is, effectively, impossible because it's extra jurisdictional; you can't prosecute someone who lives in China and has all of their business in China under Australian law. It's about accountability and having a system of regulation which allows proper enforcement of the procedures you put in place.<sup>36</sup>

#### *Constitutional considerations*

6.34 Several participants drew the committee's attention to the need to consider potential constitutional constraints when considering a ban on foreign donations. Some submitters highlighted recent High Court decisions relating to political finance laws in NSW and proposed that these decisions establish the parameters for reforms at the federal level.<sup>37</sup>

6.35 Professor Williams pointed to the case of *Unions NSW v New South Wales*,<sup>38</sup> in which the High Court held that a provision under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (Election Funding Act), which prohibited political donations unless made by a person whose name appeared on the electoral roll, was invalid as it is inconsistent with the implied freedom of political communication in the *Australian Constitution*. Professor Williams

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<sup>34</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 11.

<sup>35</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 4.

<sup>36</sup> Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 9.

<sup>37</sup> See Professor George Williams AO, *Submission 1*, p. 1; Dr Luke Beck, *Submission 12*, p. 1; Dr Yee-Fui Ng, *Submission 11*, pp. 3–4.

<sup>38</sup> *Unions NSW v New South Wales* [2013] HCA 58.

noted that the High Court decision in this case 'suggests that any attempt to limit donations to individuals on the electoral roll has an unacceptable risk of being struck down'.<sup>39</sup>

6.36 In discussing the issue of restrictions on the source of donations, Professor Beck highlighted the case of *McCloy v New South Wales*, in which the High Court upheld a ban on political donations from property developers under the Election Funding Act. Reflecting on the High Court's findings in this case, Professor Beck submitted that:

In broad terms, prohibiting a class of donor from making political donations will be valid where there is something 'sufficiently distinct' about that class of donor to 'warrant specific regulation' especially in light of the nature of the public powers that class of donor may seek to influence in their interest.<sup>40</sup>

6.37 Professor Beck considered this reasoning in relation to political donations from foreign interests:

Foreign entities and individuals are in a distinct category. They may be considered 'sufficiently distinct' from other classes of donor. The self-interest pursued by foreign donors in making political donations to Australian candidates and parties is likely to [be] qualitatively different to the self-interest pursued by Australian donors.<sup>41</sup>

6.38 Dr Ng also pointed to the case of *McCloy v New South Wales*, noting that 'the court upheld a New South Wales scheme that banned donations from property developers due to the history of corruption in the state'. Dr Ng suggested that this means 'it is possible to ban donations from a certain group, such as foreigners, where there is evidence of a serious risk of corruption'.<sup>42</sup>

6.39 However, Dr Ng questioned whether there is sufficient evidence of corruption due to foreign donations in Australia for a ban to be upheld as constitutionally valid. Dr Ng noted that the proportion of donations from foreign sources in Australia is relatively small:

[T]he proportion of foreign donations in Australia is small. Foreign political donations amounted to 2.6% of total donations to political parties in 2015-16. In the last seven election periods from 1998-99 to 2016, foreign donations have amounted to between 0.03% to 6.13% of total donations. As such, there may not be enough proof that foreigners pose a particular threat to the integrity of the Australian electoral system.<sup>43</sup>

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<sup>39</sup> Professor George Williams AO, *Submission 1*, p. 1. See also Dr Luke Beck, *Submission 12*, p. 2.

<sup>40</sup> Dr Luke Beck, *Submission 12*, p. 2.

<sup>41</sup> Dr Luke Beck, *Submission 12*, p. 2.

<sup>42</sup> Dr Yee-Fui Ng, *Submission 11*, p. 3.

<sup>43</sup> Dr Yee-Fui Ng, *Submission 11*, p. 4.

### Industry-specific bans

6.40 Some submitters and witnesses raised concerns regarding political donations made to political parties by donors from certain consumption industries—including the tobacco, alcohol and gambling industries—and the potential influence such donations may have on the development of public health policies.<sup>44</sup>

6.41 For example, the Centre for Drug, Alcohol and Addiction Research (CEDAAR) submitted that it has 'a particular concern for donations from dangerous consumption industries, such as tobacco, alcohol and gambling, and their influence on the development of public health policies'.<sup>45</sup>

6.42 Similarly, the McCusker Centre for Action on Alcohol and Youth (MCAAY), expressed concern regarding 'the extent of funding provided to Australian political parties by various alcohol industry bodies and associated groups'.<sup>46</sup> MCAAY stressed the importance of government policy discussions on alcohol issues and approaches to reduce alcohol-related harm not being influenced by vested interests from the industry:

There is currently considerable policy discussion at national and state levels in Australia on alcohol issues and the approaches open to governments to reduce alcohol-related harm. It is imperative that the debate is not unduly influenced by companies with vested interests in maintaining and increasing alcohol consumption and in ensuring a regulatory environment that supports their financial interests. The public may consider political parties that are supported by donations from alcohol interests to bear an expectation of support for the alcohol lobby agenda.<sup>47</sup>

6.43 The Foundation for Alcohol Research and Education (FARE) underlined the importance of safeguarding against undue influence of the alcohol industry on government policy decisions, arguing that there can be a direct conflict between the interests of the alcohol industry and those of the general public:

Alcohol policy decisions relating to the taxation and regulation of the industry directly affect the health and wellbeing of the Australian population. The interests of the alcohol industry can be in direct conflict with those of the population. It is important, therefore, that appropriate measures are in place to prevent undue influence of the alcohol industry on public policy decisions.<sup>48</sup>

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<sup>44</sup> See, for example, McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1; Centre for Drug, Alcohol and Addiction Research, *Submission 15*, p. 2; Foundation for Alcohol Research and Education, *Submission 25*, pp. 4, 5.

<sup>45</sup> Centre for Drug, Alcohol and Addiction Research, *Submission 15*, p. 2.

<sup>46</sup> McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1.

<sup>47</sup> McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1.

<sup>48</sup> Foundation for Alcohol Research and Education, *Submission 25*, p. 4.

*Support for industry-specific bans*

- 6.44 A number of submitters recommended the introduction of industry-specific bans.<sup>49</sup>
- 6.45 Dr Livingstone and Ms Johnson, for example, expressed support for the prohibition of donations 'from certain classes of persons or entities with clear commercial vested interests in government regulatory decisions'. Dr Livingstone and Ms Johnson contended that these are industries 'that exist solely because they are granted a license from government present a greater corruption risk, since they derive significant benefit from policy decisions'.<sup>50</sup>
- 6.46 The Australian Council on Smoking and Health (ACOSH) recommended that 'political donations from the tobacco industry are prohibited under a new Commonwealth Law'.<sup>51</sup>
- 6.47 When questioned by the committee on the benefits of banning political donations from certain industries, Dr Ingrid Johnston, Senior Policy Officer at the Public Health Association of Australia (PHAA), responded that:
- There would be a better playing field for the other side of the argument. At the moment you have alcohol companies, for example, being able to donate money, and then you have the counselling organisations, the public health advocates and the small groups who pick up the pieces from alcohol damage, who are not able to put their side of the story with the same power. So if there weren't those donations then it would start to tip the balance a little bit more the other way so that you can get the other side of the story and so that there's an equal playing field for policy ideas and evidence.<sup>52</sup>
- 6.48 MCAAY and Transparency International Australia (TIA) both highlighted the approach to industry-specific bans in NSW and suggested that consideration should be given to adopting similar measures at the federal level.<sup>53</sup>
- 6.49 Under the Election Funding Act, it is unlawful for a prohibited donor, or for a person on behalf of a prohibited donor, to make a political donation. It is also

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<sup>49</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 7; Australian Council on Smoking and Health, *Submission 14*, p. 1; Foundation for Alcohol Research and Education, *Submission 25*, p. 4; McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 3.

<sup>50</sup> Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 7.

<sup>51</sup> Australian Council on Smoking and Health, *Submission 14*, p. 1. See also Mr Maurice Swanson, President, Australian Council on Smoking and Health, *Committee Hansard*, 2 November 2017, p. 28.

<sup>52</sup> Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 15.

<sup>53</sup> McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 3; Transparency International Australia, *Submission 33*, p. 3.

unlawful for a person to accept a donation that was made, wholly or partly, by a prohibited donor or by a person on behalf of a prohibited donor.<sup>54</sup>

6.50 A prohibited donor under the NSW Election Funding Act is:

- (a) a property developer, or
- (b) a tobacco industry business entity, or
- (c) a liquor or gambling industry business entity,

and includes any industry representative organisation if the majority of its members are such prohibited donors.<sup>55</sup>

#### *Arguments against industry-specific bans*

6.51 The committee heard arguments from some witnesses that opposed the introduction of industry-specific bans.

6.52 Professor Tham expressed the view that, while problems in relation to corruption do tend to occur in particular sectors, other regulatory measures to cap political donations make bans on such industries unnecessary. Professor Tham advised the committee:

I'm actually quite opposed to sector-specific bans. Of course the problems we see in terms of corruption occur in particular sectors. That's true, and I think the submissions by Dr Livingstone and Dr Johnson quite powerfully document that—the gambling industry. But when we think about what should be the proper regulatory measure, the path forward should be uniform caps. Once you have uniform caps set at a low level, they render unnecessary sector-specific caps.

6.53 Mr Rangott from the NSW Independent Commission Against Corruption (ICAC) agreed that appropriate caps on donations would negate the need to prohibit certain industries from making political donations, as well as the administrative burden associated with such bans:

I think it would negate the need. Obviously, we've talked about it already, but, in the administrative burden of just identifying whether that person, that donor, is connected with one of those banned classes of donor—are they foreign or are they domestic?—there is some effort that goes into that, and I accept that. As a for instance, if a tobacco company or gambling company or a property developer donated a small but capped amount of money, you have to do the mental calculus. Say it's \$5,000. Is that going to corrupt the process? If it's a small, capped donation, it's highly unlikely. It's really those very large donations that seem to cause problems.<sup>56</sup>

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<sup>54</sup> *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96GA.

<sup>55</sup> *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96GAA.

<sup>56</sup> Mr Lewis Rangott, Executive Director, Corruption Prevention, New South Wales Independent Commission Against Corruption, *Committee Hansard*, 30 January 2018, p. 8.

### Committee view

- 6.54 While the committee accepts that income directly from foreign donations is small, there is public support that any attempt to influence the political process in Australia by foreign governments should be curtailed. Contributors were also of the view that overseas-sourced donations should be subject to restrictions. The committee supports this view.
- 6.55 With respect to industry-specific bans, the committee is also cognisant of evidence from NSW where they have prohibited donors from particular industries. ICAC submitted that the burden of administering such a regime is high, and may be unnecessary if caps on donations were in place. However, the committee also recognises the importance of limiting the influence of sectors proven to be inimical to public health and the broader public interest. On balance, the committee is of the view industry-specific bans are required to enhance the perceived integrity of a revised finance regime.

### Recommendation 8

- 6.56 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a ban on foreign donations to political parties, candidates and associated entities. For the purpose of the ban, foreign donations should be defined as donations from a source that is not an Australian citizen or resident, or an entity registered in Australia.**

### Recommendation 9

- 6.57 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a ban on donations from developers, banks, mining companies and the tobacco, liquor, gambling, defence and pharmaceutical industries to political parties, candidates and associated entities.**

### *Caps on campaign expenditure*

- 6.58 At the federal level, there are currently no restrictions on the amount that can be expended on election campaigns. As neatly summarised by Professor Tham, there is 'no natural limit on campaign expenditure or, more generally, to the parties' expenditure. The only real limit is the size of the parties' budgets'.<sup>57</sup>
- 6.59 As noted in the Synod's submission, Australia's expenditure on election campaigns is very high compared to many other Organisation for Economic Cooperation and Development (OECD) countries. To demonstrate this point, the Synod provided the following example:

In the 2013 Federal election public funding to the parties was \$58 million, not including tax revenue forgone for tax deductions on donations up to

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<sup>57</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 72.

\$1,500 to political parties and candidates. Private funding in donations for the two major parties in that election is estimated to have been \$367 million. This works out to roughly \$29 being spent per voter on the election. By comparison in the 2015 Canadian election the spending was \$5 per voter, for the 2014 New Zealand election the spending was \$2.83 per voter and in the UK 2015 election the spending by political parties was \$1.36 per voter.<sup>58</sup>

6.60 The Synod also highlighted that campaign expenditure in Australia is made up of a high proportion of funding from private sources compared to other OECD countries (see Table 6.1). Based on the above funding figures from the 2013 federal election, the Synod concluded that '86 per cent of the funds spent on the election appear to have come from private sources'.<sup>59</sup>

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<sup>58</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 11.

<sup>59</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 11.

**Table 6.1 Balance between public and private funding to political parties as a percentage of total party income in selected OECD countries, 2007 to 2015<sup>60</sup>**

Country	Public funding	Private and other funding
Belgium	85	15
Denmark	75	25
Finland	75	25
Greece	90	10
Hungary	60	40
Iceland	75	25
Italy	82	18
Netherlands	35	65
Norway	67.4	32.6
Poland	54-90	10-46
Portugal	80	20
Slovak Republic	87.5	12.5
Spain	87.5	12.5
Sweden	75	25
Turkey	90	10
United Kingdom	35	65

6.61 The unrestricted nature of election campaign spending has been described as having given rise to an 'arms race', whereby political parties feel a pressure to amass increasing amounts of money for their election campaigns through large donations.<sup>61</sup> As noted in Chapter 2, the risk posed by this increased fundraising and spending on election campaigns was highlighted as early as 2008 in the then Labor Government's 'Electoral Reform Green Paper':

Spiralling costs of electioneering have created a campaigning 'arms race'—heightening the danger that fundraising pressures on political parties and

<sup>60</sup> OECD, *Financing Democracy: Funding Political Parties and Election Campaigns and the Risk of Policy Capture*, 2016, p. 38, as cited in Synod of Victoria and Tasmania, *Uniting Church in Australia, Submission 20*, p. 11.

<sup>61</sup> See Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 1.

candidates will open the door to donations that might attempt to buy access and influence.<sup>62</sup>

6.62 As well as the risk of increased motivation and opportunity for undue influence through large donations, unrestricted campaign expenditure has been argued to reinforce the imbalance between minor and major parties that results from unequal private funding; that is, the major parties are able to secure an unfair advantage over their minor party competitors.<sup>63</sup>

6.63 Professor Tham's submission reflected on this 'unfair playing field' between major and minor parties:

The flow of private money creates a dramatic funding inequality amongst the parties.

...

Come election time then, the playing field is far from level. Armed with larger war chests, the major parties are able to vastly outspend their competitors.<sup>64</sup>

6.64 As cited by Professor Tham, the above risks and consequences of escalating campaign expenditure were also underscored by the NSW Legislative Council's Select Committee on Electoral and Political Party Funding. The Select Committee expressed concern about escalating spending levels and noted that it 'does not consider this escalation to be healthy or sustainable'. The Select Committee contended that:

It [escalated spending] increases pressure on parties and candidates to engage in more fundraising, thus taking time from their other representative and policy functions; it squeezes minor parties and independents, who do not have access to the same resources as the major parties; and it makes it harder for new entrants to break into the political arena, thus adversely impacting on the diversity of political representation. The increased reliance on private funding also fosters strong ties between politicians and donors, giving rise to perceptions of undue influence.<sup>65</sup>

#### *Support for expenditure caps*

6.65 Inquiry participants broadly supported the introduction of expenditure caps on election campaigns at the federal level. Submitters and witnesses argued that expenditure caps are necessary to promote fair electoral contests and to

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<sup>62</sup> Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 1.

<sup>63</sup> See Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 2.

<sup>64</sup> Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, pp. 92–93.

<sup>65</sup> Select Committee on Electoral and Political Party Funding, Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, June 2008, p. 123, as cited in Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, p. 115.

alleviate the risk of undue influence on the political process by reducing the need to raise funds through large donations.<sup>66</sup>

6.66 ACF recommended limiting the amount political parties, candidates and independent advocacy organisations can spend on elections in order to 'remove the incentive for politicians to amass big money war chests, and ensure a level democratic playing field for everyone'.<sup>67</sup>

6.67 TIA also endorsed introducing limits on campaign expenditure, submitting that '[s]pending by parties on overall election campaigns or in individual seats should be capped'.<sup>68</sup>

6.68 Professor Tham's submission argued:

There are clear connections between the fairness rationale and election spending limits: if properly designed, they will facilitate open access to electoral contests by reducing the costs of meaningful campaigns, thereby increasing the competitiveness of these contests; they will assist in addressing the imbalance between the minor and major parties and will contain departures from 'equality of arms' amongst the major parties.<sup>69</sup>

6.69 Some participants cautioned that for campaign expenditure caps to be effective, they must be accompanied by contribution limits. For example, PHAA submitted that:

There is also a difference between donations and campaign expenditure, and caps need to be placed on both for the system to be effective. Limits on expenditure during election campaigns may help to decrease the motivation and opportunities for political donations seeking to purchase influence.<sup>70</sup>

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<sup>66</sup> See, for example, Public Health Association of Australia, *Submission 32*, p. 7; Australian Greens, *Submission 7*, p. 2; Professor George Williams AO, *Submission 1*, p. 2; Australian Conservation Foundation, *Submission 10*, p. 9; GetUp, *Submission 21*, p. 2.

<sup>67</sup> Australian Conservation Foundation, *Submission 10*, p. 9.

<sup>68</sup> Transparency International Australia, *Submission 33*, p. 3.

<sup>69</sup> Associate Professor Joo-Cheong Tham, *Submission 3-Attachment 2*, p. 114.

<sup>70</sup> Public Health Association of Australia, *Submission 32*, p. 7.

6.70 Professor Tham echoed this view, contending that the increasing demand for election campaign funds is driving the supply of money to political parties through donations and fundraising activities:

They [political parties] discharge their arms and then they fundraise again and so on and so forth. The key point to be made here is that if we're worried about the supply of political funds, we should be equally concerned about the demand for election campaign funds, for it's the demand that's driving the supply. If we want to deal with unsavoury fundraising practices, it must be dealt with not just at the contribution side of the ledger but also at the spending side of the ledger.<sup>71</sup>

6.71 Dr Edwards expressed similar sentiments to the committee:

I think that one has to look to the root of this problem, which is that people aren't raising money for fun; they're raising it because of the arms race to be able to pay for campaign funds. The only way that we can really systemically address this problem is to reduce the need to be raising as much money for campaigning.<sup>72</sup>

6.72 The committee questioned witnesses about the practical implications of implementing caps on donations with regard to political parties' ability to mount effective election campaigns. Professor Beck acknowledged that there would be practical implications of capping donations, however suggested that this would be an inevitable consequence for the purposes of holistic reform and would be partly alleviated by complementary changes to cap campaign expenditure:

**Senator O'SULLIVAN:** One piece of a paper in each letterbox in one state electorate these days costs \$40,000.

**Prof. Beck:** Do you need to put so many pieces of paper in a letterbox? If all political parties had caps—

**Senator O'SULLIVAN:** No, no. You probably do need to put one, to tell them who you are as a candidate, and oftentimes that's all that happens— one or two. But it is \$40,000 alone to do that. Don't worry about your corflutes to identify yourself or any of the administrative costs of an election. Trust me, when I was raising the money I wanted caps on expenditure more than anyone else I know; there would have been less that I had to raise. But the fact of the matter is I am challenged by the practical implications of some of these recommendations, I really am.

**Prof. Beck:** Of course there are practical issues, and of course it would be a change to the current system. But surely that's the whole point.<sup>73</sup>

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<sup>71</sup> Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 2.

<sup>72</sup> Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 6.

<sup>73</sup> Associate Professor Luke Beck, *Committee Hansard*, 30 January 2018, p. 12.

### Committee view

- 6.73 The corollary to a cap on donations is a cap on campaign expenditure. The cost of campaigning in Australia is very high compared to similar jurisdictions overseas and, as illustrated during the inquiry, the introduction of a limit on expenditure would involve a significant change in the way electioneering and campaigning is carried out in Australia.
- 6.74 While some work will be required as to the appropriate level at which to cap expenditure, and how it will be regulated, in the context of a holistic overhaul of the donations regime, the committee is of the view that it is possible and necessary to both limit the impact of a donations cap, and the impost on public funding to bridge any gap.

### Recommendation 10

- 6.75 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce caps on campaign expenditure by political parties, candidates and associated entities. Expenditure caps should be indexed to inflation and subject to periodic review.**

### *Compliance and enforcement*

- 6.76 The committee heard evidence during the inquiry regarding the efficacy of current enforcement mechanisms available to ensure compliance with political finance regulations.

### AEC regulatory powers and sanctions

- 6.77 Some participants expressed concern regarding the efficacy of the regulatory enforcement powers and penalties for breaches of political finance laws that are currently afforded to the AEC under the Electoral Act. A number of submitters recommended the introduction of stricter sanctions for breaches and enhancement of the AEC's powers to monitor and enforce compliance with political finance rules.<sup>74</sup>
- 6.78 Dr Edwards pointed to large discrepancies between the disclosure data of political parties and donors as evidence of weaknesses in the present compliance and enforcement measures:

To date there has been a very lax attitude to enforcing the accuracy and compliance of disclosures. To my knowledge there have not been any prosecutions for failing to meet compliance obligations, even though failures are rife in the data. Reconciliation of data provided by donors and parties reveal large discrepancies and failures in reporting. One analysis found 80 cases in the 2014–15 [sic] where donors had declared payments as

<sup>74</sup> See, for example, Dr Belinda Edwards, Submission 22, [p. 3]; Dr Yee-Fui Ng, *Submission 11*, p. 3; Professor George Williams AO, *Submission 1*, p. 2.

a 'Donation' and the parties had recorded the payments as 'Other Receipts'.<sup>75</sup>

- 6.79 Dr Ng argued that political finance rules in themselves are 'insufficient' and that these 'must be coupled with effective enforcement'. Dr Ng further submitted therefore, 'it is incumbent on the Australian Electoral Commission to vigilantly monitor compliance with the rules and prosecute any breaches'.<sup>76</sup>
- 6.80 This view was supported by Dr Edwards, who recommended that the AEC be empowered 'to police the timeliness of disclosures, and the accuracy of the categorization of disclosures, with failures to be penalized with fines and public statements of compliance failures'.<sup>77</sup>
- 6.81 Professor Williams submitted that 'strict sanctions for the breach of campaign finance rules, combined with the necessary resources for enforcement' should be a feature of federal political finance laws.<sup>78</sup>
- 6.82 Similarly, TIA advocated for sanctions for breaches of political finance rules to be 'increased significantly and enforced vigorously'.<sup>79</sup>
- 6.83 Electoral Commissioner, Mr Tom Rogers, stressed to the committee that the AEC has successfully performed its roles of administering and regulating the current federal political funding and disclosure regime within the boundaries set by the Electoral Act and AEC resourcing:

The AEC's role is to perform the twin roles of administrator and regulator of the existing scheme. In our view, the AEC has performed these roles successfully within the legislative and resource constraints placed upon us. We remain committed to working with parliament on funding and disclosure, and we stand ready to administer and regulate any future model.<sup>80</sup>

- 6.84 Mr Paul Pirani from AEC drew the committee's attention to the current penalties for breaches of requirements under the Electoral Act:

The fines at the moment are 10 penalty units for breaches of disclosure requirements. In section 316 it's also 10 penalty units. There is one offence—if we get provided with deliberately false or misleading information it's imprisonment for six months or 10 penalty units. A

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<sup>75</sup> Dr Belinda Edwards, *Submission 22*, [p. 3].

<sup>76</sup> Dr Yee-Fui Ng, *Submission 11*, p. 3.

<sup>77</sup> Dr Belinda Edwards, *Submission 22*, [p. 3].

<sup>78</sup> Professor George Williams AO, *Submission 1*, p. 2.

<sup>79</sup> Transparency International Australia, *Submission 33*, p. 3.

<sup>80</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 47.

penalty unit is currently \$210, so do the maths in relation to that. But they are relatively small fines.<sup>81</sup>

### **A federal anti-corruption commission**

6.85 Over the course of the inquiry, several participants raised the need for an anti-corruption body at the federal level to investigate non-compliance and bolster the integrity of the political finance regime.

6.86 Dr Ng asserted that the federal government is 'lagging behind', noting that anti-corruption bodies exist in all Australian state jurisdictions. Dr Ng submitted that:

To uncover and investigate allegations of corruption, a federal anti-corruption body modelled on NSW's Independent Commission Against Corruption should be introduced. In this way, any illegal donations can be thoroughly investigated. All States have anti-corruption bodies, and the federal government is lagging behind in this crucial area.<sup>82</sup>

6.87 Representatives from ACF also commented on the absence of a federal anti-corruption body. Dr Paul Sinclair, Director of Campaigns, reflected on the fragmentation this causes between federal and state levels of government in relation to holding individuals to account with regard to political funding:

Now, the issue we have with the accusations that are being made in New South Wales is the inability of a federal entity to call state government bureaucrats or officials and hold them to account for the abuse of federal funds. So, a federal ICAC can work very closely to seek integration where at the moment there is fragmentation. The federal level is the only level of government between the states and the feds that doesn't have something like an ICAC, and it's a glaring weakness that we need to see rectified.<sup>83</sup>

6.88 Mr Peter Burke contended that an independent anti-corruption body is a 'vital first step' to re-establish public trust:

If trust is to be re-established both sides of parliament must now act decisively. The political donation process is disastrously flawed and clearly prone to corruption. The establishment of an Independent Corruption Watchdog, properly resourced and authorised to act, would be one of the vital first steps in restoring the electorates faith in the those they have elected to office.<sup>84</sup>

6.89 TIA argued that a federal anti-corruption commission with overarching oversight 'should be established as a matter of urgency'. TIA also argued that

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<sup>81</sup> Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 54.

<sup>82</sup> Dr Yee-Fui Ng, *Submission 11*, p. 3.

<sup>83</sup> Dr Paul Sinclair, Director of Campaigns, Australian Conservation Foundation, *Committee Hansard*, p. 13.

<sup>84</sup> Mr Peter Burke, *Submission 26*, p. 4.

the 'system should include a Parliamentary Integrity Commissioner who can refer serious breaches to the Integrity body'.<sup>85</sup>

6.90 Similarly, GetUp encouraged the introduction of a 'corruption watchdog with teeth', recommending the creation of 'an independent federal corruption watchdog with broad investigative powers'.<sup>86</sup>

### **Committee view**

6.91 If the donations regime is to be overhauled, as recommended throughout this report, enhanced regulatory powers and sanctions will be necessary. The current measures available to the AEC do little to deter wrongdoing. The committee is of the view that sanctions and penalties under any new political finance regime need to provide as strong an incentive as possible to ensure the integrity of the system.

6.92 While not the focus of this inquiry, many contributors and submitters cited the need for a federal ICAC with broad investigatory powers to provide oversight of a revised political finance regime, amongst its other activities.

### **Recommendation 11**

**6.93 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to:**

- **increase the regulatory powers of the Australian Electoral Commission to monitor and enforce compliance with the political funding and disclosure regime;**
- **expand the regulatory powers of the Australian Electoral Commission to investigate and aggregate donations made below the disclosure threshold; and**
- **introduce strict sanctions and penalties for breaches of legislative requirements.**

### **Recommendation 12**

**6.94 The committee recommends that the Australian Government establish a federal independent integrity commission.**

#### *Increase in public funding*

6.95 Over the course of the inquiry, several submitters and witnesses highlighted the need for public funding to adequately complement reforms to private funding, in particular, the proposed introduction of caps on donations. Participants argued that a modest increase to public funding is necessary to

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<sup>85</sup> Transparency International Australia, *Submission 33*, p. 3.

<sup>86</sup> GetUp, *Submission 21*, p. 3.

help alleviate the inevitable shortfall in political parties' income that would result from limiting the amount a donor can contribute.

6.96 For example, Professor Tham argued that:

If contribution limits are imposed, such funding will be necessary to (partly) make up for the shortfall in income experienced by political parties. In doing so, public funding will directly support these parties in discharging their functions. Together with such limits, public funding will also wean these parties off of large political contributions, thereby lessening the risk of corruption.<sup>87</sup>

6.97 The Australian Greens expressed a similar view, submitting that a 'necessary consequence of capping donations is that public funding will have to increase to replace the large private donations'.<sup>88</sup> Reiterating this point, they noted that:

While these amounts are likely to be small in comparison to the government's total expenditure, it is necessary to secure public support for greater taxpayer money going to political candidates as the necessary price of keeping the influence of big money out of politics.<sup>89</sup>

6.98 Professor Miller from CEDAAR also endorsed an increase to public funding in light of the proposed changes to the political finance regime, noting the need sufficient funding for political parties to engage in political communication:

If there are going to be changes around the political donations scheme, I think it's important to look at ensuring there is adequate funding for political parties to get their message across...<sup>90</sup>

6.99 Similarly, Professor Williams told the committee that 'I think it is in the taxpayers' interests that they subsidise these changes to ensure that they are implemented properly and without prejudice'.<sup>91</sup>

6.100 The Synod discussed how an appropriately balanced private and public funding scheme can help facilitate the aims of 'levelling the playing field' between political parties and reducing dependence on private income:

Public funding will help complement private funding, providing support for the institutionalisation and daily activities of political parties while negating the dependence on private capital. Public funding can ensure that all political forces are on a level playing field in terms of access to resources to reach electorates, which encourages pluralism and choice for the community. Paired with donation limits, public funding can also limit

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<sup>87</sup> Associate Professor Joo-Cheong Tham, *Submission 3–Attachment 2*, p. 168.

<sup>88</sup> Australian Greens, *Submission 7*, p. 3.

<sup>89</sup> Australian Greens, *Submission 7*, p. 3.

<sup>90</sup> Professor Peter Miller, Director, Centre for Drug, Alcohol and Addiction Research, *Committee Hansard*, 6 November 2017, p. 23.

<sup>91</sup> Professor George Williams AO, *Committee Hansard*, 30 January 2018, p. 13.

the advantage and close the gap between competitors with vastly different funding amounts.<sup>92</sup>

6.101 International IDEA expressed a similar view, arguing that 'public funding can dilute and reduce the relative importance of private donations providing that it is combined with other regulatory measures'. International IDEA further submitted that '[i]n order to offset the influence of private donations, the amount provided from the public purse must also be sufficiently large to have an impact'.<sup>93</sup>

6.102 The committee heard from Mr Rangott of ICAC about how an increase in public funding in NSW has supplemented the funding burden placed on political parties by caps on donations:

To the extent that those caps bite, in New South Wales they were supplemented by public funding, so those burdens of running a political party that were met in previous times are now being met by public funding. So that is part of the answer. I don't think it is fair to require political parties to run on the smell of an oily rag, so that was the situation in New South Wales.<sup>94</sup>

### **Committee view**

6.103 An increase in public funding is one of the most sensitive aspects of any proposed changes to the current regime. However, the committee believes it is unrealistic to expect political parties to be subject to a donations cap, even with an associated cap on expenditure, and not provide some element of increased funding to bridge the gap.

6.104 The committee is also of the view that a revised public funding formula, which is linked to expenditure to prevent the potential for profiteering from a revised model, would increase transparency, equity and scrutiny, and therefore the accountability of political parties to the public.

### **Recommendation 13**

**6.105 The committee recommends that the Australian Government implement a small increase in public funding to political parties given the significant loss in revenue that would occur from implementing donations caps.**

### **Jurisdictional inconsistency**

6.106 In addition to the measures outlined so far in this chapter, a number of inquiry participants highlighted the need for greater harmonisation between federal

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<sup>92</sup> Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 11.

<sup>93</sup> International IDEA, *Submission 13*, p. 4.

<sup>94</sup> Mr Lewis Rangott, Executive Director, Corruption Prevention, New South Wales Independent Commission Against Corruption, *Committee Hansard*, 30 January 2018, p. 5.

and state and territory political funding and disclosure regimes as another means of enhancing the integrity of political finance regulation.

6.107 As noted in Chapter 1, the various state and territory schemes that apply to elections and related activities within their relative jurisdictions are broadly similar to the federal regime in terms of their objectives and approach. However, some quite significant differences have evolved between the states and territories in response to local factors, particularly with regard to disclosure thresholds and the degree of regulation involved.

6.108 The AEC submitted that the varying requirements that exist in each state and territory create 'a layer of complexity for all participants', and that non-disclosure is often a result of misunderstanding the different obligations between jurisdictions:

Currently, state and territory disclosure schemes have different obligations to the Commonwealth and to each other. The different thresholds, definitions, and timings create a layer of complexity for all participants, particularly donors. Instances of nondisclosure can often be attributed to donors or organisations not fully appreciating the different requirements between jurisdictions.

For the general public the different disclosure provisions across the jurisdictions provide a layer of complexity that may add to a perception of a lack of transparency.<sup>95</sup>

6.109 Some submitters and witnesses argued that inconsistent political funding and disclosure regulation between the Commonwealth and the states and territories creates loopholes that encourage evasion of the system.<sup>96</sup>

6.110 For example, Mr David Templeman, President of PHAA, commented that:

There are different rules in each jurisdiction, and the lack of real-time integrated national reporting on all donations from all sources, regardless of the amount, means that there are so many ways to evade timely public reporting of donations.<sup>97</sup>

6.111 Dr Ng also reflected on this issue, noting that the inconsistencies with regard to political finance regulation have seen 'money being channelled to other jurisdictions with more lenient rules'.<sup>98</sup>

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<sup>95</sup> Australian Electoral Commission, *Submission 2–Attachment 1*, p. 8.

<sup>96</sup> See, for example, Adjunct Professor Colleen Lewis, *Submission 30*, [pp. 4–5]; Public Health Association of Australia, *Submission 32*, p. 7; NSW Independent Commission Against Corruption, *Submission 28*, p. 2.

<sup>97</sup> Mr David Templeman, President, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 13.

<sup>98</sup> Dr Yee-Fui Ng, *Committee Hansard*, 2 November 2017, p. 9.

6.112 Elaborating on this point, Dr Ng drew the committee's attention to how donations caps under NSW legislation have been circumvented by funnelling donations to the federal level:

For instance, at the federal level we don't have those caps. The donations were channelled to the federal level and then channelled back to New South Wales. One problem with the system is that it's not uniform across the country. Where there's a more lenient system, the money can be channelled there.<sup>99</sup>

6.113 Arguing the need for a 'national system for political donations' in Australia, Dr Lewis also highlighted the loopholes created by inconsistent regulation between jurisdictions:

The time has come for action, not more words, and that action needs to involve state and territory governments and the federal government coming together to establish a national system for political donations in this country. This is necessary because history shows that members of parliament and political parties will 'game' a fractured system that provides loopholes for MPs and political parties to exploit.<sup>100</sup>

6.114 ICAC acknowledged that 'steps have been taken to limit the adverse impact of these inter-jurisdictional differences', however it urged the committee to 'consider the benefits of a more uniform framework for regulating political donations made across Australia'.<sup>101</sup>

### **Committee view**

6.115 Electoral funding rules vary enormously between the Commonwealth and the states and territories. The committee considers this to be a serious issue when it comes to the disclosure of donations and expenditure. Efforts at a state level to regulate money in politics have been undermined by the ability of donors to funnel money into federal level party election accounts which are not under the jurisdiction of state election funding laws.

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<sup>99</sup> Dr Yee-Fui Ng, *Committee Hansard*, 2 November 2017, p. 9.

<sup>100</sup> Adjunct Professor Colleen Lewis, *Submission 30*, [pp. 4–5].

<sup>101</sup> NSW Independent Commission Against Corruption, *Submission 28*, p. 2.

**Recommendation 14**

**6.116** The committee recommends that the Australian Government initiate discussions between state and territory governments and the Commonwealth with regard to political donations regulation—including legislative definitions, allowable donors, disclosure thresholds and disclosure timeframes—with a view to developing harmonised laws within two years.

Senator Richard Di Natale  
Chair



# Dissenting Report from Labor Senators

- 1.1 Labor Senators are proud of Labor's record when it comes to improving transparency and accountability around political donations.
- 1.2 Labor has a proud record of policy and reform around donations and has taken real steps to take action, including the introduction of the Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2017 into the Parliament.
- 1.3 Labor Senators on this committee thank the members of the Joint Standing Committee on Electoral Matters for their work and continue to emphasise that the Electoral Matters committee is best placed to inquire into issues regarding the political influence of donations.

## *Labor's Policies on Political Donations*

- 1.4 Labor's suite of donation reform and accountability policies include:
  - (a) Banning foreign donations;
  - (b) Requiring all donations above \$1000 to be disclosed;
  - (c) Banning donation splitting;
  - (d) Banning anonymous donations above \$50;
  - (e) Linking public funding to campaign expenditure;
  - (f) Work to develop a system of real-time reporting of donations and contributions supported by an administrative funding model;
  - (g) Introducing new offences and increasing penalties for breaches; and
  - (h) The creation of a National Integrity Commission.
- 1.5 Without going into detail on each policy, transcripts from the public hearings will indicate that such policies have the broad support of witnesses.

## *Response to Chair's Draft Recommendations*

- 1.6 Labor Senators note Recommendation 1 and believe it should be reworded to reflect the need for a broader approach to donation reform, given the broad range of concerns covered in Chapter 3:
  - (a) The committee recommends that the Australia Government consider ways in which payments, donations and subscriptions can be better categorised and disclosed to the Australian community.
- 1.7 Labor Senators support Recommendation 2, which goes to the regulation of third parties and their expenditure, save for the reference to expenditure caps which is covered later in these comments on Recommendation 10.
- 1.8 Labor Senators support Recommendations 3, 4, 5 and 6, which support Labor's \$1000 disclosure threshold, improved reporting in annual returns for political

parties, real time disclosure and the improved presentation of Australian Electoral Commission political finance data.

- 1.9 Labor Senators believe that Recommendation 7, which relates to the proposal for a donations cap, requires further consideration. Such caps raise significant constitutional concerns and may have unintended consequences. Labor Senators acknowledge policy development in relation to donations caps undertaken by then Special Minister of State John Faulkner in the first *Electoral Reform Green Paper* (December 2008).
- 1.10 Labor Senators support Recommendation 8, which calls for a ban on foreign donations.
- 1.11 Labor Senators do not support Recommendation 9. Such industry specific bans raise constitutional concerns and have been the subject of High Court litigation. Labor Senators note that it is open to political parties to voluntarily decline to accept donations from specific industry sectors. For example, the Australian Labor Party has long refused to accept donations from tobacco companies. Labor Senators note that, despite claiming to oppose corporate donations, prior to the 2010 Federal Election the Australian Greens accepted a \$1.7 million donation from Graeme Wood, founder of online travel company Wotif.com. Despite claiming to oppose gambling donations, prior to the 2016 Federal Election the Australian Greens accepted a \$500,000 donation from Duncan Turpie, a high-end gambler and member of the secretive Punters' club.
- 1.12 Labor Senators note Recommendation 10. Labor Senators believe that a cap on expenditure should not be ruled out in the future as a policy option, but reforms to donation transparency should be implemented as a priority and the outcomes of these changes evaluated.
- 1.13 Labor Senators support Recommendation 11, which calls for improved powers for the AEC and changes to penalties.
- 1.14 Labor Senators support Recommendation 12, as Labor supports the establishment of a National Integrity Commission.
- 1.15 Labor Senators support Recommendation 13, save for the reference to a donations cap which is covered in comments about Recommendation 7.
- 1.16 Labor Senators support Recommendation 14 which aims to improve the harmonisation of Commonwealth and State regulation of political donations.

### *Beneficial Ownership*

- 1.17 A broad range of stakeholders also supported the creation of a register of beneficial ownership, which would improve transparency and particularly help to uncover donation splitting and the ultimate source of donations from legal entities:

**Senator KETTER:** The issue of a public register of ultimate beneficial ownership: do you think this will play a part in political donation reforms?

**Dr Zirnsak:** Absolutely. It would be one of the benefits of having an ultimate beneficial ownership register. You would, ideally, know who is behind an entity. It would help restrict people from using various corporate legal vehicles to conceal their identity or the fact that they're behind it.<sup>1</sup>

1.18 Labor Senators support the creation of a register of beneficial ownership and draw attention to Recommendation 19 of the Senate Economics References committee report into Foreign Bribery, which states that:

- (a) The committee recommends that Australian Securities and Investment Commission expand the register of beneficial ownership to require companies, trusts and other corporate structures to disclose information regarding their beneficial ownership; and that this information be maintained in a central register.

**Senator Chris Ketter**  
Deputy Chair

**Senator Carol Brown**  
Labor Senator for Tasmania

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<sup>1</sup> Dr Mark Zirnsak, *Committee Hansard*, Thursday 2 November 2017, p. 19.



# Dissenting Report from Coalition Senators

## Introduction

- 1.1 The Liberal and National Senators on this committee are very concerned about the implications of this report and its recommendations for Australia's open and transparent democracy. Our electoral system should promote the consistent treatment of all political groups and individuals, and this report instead seeks to place inequity at the forefront of its recommendations.
- 1.2 Recommendation 1 is built upon chapter three, which assumes that political donations can have no purpose other than to achieve a corrupting influence.
- 1.3 Moreover, the case studies it uses to support its argument imply that any donation to a political party is automatically evidence of corruption. Such a view does not allow for legitimate public participation in policy making and free elections. Moreover, it also suggests that the political parties involved are simply operators-for-hire, and do not have the ability to make their own decisions in the national interest.
- 1.4 The recommendation seems to be politically motivated. The discussion and case studies utilised within chapter 3 focus on the major parties, while undertaking no discussion of minor parties – such as the significant, record-making donations received by the Greens. As such, this recommendation is framed in a way that targets events run by the major parties, without discussing minor party fundraising methods. As such, we reject this recommendation.
- 1.5 Recommendation 2, by advocating special treatment or exemptions for certain political actors, creates a loophole which undermines the committees other recommendations.
- 1.6 This irregularity creates further inequality in the treatment of certain entities, and as such we reject this recommendation.
- 1.7 Recommendations 3 to 6 continue to imply a conspiratorial lack of accountability from political parties, while proposing to create administrative nightmares in attempting to resolve them. Political parties – mostly volunteer-run organisations – are already subject to extensive regulation and transparency under the Electoral Act.
- 1.8 The practical effect of these recommendations would be to create new and demanding administrative burdens for anyone wishing to participate in the political process as a donor, candidate or political party, while ignoring other political actors like third party campaign groups. As such, we reject these recommendations.

- 1.9 Recommendation 7 proposes to entrench a funding model that works to the advantage of the Greens and organisations such as GetUp, while similarly damaging the ability of Australians to participate in free elections.
- 1.10 Moreover, it recommends severe restrictions on political parties, while ignoring the growing influence of third party campaign groups. Election campaigns are no longer solely fought between political parties and candidates. A range of interest groups, unions, activist groups like GetUp and politically-active charities seek to influence election outcomes through advertising, how-to-vote material and grassroots political campaigning. In the last election year, 55 third party campaigners reported almost \$40 million worth of “political expenditure” to the Australian Electoral Commission.
- 1.11 These third parties are subject to significantly less transparency and scrutiny than political parties. Whereas political parties are currently required to publicly disclose all donations above the disclosure threshold, this is not true of third party campaign groups. Similarly, while donors must disclose donations above the disclosure threshold made to political parties, this is not true of third party campaign groups. By limiting donations to some political actors – but not others – the effect of this recommendation would be to encourage unrestricted donations to less-transparent third party campaigners as opposed to political parties, thus reducing the effectiveness of political donation laws and eroding transparency in the funding of election campaigns. As such, we reject this recommendation.
- 1.12 In relation to Recommendation 8, while we support a ban on foreign political donations, we would also like to note the chair has criticised the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, which bans foreign political donations to political parties and other relevant political actors.
- 1.13 Like Recommendation 7, this recommendation ignores the significant role third party campaign groups play in Australian elections, creating a significant loophole for foreign interests to seek to influence Australian elections by funding third parties’ political campaigning.
- 1.14 Recommendation 9 is a blatant targeting of particular groups which do not suit the agenda of the chair and submissions by sympathetic special-interest groups, and thus continues the trend within this report of advocating unequal treatment of political actors. This recommendation takes limited evidence, and applies it unquestioningly to industry groups which the chair does not agree with or personally opposes, such as the defence, banking, mining and pharmaceutical industries. Such undemocratic and unequal treatment would undermine the fairness and openness of our political system, and we thus reject this recommendation.

- 1.15 Furthermore, we also note the hypocrisy of the argument of this report and the chair, given that the Tasmanian Greens reportedly received significant donations from a leading gambler as well as a casino proponent in the lead-up to the 2018 Tasmanian election. Having willingly accepted this money, the Greens now claim donations from such industries are so corrupting they must be banned.
- 1.16 Recommendation 10 does not consider the role of third parties in Australian politics. In conjunction with Recommendation 7, the effect of this recommendation would be to divert donations to less-transparent third party campaign groups. In contrast to political parties, these groups would have an unlimited capacity to spend money campaigning in elections. Candidates – subject to spending limits – would be unable to answer the various claims and assertions made about them by third party campaigners. In this environment, political parties and candidates would play a relatively minor role in elections that would come to be dominated by politically-active special interest groups that are less transparent and less accountable than political parties. As such, we reject this recommendation.
- 1.17 Recommendations 11 and 12 argue for significant changes to the powers of the Australian Electoral Commission in line with the other recommendations in this report, as well as the establishing of a federal integrity commission. The powers proposed for the AEC would not be necessary without the report's substantive recommendations, and as we do not see the need for those recommendations, we reject this recommendation.
- 1.18 Furthermore, when considering an anti-corruption commission, Liberal and National Senators would like to note that the existing multi-faceted approach to combatting corruption has proven to be effective. Transparency International currently ranks Australia at 13<sup>th</sup> on its Corruption Perception Index, and only two nations higher than Australia on that index have a national anti-corruption body. However, we believe that the Government should always look at how we can strengthen our approach to combatting corruption, and as such we note this recommendation.
- 1.19 Recommendation 13 argues for the increase of public funding to political parties, but in conjunction with other aspects of this report will still dilute the role of political parties relative to third party organisations. This will further damage the transparency of our political processes and drive donations away from political parties towards less accountable third parties.

#### *Additional Objections*

- 1.20 The Liberal and National Senators on this committee would also like to note more broadly the cynical political attack which has been undertaken under the guise of a committee report as published.

1.21 The report has no qualms about quoting the Australian Greens as a legitimate submitter and pushing their own submission and actions in the Australian Parliament, while failing to quote the views of other parties. In particular, this report quotes the Greens' *Submission 7* eight times throughout this report, while failing to even acknowledge some of the recommendations and arguments from the submission by the Liberal Party of Australia in *Submission 35*. Given that the arguments within were both pertinent to and engaged in ongoing issues nationally around changes to electoral donations, it is staggering that a report published under the guise of a committee would be so blatantly partisan in its targeting and interests.

### *Conclusion*

- 1.22 Liberal and National Senators believe that this report's recommendations would place significant burdens on political parties and Australians, as well as creating an extremely unequal political donation system. The recommendations would significantly restrict the ability of individuals to participate in the political system, through further regulation and burdensome demands on the administration of donations made to certain political actors but not others. While restricting legitimate democratic participation by political parties and individuals, the recommendations largely exempt third party political activists and campaigners – some of which already spend more money influencing elections than political parties.
- 1.23 Furthermore, the proposed unequal donation system would risk undermining transparency by driving donations to less-transparent third-party organisations which are not subject to the same transparency requirements as political parties under the Electoral Act.
- 1.24 As such, we reject almost all recommendations in this flawed, partisan report. We also note that the Government currently has legislation before the Senate to ensure all relevant political actors are subject to the same transparency, disclosure and reporting requirements and subject to the same ban on foreign political donations.

**Senator Jim Molan**  
**Senator for NSW**

**Senator Barry O'Sullivan**  
**Senator for QLD**

# Appendix 1

## Submissions, additional information, answers to questions on notice and tabled documents

### Submissions

- 1 Professor George Williams AO
- 2 Australian Electoral Commission
- 3 Associate Professor Joo-Cheong Tham
- 4 Mr Robert Grigg
- 5 Property Council of Australia
- 6 ExxonMobil Australia
- 7 Australian Greens
- 8 McCusker Centre for Action on Alcohol and Youth (MCAAY)
- 9 Ms Nina Christesen
- 10 Australian Conservation Foundation
- 11 Dr Yee-Fui Ng
- 12 Dr Luke Beck
- 13 International IDEA
- 14 Australian Council on Smoking and Health (ACOSH)
- 15 Centre for Drug, Alcohol and Addiction Research (CEDAAR)
- 16 Woodside Energy
- 17 Gene Ethics
- 18 Dr Charles Livingstone and Ms Maggie Johnson
- 19 Mr Jon Shirley
- 20 Synod of Victoria and Tasmania, Uniting Church in Australia
- 21 GetUp
- 22 Dr Belinda Edwards
- 23 Anglican Church Southern Queensland
- 24 Electoral Commission Queensland
- 25 Foundation for Alcohol Research and Education (FARE)
- 26 Mr Peter Burke
- 27 Community Council for Australia
- 28 NSW Independent Commission Against Corruption (ICAC)
- 29 Accountability Round Table
- 30 Adjunct Professor Colleen Lewis
- 31 Government of South Australia
- 32 Public Health Association of Australia (PHAA)
- 33 Transparency International Australia
- 34 Mr Chris Reid
- 35 Liberal Party of Australia
- 36 Mr Tim Kent

**Additional information**

- 1 Queensland Resources Council (QRC), response to the committee's request for information (Received 10 November 2017)
- 2 Australian Labor Party (ALP), response to the committee's request for information (Received 13 November 2017)
- 3 Brickworks Limited, response to the committee's request for information (Received 16 November 2017)
- 4 Macquarie Group, response to the committee's request for information (Received 21 November 2017)
- 5 NSW Minerals Council, response to the committee's request for information (Received 22 November 2017)
- 6 Minerals Council of Australia (MCA), response to the committee's request for information (Received 22 November 2017)
- 7 Crown Resorts Limited, response to the committee's request for information (Received 23 November 2017)
- 8 Nine Entertainment Co, response to the committee's request for information (Received 23 November 2017)
- 9 Insurance Council of Australia (ICA), response to the committee's request for information (Received 23 November 2017)
- 10 Commonwealth Bank of Australia (CBA), response to the committee's request for information (Received 23 November 2017)
- 11 Westpac, response to the committee's request for information (Received 24 November 2017)
- 12 Australian Southern Bluefin Tuna Industry Association (ASBTIA), response to the committee's request for information (Received 27 November 2017)
- 13 ANZ, response to the committee's request for information (Received 27 November 2017)
- 14 Australian Petroleum Production and Exploration Association (APPEA), response to the committee's request for information (Received 30 November 2017)
- 15 PricewaterhouseCoopers (PwC), response to the committee's request for information (Received 4 December 2017)
- 16 National Australia Bank (NAB), response to the committee's request for information (Received 11 December 2017)
- 17 Financial Services Council (FSC), response to the committee's request for information (Received 20 December 2017)
- 18 Liberal Party of Australia, response to the committee's request for information (Received 1 February 2018)
- 19 Deloitte, response to the committee's request for information (Received 20 November 2017)
- 20 CropLife Australia, letter regarding evidence provided at the public hearing in Melbourne on 2 November 2017 (Received 22 November 2017)

- 21 Agricultural Biotechnology Council of Australia (ABCA), letter regarding evidence provided at the public hearing in Melbourne on 2 November 2017 (Received 23 November 2017)
- 22 Alcohol Beverages Australia (ABA), letter regarding evidence provided at the public hearing in Canberra on 6 November 2017 (Received 23 November 2017)
- 23 Australian Southern Bluefin Tuna Industry Association (ASBTIA), additional information to previous response to the committee's request for information and appearance at the public hearing in Sydney on 30 January 2018 (Received 22 February 2018)
- 24 Professor Joo-Cheong Tham, response to the committee's letter regarding the regulation of third parties (Received 29 March 2018)
- 25 Associate Professor Luke Beck, response to the committee's letter regarding the regulation of third parties (Received 12 April 2018)
- 26 Australian Council of Social Service (ACOSS), response to the committee's letter regarding the regulation of third parties (Received 13 April 2018)
- 27 Minerals Council of Australia (MCA), response to the committee's letter regarding the regulation of third parties (Received 13 April 2018)
- 28 St Vincent de Paul Society National Council, response to the committee's letter regarding the regulation of third parties (Received 13 April 2018)
- 29 Australian Conservation Foundation (ACF), response to the committee's letter regarding the regulation of third parties (Received 13 April 2018)
- 30 Australian Council for International Development (ACFID), response to the committee's letter regarding the regulation of third parties (Received 20 April 2018)
- 31 Community Council for Australia (CCA), response to the committee's letter regarding the regulation of third parties (Received 23 April 2018)

### **Answer to Question on Notice**

- 1 Centre for Drug, Alcohol and Addiction Research (CEDAAR), response to a question on notice arising from the public hearing in Canberra on 6 November 2017 (Received 6 November 2017)
- 2 Transparency International Australia, response to a question on notice arising from the public hearing in Melbourne on 2 November 2017 (Received 10 November 2017)
- 3 Foundation for Alcohol Research and Education (FARE), response to a question on notice arising from the public hearing in Canberra on 6 November 2017 (Received 15 November 2017)
- 4 Australian Council on Smoking and Health (ACOSH), response to questions on notice arising from the public hearing in Melbourne on 2 November 2017 (Received 22 November 2017)
- 5 Gene Ethics, response to questions on notice arising from the public hearing in Melbourne on 2 November 2017 (Received 23 November 2017)

- 6 Woodside Energy Ltd, response to questions on notice arising from the public hearing in Melbourne on 2 November 2017 (Received 27 November 2017)
- 7 Minerals Council of Australia (MCA), response to questions on notice arising from the public hearing in Sydney on 30 January 2018 (Received 7 February 2018)
- 8 Australian Electoral Commission (AEC), response to questions on notice arising from the public hearing in Sydney on 30 January 2018 (Received 14 February 2018)
- 9 NSW Independent Commission Against Corruption (ICAC), response to questions on notice arising from the public hearing in Sydney on 30 January 2018 (Received 15 February 2018)

### **Tabled documents**

- 1 'The tip of the iceberg: Political donations from the mining industry', tabled by the Australian Conservation Foundation at a public hearing in Melbourne on 2 November 2017.
- 2 Supplementary submission tabled by the Foundation for Alcohol Research and Education at a public hearing in Canberra on 6 November 2017.
- 3 'Price of Power: The Big Business Billions Behind Australia's Corporate Lobby', tabled by GetUp at a public hearing in Canberra on 6 November 2017.

## Appendix 2

# Public Hearings

*Melbourne VIC, 2 November 2017*

**Committee Members in attendance:** Senators Brockman, Di Natale, Georgiou, Ketter, Lambie.

ABBOTT, Mr Anthony Michael Rutherford, Senior Vice President, Corporate and Legal, Woodside Energy Ltd

JOHNSON, Ms Maggie, Private capacity

LIVINGSTONE, Dr Charles, Private capacity

McINNES, Mrs Sandra, Vice President, Corporate Affairs, Woodside Energy Ltd

METCALFE, Mr Peter James, General Manager, Government and International Relations, Woodside Energy Ltd

MIZZI, Ms Jenna, Social Justice Researcher, Synod of Victoria and Tasmania, Uniting Church in Australia

MURRELL, Ms Fran, President, MADGE Australia

NG, Dr Yee-Fui, Private capacity

O'SHANASSY, Ms Kelly, Chief Executive Officer, Australian Conservation Foundation

PHELPS, Bob, Executive Director, Gene Ethics

SINCLAIR, Dr Paul, Director of Campaigns, Australian Conservation Foundation

SWANSON, Mr Maurice, President, Australian Council on Smoking and Health

THAM, Associate Professor Joo-Cheong, Private capacity

WHEALY, The Hon. Anthony, QC, Chair, Transparency International Australia

ZIRNSAK, Dr Mark, Director, Social Justice, Synod of Victoria and Tasmania, Uniting Church in Australia

*Canberra ACT, 6 November 2017*

**Committee Members in attendance:** Senators Brockman, Di Natale, Georgiou, Ketter.

CROSBIE, Mr David, Chief Executive Officer, Community Council for Australia

EDWARDS, Dr Belinda, Private capacity

HARRISON, Mr Anthony, Senior Policy Officer, Foundation for Alcohol Research and Education

JOHNSTON, Dr Ingrid, Senior Policy Officer, Public Health Association of Australia

MEROPE-SYNGE, Mr Django, Acting Economic Campaign Director, GetUp!

MILLER, Professor Peter, Director, Centre for Drug, Alcohol and Addiction Research; and Professor of Violence Prevention and Addiction Studies, School of Psychology, Deakin University

OOSTING, Mr Paul, National Director, GetUp!

SMITH, Mr Ian, Managing Partner, Bespoke Approach  
TEMPLEMAN, Mr David, President, Public Health Association of Australia  
THORN, Mr Michael, Chief Executive, Foundation for Alcohol Research and Education

*Sydney NSW, 30 January 2018*

**Committee Members in attendance:** Senators Di Natale, Georgiou, Ketter, O'Sullivan.

BECK, Associate Professor Luke, Private capacity

BYERS, Mr David, Interim Chief Executive, Minerals Council of Australia

DAVIS, Mr Mark, Director, Strategy and Communications, Minerals Council of Australia

HERD, Ms Annabelle, Chief Operating Officer, Network Ten

JEFFRIESS, Mr Brian Charles, Chief Executive Officer, Australian Southern Bluefin Tuna Industry Association Ltd

LEWIS, Adjunct Professor Colleen Helen, Private capacity

MARRIOTT, Mr Paul, Head of Corporate Communications, Macquarie Group

PIRANI, Mr Paul, Chief Legal Officer, Australian Electoral Commission

PRASAD, Ms Navleen, Head of Government Relations, Macquarie Group

RANGOTT, Mr Lewis, Executive Director, Corruption Prevention, New South Wales Independent Commission Against Corruption

ROGERS, Mr Tom, Electoral Commissioner, Australian Electoral Commission

TROETH, Mr Simon, Director, Media, Minerals Council of Australia

WILLIAMS, Professor George, Private capacity

WILSON, Mr Ian, Regulatory Affairs Manager, Network Ten