

MICHAEL BERKMAN MP

Queensland Greens Member for Maiwar



6 July 2018

Economics and Governance Committee
Parliament House

Sent via email only: egc@parliament.qld.gov.au

Response to submissions – Electoral Legislation (Political Donations) Amendment Bill 2018

To the Economics and Governance Committee,

I write in response to the invitation of 12 June 2018 from the chair of the Economics and Governance Committee (the Committee), Mr Linus Power MP, to provide a written response on the issues raised in the submissions to the Committee on the Electoral Legislation (Political Donations) Amendment Bill 2018 (**Bill**).

At the close of the submissions on 15 June 2018 the Committee had received 19 submissions, which are listed at Annexure 1. The submission from the Crime and Corruption Commission dated 12 June 2018 (**the CCC Submission**) warrants a more detailed response than the remaining submissions, numbered 1 to 3 and 5 to 19 (**the Other Submissions**).

The Other Submissions

Leaving aside the CCC Submission, each of the Other Submissions supports the Bill.

The Other Submissions were made by a variety of individuals and organisations, including community organisations, a community legal centre, and two local governments – the Redland City Council and the Southern Downs Regional Council, each of which support the Bill and suggest further reform, such as extension of the prohibition beyond for-profit entities and public funding of elections.

Redland City Council and the Southern Downs Regional Council are not alone in suggesting further reform is necessary. For example, the submissions from EDO Qld and Brisbane Residents United Inc each suggested investigation of publicly funded elections, capping electoral expenditure, and better regulation of the revolving door between industry and government.

The CCC Submission

The CCC Submission is, unsurprisingly, the most detailed submission received by the Committee and is prepared in the context of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and other Legislation Amendment Act 2018 (the Belcarra Bill)*, which was assented to on 21 May 2018, and the Report on Operation Belcarra that was the basis of the Belcarra Bill.

www.michaelberkman.com.au

1/49 Station Road, Indooroopilly • PO Box 423, Indooroopilly Centre QLD 4068
P: 07 3737 4100 • E: maiwar@parliament.qld.gov.au

Mr MacSporran QC notes in the CCC Submission that it has not previously recommended prohibition of political donations by for-profit corporations in the context of either State or Local Government elections, and that it does not consider that there is a proper basis for it to do so, but, importantly, this observation is qualified – this is the CCC’s position on the information currently available to it, and is subject to any further evidence gathered.

This qualification relates to the important leading case law regarding any proposed ban on political donations, and the importance of evidence with respect to the potential influence of political donations. Mr MacSporran relevantly notes in the CCC Submission:

I have previously told the Committee my personal view that in an ideal world all donations would be banned, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified. For this reason the Operation Belcarra Report singled out property developers and not others as the evidence simply did not meet the expectation that other types of donors (for example, trade unions) demonstrated the same risk of actual or perceived corruption *in the local government context*.¹

While the Bill could be enacted and related policy reform pursued in the interests of improving accountability and public confidence in Queensland’s electoral system, I believe a targeted inquiry by the CCC into the influence of political donations would be most useful, and should be instigated to ensure all relevant evidence is available to demonstrate the proportionality of such a legislative response.

As the members of this Committee would be well aware, the Committee can instigate an inquiry into any matter in its portfolio area.² An investigation into the influence of political donations might arguably be more appropriately instigated by the Legal Affairs and Community Safety Committee, given its responsibility for the Department of Justice and Attorney-General and the *Electoral Act 1992*.

On any sensible approach, however, the CCC is the appropriate body to investigate any matter involving potential corruption, and it can be compelled to do so if Government and opposition members of the Parliamentary Crime and Corruption Committee (PCCC) make a bipartisan request of the CCC.³

In summary, the CCC Submission is neither supportive of nor opposed to the Bill, but makes important submissions for the consideration of the Committee, the Government and the Opposition regarding the vital importance of further investigation on the influence of political donations.

Additional evidence of the influence of political donations

While the timeframes for submissions and this response limit the amount of primary research and relevant evidence that might be presented to the Committee, there is significant other evidence and research available in the federal and other jurisdictions that warrant consideration by the Committee.

First and most recent among these is the report of the Australian Senate Select Committee into the Political Influence of Donations.⁴ The content of this report is far reaching and I will not attempt to restate all relevant findings here, but recommend the report, and particularly chapter 3, for the Committee’s consideration.

¹ *Emphasis added.*

² *Parliament of Queensland Act 2001, s92(1)(d).*

³ *Crime and Corruption Act 2001, s294.*

Some excerpts from the report and hearings are particularly salient in the context of the Bill, such as the evidence of Dr Belinda Edwards of the School of Humanities and the Social Sciences, University of New South Wales, and Mr David Templeman, President of the Public Health Association of Australia, which address the importance of Directors' fiduciary duties in considering the motivation for corporate donations:

"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'. 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.*

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'.

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."*⁵

The Senate Select Committee makes important findings about the significance of both real and perceived influence arising from political donations.

"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

⁴ (2018) *Political Influence of Donations*. Available online at: http://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024147/toc_pdf/PoliticalInfluenceofDonations.pdf;fileType=application%2Fpdf

⁵ Senate Select Committee into the Political Influence of Donations (2018) *Political Influence of Donations*, pp38-39 (*Emphasis added, references omitted*).

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 ...

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'. ICAC reiterated its opinion from its December 2014 report into the influence of political donations on the integrity of government decision-making:

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.”⁶

A number of the submissions to this Select Committee are important for the purpose of this Committee's considerations. For example, the submission from the Australian Council on Smoking and Health notes that “[i]t is clear from the internal documents of the tobacco industry that the only reason for donations to political parties is to exert influence over the political process and public health policy.”⁷

In addition to the full report of the Committee (**Annexure 2**), I have included as annexures to this submission a selection of the submissions to the Senate Select Committee, including:

- Submission 14 from the Australian Council on Smoking and Health (**Annexure 3**);
- Submission 20 from the Synod of Victoria and Tasmania, Uniting Church in Australia (**Annexure 4**);⁸
- Submission 23 from the Anglican Church Southern Queensland (**Annexure 5**);⁹
- Submission 25 and supplementary submission 25.1 from the Foundation for Alcohol Research and Education (**Annexure 6**);¹⁰
- Submission 33 from Transparency International Australia (**Annexure 7**).¹¹

There is no shortage of relevant work being done outside the scope of the Senate Select Committee. A discussion paper published last year by the Australia Institute (see **Annexure 8**) made the following findings:

“This report finds that:

- The mining industry has disclosed donations of \$16.6 million to major political parties over the last ten years (2006-07 to 2015-16)

⁶ Senate Select Committee into the Political Influence of Donations (2018) *Political Influence of Donations*, pp41-42 (*Emphasis added*, references omitted).

⁷ Australian Council on Smoking and Health, Submission 14, p. 2. Available online at: http://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024147/toc_pdf/PoliticalInfluenceofDonations.pdf;fileType=application%2Fpdf

⁸ Available online at: <https://www.aph.gov.au/DocumentStore.ashx?id=d2c3fde4-fdad-4fd9-8dc2-81d6c4f517ef&subId=560901>

⁹ Available online at: <https://www.aph.gov.au/DocumentStore.ashx?id=334db11a-4937-4603-9709-2974b3d5dceb&subId=560904>

¹⁰ Available online at: <https://www.aph.gov.au/DocumentStore.ashx?id=32a073db-01c1-449f-8806-f744b27a3672&subId=560964> and <https://www.aph.gov.au/DocumentStore.ashx?id=32a073db-01c1-449f-8806-f744b27a3672&subId=560964>

¹¹ Available online at: <https://www.aph.gov.au/DocumentStore.ashx?id=121e75f4-9d2d-4bf6-abdd-7acf21e4e5fa&subId=561119>

- Disclosed mining industry donations to political parties have increased from a base of \$345,000 in 2006-07 to a peak of \$3,788,904 in 2010-11
- 81% of these donations went to the Coalition, including 71% to the Liberal Party
- Mining industry disclosed donations reached over \$1 million for the first time in 2007-08, the first year that carbon pricing policy was taken to an election in Australia
- Mining company donors often make significant political donations in years they pay no company tax
- Donations correlate with the election cycle, timelines on project approvals, and debates on key industry policies such as the mining tax and carbon price

This influence is just the tip of the iceberg. Significant sources of political donations are hidden from public view, for example donations under \$13,000, donations given through party fundraising events, and some donations hidden through associated entities. Mining companies have a much larger political expenditure budget, including spending on lobbying, advertising and entertaining political representatives. And political donations and expenditure are indicative of much broader political influence through other means, as demonstrated by the corruption of the mining licence process in NSW revealed by the NSW ICAC.”¹²

Other research conducted by the Australia Institute (see **Annexure 9**) identifies concerns about the influence of political donations in specific case studies, in circumstances where the scope of the CCC’s investigative powers and the definition of “corrupt conduct” limited its investigation or findings.

“Acland Stage 3 – alleged improper influence in decision making through political donations

An allegation was made to the CCC that New Hope Coal, the proponents of the Acland Stage 3 mine expansion, influenced the decision by the Newman Government to approve the expansion, after pledging pre-election not to approve it. The allegation included evidence that New Hope made significant political donations, gifts to senior government staff, and had a high level of access to senior LNP figures. In stating its reason not to investigate, the CCC states in its 2015-16 Annual Report that ‘the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.’

Sibelco – alleged improper influence in decision making through political donations

An allegation was made to the CCC that Sibelco, a sand mining company operating on Stradbroke Island, influenced the decision by the Newman Government to extend the legislated closure of the sand mine from 2019 to 2035. The allegation included evidence of a \$91,000 mail out in Campbell Newman’s electorate prior to the election a \$1 million pre-election campaign by Roland Pty Ltd paid for Sibelco, and a high level of access to senior LNP figures before and after the election. In responding to the allegation, the CCC stated ‘Our assessment is that while the allegation you have raised may, if proved, amount to suspected corrupt conduct, the assertion of favourable treatment for Sibelco and a connection between the donations by Sibelco and the recent legislative amendments is speculative.’¹³

¹² The Australia Institute (2017) *The tip of the iceberg: Political donations from the mining industry*, pp. 4-5. Available online at: <http://www.tai.org.au/sites/default/files/P339%20Tip%20of%20the%20iceberg.pdf>

¹³ The Australia Institute (2017) *Queensland watchdog asleep at the gate: A comparison of the Queensland and NSW anti-corruption commissions*, p19 (references omitted). Available online at: <http://www.tai.org.au/sites/default/files/P352%20Queensland%20watchdog%20asleep%20-%20April%20FINAL.pdf>

A 2016 report by the Australia Institute (see **Annexure 10**) look at these and other case studies, including Beach Energy, Karreman Quarries, Adani, Linc Energy and Carbon Energy.¹⁴

The political power of the gambling industry more broadly is well-established and is powered in large part by their hefty donations to both Labor and the Liberal / National parties in Queensland and around Australia. One particularly striking local example is the Queens Wharf mega casino development in Brisbane. The Committee will be aware of the very significant community concerns regarding corporate influence in the approval of the Queens Wharf. It is one of four new casinos currently proposed around Queensland.

Queens Wharf was a Newman government initiative which was continued by Labor after 2015. It will privatise 10% of the CBD, handing over 13 hectares of public land to private casino operators and developers on a 99 year lease. The proposal will put 2,500 poker machines in the heart of Brisbane including 800 new machines. The Labor government has never undertaken any consultation with Brisbane residents about whether they want a casino on the site, instead relying on a tokenistic online survey carried out under Campbell Newman. Both Labor and the LNP have refused to release basic documents including the casino license, cost-benefit analysis, land valuation and the contract between the State and the proponents despite Right to Information requests.

The proponents of the casino, their lobbyists and associates have been very generous donors to both Labor and the LNP, giving a total of \$222,575 to Labor and the LNP since 2013.

Amendments required in Consideration in Detail

As would be clear to the committee, the Bill was largely modelled on the Belcarra Bill and proposes a number of amendments in precisely the same terms as the Belcarra Bill. Following the passage of the Belcarra Bill through Parliament, a number of the Bill's clauses will require amendment in consideration in detail to address this duplication.

I have included a draft of the necessary amendments for consideration of the Committee (see **Annexure 11**).

Please do not hesitate to contact my office on 07 3737 4100 if I can be of assistance.

Kind regards,



Michael Berkman MP

¹⁴ The Australia Institute (2016) *Greasing the Wheels - The systemic weaknesses that allow undue influence by mining companies on government: a QLD case study*, Available online at: http://www.tai.org.au/sites/default/files/P266%20Greasing%20the%20Wheels%20160726_0.pdf

Annexure 1 – list of submissions

- 1 - David Hutley
- 2 - Elly Hanrahan
- 3 - Don Margetson
- 4 - Crime and Corruption Commission
- 5 - Claire Ogden
- 6 - Organisation Sunshine Coast Association of Residents Inc
- 7 - Dr Gemmia Burden
- 8 - Verity Paterson
- 9 - Brisbane Residents United Inc
- 10 - Redlands2030
- 11 - Redlands City Council
- 12 - Wallace Wight
- 13 - Pat Coleman
- 14 - Chris Turnbull
- 15 - Miranda Bertram
- 16 - John Meyer
- 17 - Neil Cotter
- 18 - Southern Downs Regional Council
- 19 - Environmental Defenders Office (Qld) Inc

Annexure 2 – Senate Select Committee into the Political Influence of Donations report (2018) Political Influence of Donations

The Senate

Select Committee into the Political
Influence of Donations

Political Influence of Donations

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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)

PHON, WA

Former committee members

Senator Jacqui Lambie (Sep 2017 to 14 Nov 2017)

JLN, TAS

Senator Slade Brockman (Sep 2017 to 6 Feb 2018)

LP, WA

Committee secretariat

Mr Gerry McInally, Committee Secretary

Ms Ashlee Hill, Senior Research Officer

Ms Brooke Gay, Administration Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3228

Fax: 02 6277 5829

E-mail: politicaldonations.sen@aph.gov.au

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.¹
- 1.2 The reporting date for the inquiry was extended on a number of occasions—initially to 7 December 2017 on 7 September 2017²; to the last sitting day in March 2018 on 27 November 2017³; to 10 May on 28 March 2018⁴; and finally to 6 June 2018 on 10 May 2018.⁵

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.

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

² *Journals of the Senate*, No. 59, 7 September 2017, p. 1898.

³ *Journals of the Senate*, No. 72, 27 November 2017, p. 2283.

⁴ *Journals of the Senate*, No. 94, 28 March 2018, p. 2982.

⁵ *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.⁶

Candidates and Senate groups

- 1.10 A 'candidate' is an Australian citizen over 18 years of age who is nominated for election.⁷
- 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.⁸

⁶ *Commonwealth Electoral Act 1918*, ss. 4(1).

⁷ *Commonwealth Electoral Act 1918*, s. 162 and 163.

⁸ *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;⁹ or
- a candidate or a member of a Senate group during the disclosure period in relation to an election.¹⁰

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.¹¹

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

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

⁹ 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.

¹⁰ Australian Electoral Commission, *Donors*, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/donors/index.htm, (accessed 15 March 2018).

¹¹ *Commonwealth Electoral Act 1918*, ss. 287(1).

¹² Australian Electoral Commission, *Associated entities*, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/associated-entities/index.htm, (accessed 15 March 2018).

return to the AEC.¹³ 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.¹⁴

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.¹⁵

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.

¹³ 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).

¹⁴ *Commonwealth Electoral Act 1918*, s. 314AEB.

¹⁵ *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.¹⁶
- 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 1983.¹⁷ 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.¹⁸

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 \$13,500.¹⁹

- 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.²⁰

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

¹⁷ See *Commonwealth Electoral Legislation Amendment Act 1983*.

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

¹⁹ Information about past disclosure threshold amounts is available on the AEC website at: www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm

²⁰ *Commonwealth Electoral Act 1918*, ss. 287(1).

1.23 The current funding and disclosure regime prevents the receipt of anonymous donations²¹ 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.²² 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.²³

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.²⁴

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.²⁵

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

²¹ 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.

²² Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

²³ Australian Electoral Commission, *Political parties*, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/political-parties/index.htm (accessed 15 March 2018).

²⁴ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

²⁵ 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.²⁶

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.²⁷ 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.²⁸

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.²⁹

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

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.³¹

²⁶ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

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

²⁸ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 2.

²⁹ Australian Electoral Commission, *Annual Report 2015–16*, p. 8.

³⁰ 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.

³¹ 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.³² 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.³³

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.³⁴

³² Section 321 of the Electoral Act specifies the formula for calculating public funding.

³³ 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

³⁴ 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 2017.³⁵
- 1.42 Issues posed by inconsistencies between the various state and territory and Commonwealth political finance regimes are discussed in Chapter 6.

³⁵ 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).¹
- 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.² 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.³

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.

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

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

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

- 2.6 In 1995, the public funding scheme was amended⁴ 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.⁵
- 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).⁶ 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.⁷
- 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.

⁴ See *Commonwealth Electoral Amendment Act 1995*.

⁵ 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.

⁶ See *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.

⁷ 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.⁸
- 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.⁹
- 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

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

⁹ 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.¹⁰ 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.¹¹

- 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.¹²

- 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'.¹³

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

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

¹¹ 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.

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

¹³ 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'¹⁴, 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.¹⁵

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.¹⁶

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

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

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

¹⁶ 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.¹⁷

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 2016.¹⁸ 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.¹⁹

- 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

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

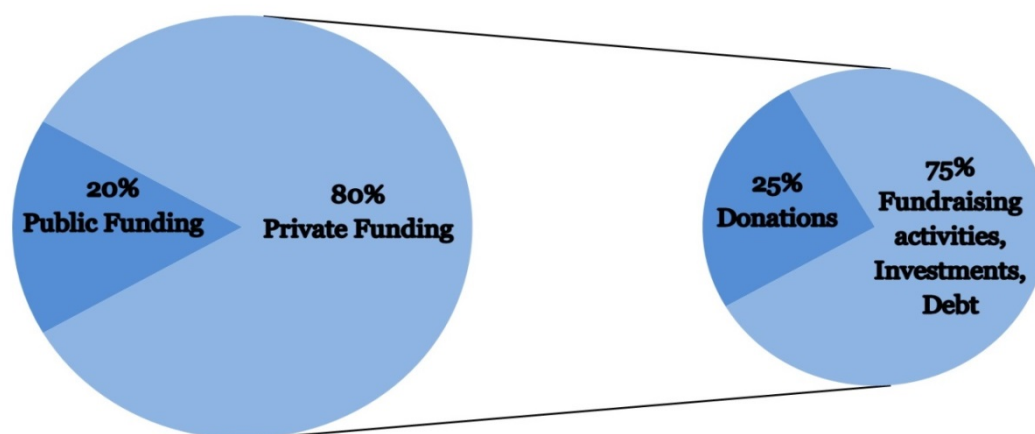
¹⁸ The bill was also introduced into the House of Representatives in February 2017 as the Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2017. However, in accordance with Standing Order 42, was removed from the Notice Paper on 5 September 2017.

¹⁹ *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.²⁰

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.²¹

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

²¹ 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.²²

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.²³

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

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

²³ 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
Total	188,052,113	156,122,007

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).²⁴ 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.²⁵

Table 2.2 Public funding to political parties for the 2016 federal election²⁶

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
Total	62,778,275.03	100

²⁴ 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>

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

²⁶ 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.²⁷

²⁷ 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.¹ 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'.²
- 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.³
- 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:

¹ 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.

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

³ 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.⁴

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'.⁵

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.⁶

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.⁷

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'.⁸ Mr Beazley further noted:

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

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

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

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

⁸ 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.⁹

- 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.¹⁰

- 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'.¹¹ 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 2014–15.¹²

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

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

¹¹ Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 2.

¹² 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 2010–11.¹³
- 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:

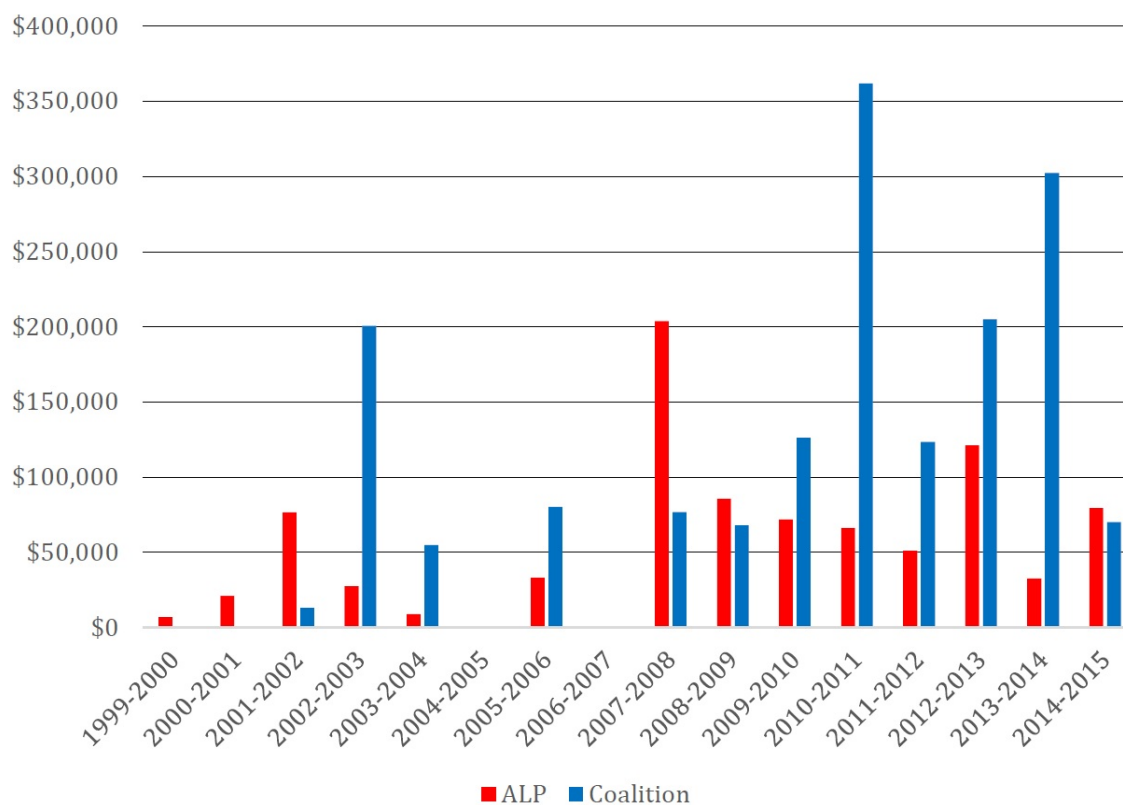
In 1999–2000 and 2000–01, ClubsNSW donated only to the ALP. However, in every year after that a proportion of donations was made to the Coalition as well as the ALP. In 2013–14, the Coalition received over 90% of ClubsNSW's total declared donations. In 2010–11, when ClubsNSW reported its maximum donation level over the period examined, the Coalition received 85%, or \$361,930 of the \$426,180 donated. The ALP received the remaining 15%, \$66,250.¹⁴

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

¹⁴ 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 2014–2015¹⁵



3.21 The report noted that some 'patterns emerge from inspection of the data' and its comparison to political decisions and events.¹⁶ 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.¹⁷

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

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

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

¹⁷ 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'.¹⁸ 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).¹⁹

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.²⁰
- 3.24 The WET is a tax of 29 per cent imposed on wine²¹ 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.²²
- 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.²³ 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

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

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

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

²¹ 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.

²² Foundation for Alcohol Research and Education, *Submission 25*, p. 6.

²³ Foundation for Alcohol Research and Education, *Submission 25*, p. 6.

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

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.²⁵

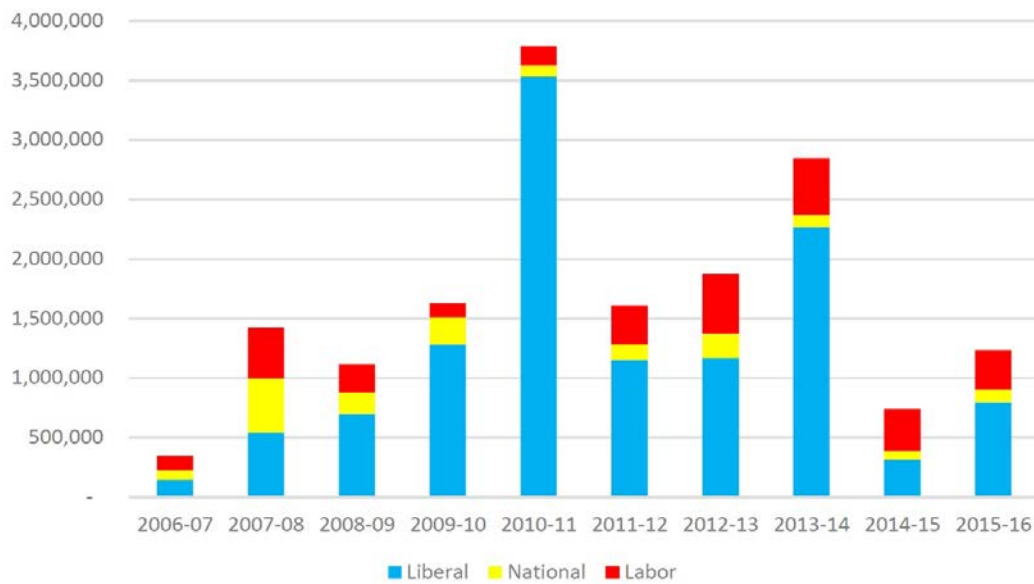
Political donations from the mining industry

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.

²⁴ Foundation for Alcohol Research and Education, *Submission 25*, p. 7.

²⁵ Foundation for Alcohol Research and Education, *Submission 25*, pp. 7–8.

Figure 3.2 Disclosed donations to major parties from resource sector 2006–2016²⁶



- 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).²⁷
- 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'.²⁸ 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.²⁹

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,

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

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

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

²⁹ 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).³⁰ 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.³¹
- 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.³² ANZ disclosed donations to the Liberal Party and ALP of \$150,000 each in 2016–17.³³
- 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'.³⁴ In 2016–17, the FSC disclosed donations to a total value of \$89,570.75.³⁵ Of this total, comparable sums were donated to the federal and state and territory branches of the major political parties.³⁶
- 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

³⁰ 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.

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

³² ANZ, *Additional Information 13*, received 27 November 2017, p. 1.

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

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

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

³⁶ 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.³⁷

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.³⁸

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.³⁹

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'.⁴⁰

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.⁴¹

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

³⁷ Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

³⁸ 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.

³⁹ 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.

⁴⁰ Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

⁴¹ 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.⁴²

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'.⁴³

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.⁴⁴

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.⁴⁵

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.⁴⁶

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.

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

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

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

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

⁴⁶ 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.⁴⁷

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'.⁴⁸

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

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

⁴⁸ 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).⁴⁹

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.⁵⁰

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.⁵¹

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.⁵²

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.⁵³

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

⁵⁰ See Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

⁵¹ 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.

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

⁵³ 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'.⁵⁴

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'.⁵⁵

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.⁵⁶

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'.⁵⁷

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.⁵⁸

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.

⁵⁴ ANZ, *Additional Information 13*, received 27 November 2017, p. 1.

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

⁵⁶ PricewaterhouseCoopers, *Additional Information 15*, received 4 December 2017, p. 1.

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

⁵⁸ 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.⁵⁹

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'.⁶⁰

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'.⁶¹

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.⁶²

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.

⁵⁹ Deloitte, *Additional Information 19*, received 20 November 2017, p. 1.

⁶⁰ Macquarie Group, *Additional Information 4*, received 21 November 2017, p. 2.

⁶¹ Woodside Energy Ltd, *Submission 16*, p. 1.

⁶² 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.⁶³

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'.⁶⁴ 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.⁶⁵

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'.⁶⁶

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.⁶⁷

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

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

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

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

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

⁶⁷ 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.⁶⁸

- 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'.⁶⁹
- 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.⁷⁰

- 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'.⁷¹ 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.⁷²

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

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

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

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

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

⁷² 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'.⁷³

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.⁷⁴

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.⁷⁵ 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'.⁷⁶

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'.⁷⁷ 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.⁷⁸

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

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

⁷⁵ 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.

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

⁷⁷ Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 1.

⁷⁸ 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'.⁷⁹

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.⁸⁰

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.⁸¹

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

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

⁸⁰ 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.

⁸¹ 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.⁸²

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.⁸³

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.⁸⁴

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'.⁸⁵

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

⁸² Foundation for Alcohol Research and Education, *Submission 25*, p. 9.

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

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

⁸⁵ 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.⁸⁶

- 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.⁸⁷

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.⁸⁸
- 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'.⁸⁹
- 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'.⁹⁰
- 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'.⁹¹ ICAC reiterated its opinion from its December 2014 report into the influence of political donations on the integrity of government decision-making:

⁸⁶ Public Health Association of Australia, *Submission 32*, p. 4.

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

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

⁸⁹ Dr Yee-Fui Ng, *Submission 11*, p. 2.

⁹⁰ Mr Jon Shirley, *Submission 19*, p. 1.

⁹¹ 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.⁹²

- 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'.⁹³ 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.⁹⁴

- 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 2016.⁹⁵ 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.

⁹² Anglican Church Southern Queensland, *Submission 23*, p. 1.

⁹³ Transparency International Australia, *Submission 33*, p. 2.

⁹⁴ Transparency International Australia, *Submission 33*, p. 2.

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

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.⁹⁶

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.**

⁹⁶ 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.¹

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.'²

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.³

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;⁴

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

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

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

⁴ 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.⁵

- 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.⁶
- 4.10 Third parties are also required to disclose gifts/donations over the threshold, where they have been used to incur political expenditure.⁷
- 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

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.

⁵ *Commonwealth Electoral Act 1918*, s. 314AEB.

⁶ 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, p. 6, (accessed 5 April 2018).

⁷ 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, 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.⁸

- 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.⁹

- 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.¹⁰

- 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.¹¹

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

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

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

¹¹ 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,¹² 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.¹³

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).

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

¹³ 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)*)¹⁴

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.'¹⁵

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.¹⁶

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.¹⁷

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

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

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

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

¹⁷ 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'.¹⁸

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.¹⁹

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.²⁰

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.²¹

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'.²²

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

¹⁸ Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 9.

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

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

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

²² 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'.²³

- 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.²⁴

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.²⁵

- 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'.²⁶

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

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

²⁴ Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 10.

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

²⁶ 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.²⁷
- 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

²⁷ 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, (accessed 22 March 2018).

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

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'.²⁹ 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.³⁰

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.³¹

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.³²

²⁸ 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, (accessed 22 March 2018).

²⁹ *Charities Act 2013*, s. 11.

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

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

³² 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.³³

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.³⁴

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'.³⁵

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

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

³⁵ 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.³⁶

- 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.³⁷

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

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

³⁷ 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.³⁸

- 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.³⁹

- 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*.⁴⁰

- 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

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

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

⁴⁰ 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.'⁴¹

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.

⁴¹ 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'.¹ 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.²

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'.³

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'.⁴

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.⁵

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

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

² Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 1.

³ Australian Conservation Foundation, *Submission 10*, p. 8.

⁴ Dr Yee-Fui Ng, *Submission 11*, p. 2.

⁵ 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'.⁶

- 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.⁷

- 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.⁸

- 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'.⁹

- 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.¹⁰

- 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.¹¹

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

⁷ Professor George Williams AO, *Submission 1*, p. 1.

⁸ Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 3.

⁹ Adjunct Professor Colleen Lewis, *Submission 30*, [p. 4].

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

¹¹ 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.¹²

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

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

¹² 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.¹³

- 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.¹⁴ Similar levels of non-disclosure have been reported for the 2015–16 election year.¹⁵

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.¹⁶
- 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'.¹⁷ 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.¹⁸

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

¹⁴ 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.

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

¹⁶ 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.

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

¹⁸ 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'.¹⁹
- 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'.²⁰
- 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'.²¹ The AEC also noted that there are differing disclosure requirements across jurisdictions.²²
- 5.23 Most states and territories in Australia currently have disclosure thresholds in place (Table 5.1), excluding Tasmania and Victoria.²³ 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 territories²⁴

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.²⁵

¹⁹ Australian Greens, *Submission 7*, p. 2.

²⁰ Australian Conservation Foundation, *Submission 10*, p. 7.

²¹ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

²² Australian Electoral Commission, *Submission 2—Attachment 1*, p. 8.

²³ 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.

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

²⁵ 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.²⁶

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'.²⁷

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.²⁸

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.²⁹

5.30 The Synod endorsed a lower threshold on anonymous donations, recommending that anonymous donations over a value of \$50 be prohibited.³⁰ 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:

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

²⁷ Dr Yee-Fui Ng, *Submission 11*, p. 2.

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

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

³⁰ 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.³¹

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.³²

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.³³

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.³⁴

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.³⁵

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:

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

³² 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.

³³ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 10.

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

³⁵ 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'.³⁶
- 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.³⁷
- 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.³⁸
- 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'.³⁹
- 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:

³⁶ 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.

³⁷ 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.

³⁸ Australian Conservation Foundation, *Submission 10*, p. 7.

³⁹ 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.⁴⁰

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'

⁴⁰ 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.⁴¹

- 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'.⁴²
- 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.⁴³
- 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.⁴⁴
- 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'.

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

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

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

⁴⁴ 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 2016–17⁴⁵

Party Group	Total Receipts	Disclosed as 'donation' ⁴⁶
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.⁴⁷

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'.⁴⁸

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:

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

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

⁴⁷ 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.

⁴⁸ 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.⁴⁹

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

⁴⁹ Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 5.

Party's \$10.3 million declared 'donations'. For the same year, \$5.4 million⁵⁰ of the ALP's declared donations of \$7.3 million were from associated entities.⁵¹

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.⁵²

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'.⁵³

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.⁵⁴

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.⁵⁵

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

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

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

⁵² 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.

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

⁵⁴ Australian Conservation Foundation, *Submission 10*, p. 8.

⁵⁵ 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.⁵⁶

- 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.⁵⁷

- 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.⁵⁸ 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.⁵⁹

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.

⁵⁶ 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.

⁵⁷ Australian Conservation Foundation, *Submission 10*, p. 4.

⁵⁸ 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.

⁵⁹ 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.⁶⁰

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'.⁶¹

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'.⁶²

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

⁶⁰ Australian Electoral Commission, *Submission 2—Attachment 1*, p. 7.

⁶¹ Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 8.

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

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

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.⁶⁴

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.⁶⁵

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.⁶⁶

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'.⁶⁷ The Australian Greens also reflected on the importance of timely disclosure during election

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

⁶⁴ Associate Professor Luke Beck, *Committee Hansard*, 30 January 2018, p. 9.

⁶⁵ International IDEA, *Submission 13*, p. 4.

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

⁶⁷ Australian Greens, *Submission 7*, p. 2.

campaigns, 'when policy announcements and stakeholder pressure is at its greatest'.⁶⁸

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.⁶⁹

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.⁷⁰

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

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.⁷³ 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

⁶⁸ Australian Greens, *Submission 7*, p. 2.

⁶⁹ 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.

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

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

⁷² Professor George Williams AO, *Submission 1*, p. 1.

⁷³ Electoral Commission Queensland, *Submission 24*, p. 2.

confidence in the knowledge about the financial arrangements of their candidates.⁷⁴

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'.⁷⁵

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.⁷⁶

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.⁷⁷

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.⁷⁸ Mr Rogers also stressed to the committee that the AEC is 'complying absolutely with the legislation that is in place at the

⁷⁴ Electoral Commission Queensland, *Submission 24*, p. 2.

⁷⁵ Dr Belinda Edwards, *Submission 22*, pp. 1, 2.

⁷⁶ Dr Belinda Edwards, *Submission 22*, p. 1.

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

⁷⁸ 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.⁷⁹ Any upgrades to the data systems would require legislative change and would have financial implications for the AEC.⁸⁰

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.**

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

⁸⁰ 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.¹
- 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.²

¹ See, for example, International IDEA, *Submission 13*, p. 2.

² 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.³

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'.⁴

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'.⁵

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.⁶

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'.⁷

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.⁸ The United States of America has donation limits for election campaigns, however

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

⁴ Adjunct Professor Colleen Lewis, *Submission 30*, [p. 3].

⁵ Dr Yee-Fui Ng, *Submission 11*, p. 2.

⁶ International IDEA, *Submission 13*, pp. 2, 4.

⁷ International IDEA, *Submission 13*, p. 2.

⁸ 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)⁹; \$10,000 per calendar year to a State or local party committee; and \$33,900 per calendar year to a national party committee.¹⁰

- 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.¹¹ 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 2010.¹² Under the NSW scheme, political donations are capped for a financial year.¹³ 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.¹⁴
- 6.12 Professor Tham expressed the view that the NSW scheme of capping political donations 'provides an excellent model for federal measures'.¹⁵ Moreover, as highlighted by several participants¹⁶, the caps on political donations imposed in NSW have been held to be legal and constitutionally valid by the High

⁹ 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.

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

¹¹ 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.

¹² 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).

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

¹⁴ Electoral Commission NSW, *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.

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

¹⁶ 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*¹⁷, 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*.¹⁸

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.¹⁹

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.²⁰ Dr Ng argued that caps which equally

¹⁷ *McCloy v New South Wales* [2015] HCA 34.

¹⁸ Dr Luke Beck, *Submission 12*, p. 1.

¹⁹ International IDEA, *Submission 13*, p. 2.

²⁰ 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'.²¹

- 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.²²
- 6.19 Professor Williams suggested a cap of \$5,000 on all donations to political parties, candidates and third parties.²³
- 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'.²⁴ 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.²⁵

- 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'.²⁶ 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).²⁷

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

²¹ Dr Yee-Fui Ng, *Submission 11*, p. 2.

²² Get Up, *Submission 21*, p. 2.

²³ Professor George Williams AO, *Submission 1*, p. 1.

²⁴ Dr Luke Beck, *Submission 12*, p. 1.

²⁵ Dr Luke Beck, *Submission 12*, p. 1.

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

²⁷ 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.²⁸ 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.²⁹

- 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.

²⁸ International IDEA, *Submission 13*, p. 2.

²⁹ 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.³⁰

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.³¹ Some participants suggested that this would ensure a ban on foreign donations does not impinge on the implied political freedoms in the *Australian Constitution*.³²

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.³³

³⁰ Joint Standing Committee on Electoral Matters, *Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, April 2018, p. 9.

³¹ 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.

³² See The Hon. Anthony Whealy QC, Chair, Transparency International Australia, *Committee Hansard*, 2 November 2017.

³³ 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'.³⁴ 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.³⁵

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.³⁶

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.³⁷

6.35 Professor Williams pointed to the case of *Unions NSW v New South Wales*,³⁸ 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

³⁴ Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 11.

³⁵ Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 4.

³⁶ Dr Charles Livingstone, *Committee Hansard*, 2 November 2017, p. 9.

³⁷ 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.

³⁸ *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'.³⁹

- 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.⁴⁰

- 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.⁴¹

- 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'.⁴²

- 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.⁴³

³⁹ Professor George Williams AO, *Submission 1*, p. 1. See also Dr Luke Beck, *Submission 12*, p. 2.

⁴⁰ Dr Luke Beck, *Submission 12*, p. 2.

⁴¹ Dr Luke Beck, *Submission 12*, p. 2.

⁴² Dr Yee-Fui Ng, *Submission 11*, p. 3.

⁴³ 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.⁴⁴
- 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'.⁴⁵
- 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'.⁴⁶ 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.⁴⁷

- 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.⁴⁸

⁴⁴ 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.

⁴⁵ Centre for Drug, Alcohol and Addiction Research, *Submission 15*, p. 2.

⁴⁶ McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1.

⁴⁷ McCusker Centre for Action on Alcohol and Youth, *Submission 8*, p. 1.

⁴⁸ 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.⁴⁹
- 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'.⁵⁰
- 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'.⁵¹
- 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.⁵²
- 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.⁵³
- 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

⁴⁹ 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.

⁵⁰ Dr Charles Livingstone and Ms Maggie Johnson, *Submission 18*, p. 7.

⁵¹ 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.

⁵² Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 15.

⁵³ 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.⁵⁴

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.⁵⁵

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.⁵⁶

⁵⁴ *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96GA.

⁵⁵ *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96GAA.

⁵⁶ 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'.⁵⁷
- 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

⁵⁷ 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.⁵⁸

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'.⁵⁹

⁵⁸ Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 11.

⁵⁹ 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 2015⁶⁰

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.⁶¹ 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

⁶⁰ 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.

⁶¹ 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.⁶²

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.⁶³

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.⁶⁴

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.⁶⁵

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

⁶² Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, December 2008, p. 1.

⁶³ See Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 2.

⁶⁴ Associate Professor Joo-Cheong Tham, *Submission 3—Attachment 2*, pp. 92–93.

⁶⁵ 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.⁶⁶

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'.⁶⁷

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'.⁶⁸

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.⁶⁹

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.⁷⁰

⁶⁶ 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.

⁶⁷ Australian Conservation Foundation, *Submission 10*, p. 9.

⁶⁸ Transparency International Australia, *Submission 33*, p. 3.

⁶⁹ Associate Professor Joo-Cheong Tham, *Submission 3-Attachment 2*, p. 114.

⁷⁰ 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.⁷¹

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.⁷²

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.⁷³

⁷¹ Associate Professor Joo-Cheong Tham, *Committee Hansard*, 2 November 2017, p. 2.

⁷² Dr Belinda Edwards, *Committee Hansard*, 6 November 2017, p. 6.

⁷³ 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.⁷⁴
- 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

⁷⁴ 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'.⁷⁵

- 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'.⁷⁶
- 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'.⁷⁷
- 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.⁷⁸
- 6.82 Similarly, TIA advocated for sanctions for breaches of political finance rules to be 'increased significantly and enforced vigorously'.⁷⁹
- 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.⁸⁰

- 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

⁷⁵ Dr Belinda Edwards, *Submission 22*, [p. 3].

⁷⁶ Dr Yee-Fui Ng, *Submission 11*, p. 3.

⁷⁷ Dr Belinda Edwards, *Submission 22*, [p. 3].

⁷⁸ Professor George Williams AO, *Submission 1*, p. 2.

⁷⁹ Transparency International Australia, *Submission 33*, p. 3.

⁸⁰ 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.⁸¹

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.⁸²

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.⁸³

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.⁸⁴

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

⁸¹ Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 30 January 2018, p. 54.

⁸² Dr Yee-Fui Ng, *Submission 11*, p. 3.

⁸³ Dr Paul Sinclair, Director of Campaigns, Australian Conservation Foundation, *Committee Hansard*, p. 13.

⁸⁴ Mr Peter Burke, *Submission 26*, p. 4.

the 'system should include a Parliamentary Integrity Commissioner who can refer serious breaches to the Integrity body'.⁸⁵

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'.⁸⁶

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

⁸⁵ Transparency International Australia, *Submission 33*, p. 3.

⁸⁶ 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.⁸⁷

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'.⁸⁸ 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.⁸⁹

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...⁹⁰

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'.⁹¹

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

⁸⁷ Associate Professor Joo-Cheong Tham, *Submission 3–Attachment 2*, p. 168.

⁸⁸ Australian Greens, *Submission 7*, p. 3.

⁸⁹ Australian Greens, *Submission 7*, p. 3.

⁹⁰ Professor Peter Miller, Director, Centre for Drug, Alcohol and Addiction Research, *Committee Hansard*, 6 November 2017, p. 23.

⁹¹ Professor George Williams AO, *Committee Hansard*, 30 January 2018, p. 13.

the advantage and close the gap between competitors with vastly different funding amounts.⁹²

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'.⁹³

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.⁹⁴

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

⁹² Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 20*, p. 11.

⁹³ International IDEA, *Submission 13*, p. 4.

⁹⁴ 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.⁹⁵

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.⁹⁶

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.⁹⁷

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'.⁹⁸

⁹⁵ Australian Electoral Commission, *Submission 2–Attachment 1*, p. 8.

⁹⁶ 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.

⁹⁷ Mr David Templeman, President, Public Health Association of Australia, *Committee Hansard*, 6 November 2017, p. 13.

⁹⁸ 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.⁹⁹

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.¹⁰⁰

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'.¹⁰¹

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.

⁹⁹ Dr Yee-Fui Ng, *Committee Hansard*, 2 November 2017, p. 9.

¹⁰⁰ Adjunct Professor Colleen Lewis, *Submission 30*, [pp. 4–5].

¹⁰¹ 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.¹

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

¹ 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 13th 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

Annexure 3 – Submission 14 from the Australian Council on Smoking and Health



5 of October 2017

Select Committee into the Political Influence of Donations
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
By email: politicaldonations.sen@aph.gov.au

Dear Committee Secretariat,

RE: POLITICAL INFLUENCE OF DONATIONS

The Australian Council on Smoking and Health (ACOSH) welcomes the opportunity to present a submission on the inquiry into political influence of donations.

ACOSH is an independent, non-government, not for profit coalition of prominent Western Australian health, education, community, social service and research bodies with a shared concern about smoking and health. ACOSH works through advocacy and collaboration on comprehensive strategies to reduce over 15,000 preventable deaths caused by smoking each year in Australia.

ACOSH recommends that political donations from the tobacco industry are prohibited under a new Commonwealth Law. Such a ban is consistent with the Article 5.3 of the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC), to which Australia is signatory. The WHO FCTC recognises the irreconcilable conflict between public health and the tobacco industry and urges all parties to protect public policies from commercial and other vested interests of the tobacco industry.

In its Article 5.3 Guidelines, the FCTC calls on parties to avoid conflicts of interests *'Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities'*.

The tobacco industry has a record going back over 60 years of lying, deception and racketeering. It is the world's most lethal industry and has also been shown to be the world's least reputable, responsible for one million Australian deaths since the harms of smoking were identified in 1950. A recent report rated tobacco as first among the global social burdens generated by human beings, ahead of "armed violence, war and terrorism". Furthermore, the industry has a long history of opposing and undermining the efforts of Australian and other governments and health authorities to reduce smoking.

It is clear from the internal documents of the tobacco industry that the only reason for donations to political parties is to exert influence over the political process and public health policy.

It is concerning that Australian political parties are still receiving political donations from the tobacco industry. For example, The National Party received \$25,580 during the financial years 2014/2016 from Phillip Morris, while the Liberal Democratic Party received \$20,140 from the same company during 2015/2016 (Donor Report, Australian Electoral Commission). This is contrary to Australia's obligations under the WHO FCTC.

ACOSH recommends the committee consider the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) that prohibits donations from corporations such as property developers, tobacco industry, liquor or gambling industry business entities, or a person who is a close associate of the above. We consider such legislation is a valuable framework and starting point in forming recommendations as NSW currently has the strongest legislation on political donations in Australia.

We trust this information is helpful.

With best wishes,

Yours sincerely,

Maurice G Swanson
President
Australian Council on Smoking and Health (ACOSH)

Annexure 4 – Submission 20 from the Synod of Victoria and Tasmania, Uniting Church in Australia



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Justice and International Mission Unit
130 Little Collins Street
Melbourne Victoria 3000
Telephone: (03) 9251 5271
Facsimile: (03) 9251 5241
jim@victas.uca.org.au

Committee Secretary
Senate Select Committee into the Political Influence of Donations
PO Box 6100
Parliament House
Canberra ACT 2600
E-mail: politicaldonations.sen@aph.gov.au

Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Select Committee into the Political Influence of Donations Inquiry

9 October 2017

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission to the Select Committee into the Political Influence of Donations Inquiry.

Political donations pose a serious threat to the proper functioning of democracy, as they risk granting some businesses, organisations and individuals greater access to politicians and influence over government policies on the basis of the size of the payment.

The OECD has pointed out that:¹

the increasing concentration of economic resources in the hands of fewer people presents a significant threat to political and economic systems. If the financing of political parties and election campaigns is not adequately regulated, money may also be a means for powerful special interests to exercise undue influence, and “capture” the policy process.

Further, they point out the negative consequence for the wider community:²

Over the past three decades, income inequality has risen in most OECD countries, reaching in some cases historical highs. The increasing concentration of economic resources in the hands of fewer people presents a significant increase in the risks of policy capture. When government policy making is captured by a handful of powerful special interests, the rules may be bent in favour of the rich. The consequences of a widespread feeling that governments are not working in the wider public interest are grave, leading to the erosion of democratic governance, the pulling apart of social cohesion, and the undermining of crucial concepts that underlie democracy such as equal opportunities for all...

The relationship between inequality and undue influence in politics through political financing is often overlooked. Socio-economic inequality is only the tip of an iceberg of inequalities of different dimensions, including differences in influence, power and voice. Consequently, governments are expected to proactively address high-risk areas at the intersection of the public and private sectors, including lobbying, conflict of interest in public decision making, and the influence of vested interests exercised through political

¹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 15.

² OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 24-25.

financing. In-depth analysis of facts and comparative evidence on political finance and its associated risks to fairness to policy making is needed to understand the risks and opportunities in different institutional settings and to move away from an ideological discussion.

The OECD points out:³

Policy capture involves varieties of actors and means, but one of the most effective remedies to avert policy capture in policy making is to adequately regulate the funding of political parties and election campaigns.

The High Court itself has expressed concerns in the joint judgement in *McCloy* where it acknowledged that political contributions can be inappropriately used to secure specific favours from the recipient. The High Court also acknowledged the problem of ‘clientelism’ which “arises from an office-holder’s dependence on the financial support of a wealthy patron to a degree that is apt to compromise the expectation, fundamental to representative democracy, that public power be exercised in the public interest.”

a) The level of influence that political donations exert over the public policy decisions of political parties, Members of Parliament and Government administration

For many political donors the aim is to get governments elected that grant them policy outcomes they seek from government. 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.

The Australian Institute released an analysis of donations from mining companies to the Liberal Party of Australia and Queensland Liberal National Party (Qld LNP) between 2010 – 2015. The political parties accepted over \$2 million in political donations from mining companies that at the time were seeking or had pending approvals for six controversial mining projects⁴.

All mining companies investigated for the report “...gained extraordinary access to government ministers and extraordinary outcomes including legislative changes to remove environmental protections, federal and state government approval of projects despite serious environmental concerns and retrospective approval of illegal mining activities.”⁵

For example, the Electoral Commission of Queensland disclosed that Sibelco Australia and New Zealand (Sibelco), invested \$93,840 in electoral expenditure as a third party campaigner over 2011-2014. However comments from Minister Anthony Lynham made in 2016 alleged that the LNP received \$90,000 in donations and over \$1 million for political campaign support.⁶ Sibelco, through lobbying contracts, had 14 recorded meetings with key government departments and ministerial advisors over 2012 - 2013.

³ OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 24.

⁴ Aulby H & Ogge M, ‘Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study’, The Australian Institute, Canberra, 2016.

⁵ Aulby H & Ogge M, Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study, The Australian Institute, Canberra, 2016, 1.

⁶ Aulby H & Ogge M, Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study, The Australian Institute, Canberra, 2016, 13.

Sibelco operates a large sand mine on North Stradbroke Island. The Labor Government's approved *North Stradbroke Island Sustainability and Protection Act 2011* posed a threat as it effectively set the phase out of sand mining on Stradbroke Island by 2019.

During the lead up to the 2012 election, Sibelco engaged Rowland Pty Ltd lobbying company to run "a public affairs strategy to influence opinion and political decision-making around the continuation of its sand mining operations...the strategy was extremely successful and the overall goal exceeded."⁷ The publicity campaign, in addition to the high level of access to the Queensland LNP Government, as claimed by Rowland Pty Ltd, appears to have secured LNP commitment to extending Sibelco's activities. In 2013 the LNP Newman Government amended the *North Stradbroke Island Sustainability and Protection Act 2011* to allow sand mining to continue to 2035 and increased the area available for mining by 300%.⁸

Individual donations make up the largest portion of political donations, approximately \$6.6 million. Amongst these individuals are those that make large donations and own, or have ties to, corporations that can benefit from government decision making. The ABC's industry donations dataset maps gives the following examples:⁹

Mining entrepreneur Paul Marks was the largest individual donor, giving \$1.3 million to the Liberal Party. Mr Marks is the chairman of Nimrod Resources and the Abbott government facilitated a lucrative deal he signed with a Chinese government-owned company in 2015.

Entrepreneur Graeme Wood gave the second-largest donation in Australian history to the Greens and last year pitched in \$630,000 to their campaign coffers. Mr Wood is an environmental campaigner who openly seeks to influence Australia's climate change policies.

Industrialist Michael Crouch donated \$161,350 to the Liberal and National parties. He has substantial long-term investments in manufacturing, meat processing and beef production companies that are exposed to the Government's trade, export and land ownership policies.

b) the motivations and reasons why entities give donations to political parties and political candidates

Political donations buy access and influence. As far back as 2006 former Victorian Premier John Cain, wrote in an opinion piece:¹⁰

So why do institutions and individuals donate?"

All of them want access and, some would say, favours. We seem to have accepted this situation provided that the donation, the giver and receiver are known; that is, that disclosure is the key. But the driver is hunger for money by the parties. Despite public funding in the Commonwealth and some states, this hunger explains the drive only in part. Donors want the parties (and so, governments) to be beholden to them and to be

⁷ Aulby H & Ogge M, 'Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study', The Australian Institute, Canberra, 2016, 16.

⁸ Aulby H & Ogge M, 'Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study', The Australian Institute, Canberra, 2016, 17

⁹ Hanrahan, C, Elvery S, McGhee A and Liddy M, 'Political donations: New data maps industries' web of influence', 9 Feb 2017, ABC News, accessed 2.10.2017 <http://www.abc.net.au/news/2017-02-09/political-donations-industry-dataset/8229192>

¹⁰ John Cain, 'The politics of greed', *The Age*, 18 October 2006, accessed 9.10.2017, <http://www.theage.com.au/news/opinion/the-politics-of-greed/2006/10/17/1160850927192.html?page=fullpage#contentSwap1>

preferred over their business competitors. It is a neat, cosy arrangement. It grows more blatant.

The parties in Australia now openly call for donations that provide access at rates of \$10,000 to the Prime Minister or premier. It costs less to get to see a minister.

As an example of buying political influence over public policy former Clubs NSW chief executive, Mark Fitzgibbon, told the media Clubs NSW was able to use political donations to buy government access, which it used to influence policy. He stated “We did support political party fundraising, which was a legitimate activity, and it certainly assisted us in gaining access. I have no doubt it had some influence”.¹¹

The managing director of Transfield Holdings, Luca Belgiorno-Nettis stated that his company had made political donations because:¹²

I think it was fairly plain that [donations] bought access in terms of the ability to simply be able to knock on the door and make the phone call and have the meeting with the political masters to voice whatever concerns that we might have, or indeed just to explore further relationships and further potential opportunities.

He also stated it would be “difficult to deny” that the company’s political donations did not help the company gain an unsolicited contract worth \$750 million to build the harbour tunnel in Sydney.¹³

In November 2009, an “indiscreet businessman’ who had paid a premium admission of \$10,000 to a function, told the media that he had “...spent the evening bending the ear of the premier about a coal industry deal he had an interest in.”¹⁴

Another example of the alleged attempted promotion of vested interests through the political donations system is Clive Palmer’s political donation patterns. Clive Palmer, who holds considerable iron ore, nickel and coal holdings, gave large sums over several decades to the Liberal National Party Government in Queensland, including \$3 million between 2005 and 2012.¹⁵ Mr Palmer’s cessation of political donations to the Liberal National Party coincided with the rejection of one of his company’s bids to build a rail line from Galilee Basin to Bowen, by the Liberal National Party.¹⁶

Shortly after stopping donations to the Liberal National Party, Mr Palmer established his own, United Palmer Party. Two companies associated with Mr Palmer, Queensland Nickel and

¹¹ Anthony Klan, ‘Pokie group ‘used political donations to buy influence’’, *The Australian*, 23 November 2009.

¹² Katherine Murphy, ‘Transfield Holdings boss says political donations ‘bought access’ to MPs’, *The Guardian*, 23 May 2016.

¹³ Katherine Murphy, ‘Transfield Holdings boss says political donations ‘bought access’ to MPs’, *The Guardian*, 23 May 2016.

¹⁴ Costar B, ‘Political donations: now for some real disclosure’, *The Sydney Morning Herald*, 12 August 2013, accessed 2.10.2017, <http://www.smh.com.au/comment/political-donations-now-for-some-real-disclosure-20130811-2rq10.html>

¹⁵ Secombe M, ‘The influence of political donations’, *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017
<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

¹⁶ Secombe M, ‘The influence of political donations’, *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017
<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

Mineralogy, gave more than \$33 million to the United Palmer Party and Mr Palmer himself donated \$104,000.¹⁷

The buying of access and influence over government policy is a key reason so many countries restrict political donations.

A political donor is offering material resources to a candidate or political party to get elected and therefore is often likely to have more influence than an advocate or lobbyist. However, this can become grey when the advocate or lobbyist is part of an organisation or business that then can publicly advocate for the policy outcome and make known that a certain political party supports their policy position.

c) the use of shell companies, trusts and other vehicles to obscure the original source of political donations

The OECD advocates tight regulations on party donations but warns that the rules can be avoided by the use of 'third party' funding and other legislative loopholes. Some of these third party mechanisms include shell companies, trusts, lobbyists and associated political entities which are used to disguise the source and intention of money going to political parties.

In terms of transparency, the Synod is concerned at the findings of Dr Belinda Edwards about growing opacity of political donations. She found in the 2013 federal election the two major parties declared less than 25% of their privately raised income as donations to the Australian Electoral Commission. Approximately half of those donations came from party fundraising bodies like the Free Enterprise Foundation or Labor Holdings. As a result, only 12-15% of the parties' incomes can be clearly and easily attributed to specific political donors. In the 2013 election year 63% of Liberal Party private income and 50% of Labor's private income was not attributed to any source.¹⁸ Over the last decade declared donations have made up a declining proportion of the Liberal Party's income, dropping from 30% in the 2007-08 election to 28% in the 2010-11 year, to 25% in the 2013-14 election year.¹⁹ For Labor declared donations have decreased from 30% in 2007-08 to 25% in the 2013-14 election.²⁰

Transparency is frustrated by the use of intermediary fund-raising organisation which are the ones that then declare the donations to the AEC. For the Liberal Party the key organisations include McCormack Pty Ltd, the Free Enterprise Foundation, Parkeelia, Vapoid, the Platinum forum, the Kooyong Club, the various 200 and 500 Clubs, the Enterprise Club and the Civic group. These groups combined accounted for \$6.01 million of the party's \$10.3 million in declared donations in 2014-2015.²¹ For the Labor Party the key organizations include Labor Holdings, the Progressive Business Associations, the 1973 Foundation, John Curtin House and the Chifley Research Centre. Payments from these organizations made up \$4.2 million of the party's \$7.3 million in declared donations in 2014-15.²² The fundraising bodies for the Nationals include Doogary Pty Ltd, the Free Enterprise Foundation and John McEwen House.²³ Many 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.

¹⁷ Seccombe M, 'The influence of political donations', *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017

<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

¹⁸ Belinda Edwards, 'Dark Money', 2016, 1, http://cdn.getup.org.au/1969-Dark_Money.pdf

¹⁹ Belinda Edwards, 'Dark Money', 2016, 7, http://cdn.getup.org.au/1969-Dark_Money.pdf

²⁰ Belinda Edwards, 'Dark Money', 2016, 8, http://cdn.getup.org.au/1969-Dark_Money.pdf

²¹ Belinda Edwards, 'Dark Money', 2016, 3, http://cdn.getup.org.au/1969-Dark_Money.pdf

²² Belinda Edwards, 'Dark Money', 2016, 3, http://cdn.getup.org.au/1969-Dark_Money.pdf

²³ Belinda Edwards, 'Dark Money', 2016, 10, http://cdn.getup.org.au/1969-Dark_Money.pdf

In 2014 the Independent Commission Against Corruption (ICAC) provided verbal and documentary evidence that showed the NSW Liberal Party sending donations from property developers to the Free Enterprise Foundation (FEF) and arranging to have them funnelled back, despite the fact that state law had banned donations from property developers from January 2010.²⁴

In 2014 the Australian television producer Reg Grundy made a \$200,000 donation to the Free Enterprise Foundation before the 2013 federal election. Mr Grundy has claimed that he and his wife were directed to donate through the FEF by Liberal Party federal director Brian Loughnane to "maintain their privacy".²⁵ The donation was made through Akira Investments Ltd. Akira Investments failed to lodge a donation disclosure form for the \$200,000 donation as required by law.²⁶

The Electoral Commission exposed the FEF as essentially a shell company for Liberal Party donations. The FEF was set up in 1981 as a charitable trust, in which its "prescribed purposes" are "promoting the principle of free enterprise". The FEF has donated \$3.8 million to the Liberal Party in five years but only made one charitable donation of \$10,000 in 1999.²⁷ In a landmark ruling, the Commission found the FEF was not a charitable discretionary trust which could receive "gifts" not classified as political donations. As a result, the names of companies who donated through the FEF to the NSW Liberals must be declared as political donors by the party.

The case against Labor candidate Simon Zhou involved a shell company being set up to donate \$45,000 to the Labor party.²⁸ Zhou, who resigned after investigations revealed his alleged role in a gold trading tax scandal, is allegedly linked to Xin Shu, a Chinese student organiser and gold trader with a number of businesses under his name and who volunteered for a Labor member's campaign. Xin Shu created a company called NE Management Group, which is registered under his personal address and for which he is the sole director, officeholder and shareholder. NE Management Group made a \$45,000 donation to the federal Labor party a week before the 2016 election. Shu used another of his companies, BFJ Funds, to make a \$25,000 donation to the NSW Labor party on the same day.²⁹

The Synod urges the Committee to recommend the creation of an accurate, accessible registry of ultimate beneficial ownership for all companies and trusts in Australia, to avoid the use of shell companies and trusts with concealed beneficial ownership being used to avoid disclosure requirements for political donations. Of course such a register has wider benefits in curbing money laundering, fraud, tax evasion and other criminal activity facilitated by secrecy. The

²⁴ Taylor L, 'A tale of two charitable foundations, and a flood of donations to the Liberals', *The Guardian*, 2 April 2016, accessed 4.10.2017 <https://www.theguardian.com/australia-news/2016/apr/02/a-tale-of-two-charitable-foundations-and-a-flood-of-donations-to-the-liberals>

²⁵ Sean Nicholls and Kate McClymont, 'Reg Grundy revealed as man behind \$200,000 Liberal-National donation', *The Sydney Morning Herald*, 2 June 2014, <http://www.smh.com.au/federal-politics/reg-grundy-revealed-as-man-behind-200000-liberalnational-donation-20140602-39evf.html>

²⁶ Sean Nicholls and Kate McClymont, 'Reg Grundy revealed as man behind \$200,000 Liberal-National donation', *The Sydney Morning Herald*, 2 June 2014, <http://www.smh.com.au/federal-politics/reg-grundy-revealed-as-man-behind-200000-liberalnational-donation-20140602-39evf.html>

²⁷ Taylor L, 'A tale of two charitable foundations, and a flood of donations to the Liberals', *The Guardian*, 2 April 2016, accessed 4.10.2017 <https://www.theguardian.com/australia-news/2016/apr/02/a-tale-of-two-charitable-foundations-and-a-flood-of-donations-to-the-liberals>

²⁸ Knaus C, ALP staffer linked to Simon Zhou used shell company to donate \$45,000 to Labor, *The Guardian*, Wednesday 21 June 2017, accessed 2.10.2017, <https://www.theguardian.com/australia-news/2017/jun/21/simon-zhou-linked-alp-staffer-used-shell-company-donate-45000-to-labor>

²⁹ Knaus C, 'ALP staffer linked to Simon Zhou used shell company to donate \$45,000 to Labor', *The Guardian*, 21 June 2017, accessed 2.10.2017, <https://www.theguardian.com/australia-news/2017/jun/21/simon-zhou-linked-alp-staffer-used-shell-company-donate-45000-to-labor>

World Bank and UN Office on Drugs and Crime have stated on the usefulness of public registries of beneficial ownership:³⁰

.... finds that registries can usefully compliment anti-money laundering objectives by implementing minimum standards for the information maintained in the registry and by providing financial institutions and law enforcement authorities with access to adequate, accurate, and timely information on relevant persons connected to corporate vehicles – corporations, trusts, partnerships and limited liability characteristics, foundations and the like.

The Synod notes that such a register is under consideration by Treasury at the current time and is one of the commitments of the Government's Open Government Partnership National Action Plan.³¹ However, at this stage the possible register is intended to be private and only accessible to law enforcement agencies, which would deny the public access to know who is behind shell companies and trusts used to conceal political donations.

In addition to the use of shell companies to channel political donations, Associate Professor Joo-Cheong Tham has pointed out the problem of existing donation disclosure thresholds applying separately to each registered political party. Where the national, state and territory branches of the major political parties are each treated as a registered political party, this means that a major party constituted by nine branches has the cumulative benefit of nine thresholds. For example, a company could donate \$10,000 to each state and territory branch of the ALP as well as to its national branch – a total of \$100,000 – without the ALP having to reveal the identity of the donor unless they voluntarily choose to do so.³²

Donation splitting appears to be more than simply theoretical. The 2011 political funding disclosures showed 13 companies and interest groups had made small donations adding up to more than \$100,000 in 2009-10.³³ *The Age* found another 21 businesses, lobbying and professional service firms used small donations to avoid disclosure and donate more than \$50,000 to each major party in the same period. The largest split donations came from "ethanol producer Manildra, gambling interests such as Crown, Tabcorp and Clubs New South Wales, tobacco companies Philip Morris and British American Tobacco and companies such as Leighton Holdings and the Macquarie group."³⁴ Payments were made for 'purchases' ranging from \$50 raffle tickets, \$2,500 tickets to 'intimate lunches' with then Labor factional leader Mark Arbib, \$1,500 breakfast with then federal Opposition Leader Tony Abbott, \$100 to \$5,000 for forums, briefings and other hosted events and subscriptions and memberships.³⁵

The lack of transparency at the Commonwealth level appears to have been intended by some. Then minister, Senator Eric Abetz, said as the sponsoring Minister for the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* that he hoped for

³⁰ Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, 34.

³¹ <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency>

³² Joo-Cheong Tham, 'Money and Politics. The democracy we can't afford', UNSW Press, Sydney NSW, 2010, 43.

³³ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

³⁴ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

³⁵ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

“a return to the good old days when people used to donate to the Liberal Party via lawyers’ trust accounts.”³⁶

d) how to improve the integrity of political decision-making through our political donations regime and the public funding of elections;

The Synod at its recent meeting of 275 church representatives from across Victoria and Tasmania adopted the following resolution:

The Synod resolve:

- (i) *To express concern that comparisons between governments by the OECD show that the Australian political system is a long way behind other OECD countries when it comes to transparency of political donations and restricting their influence in the political system.*
- (ii) *To express concern that political donations can allow policy making to be captured by a handful of powerful interests, meaning that rules may be bent to favour only the few in society. The consequences are likely to be the adoption of policies that are counter to the public interest.*
- (iii) *To call on the Australian Parliament to:*
 - a. *Place caps on how much can be provided in political donations and how much candidates and third parties can spend in elections.*
 - b. *Amend the Commonwealth Electoral Act 1918 to ban political parties, independent candidates and associated entities from receiving ‘gifts of foreign property’.*
 - c. *Pass reforms around the transparency of political donations including:*
 - o *That they be disclosed in as close to real time as is possible, rather than once a year;*
 - o *That donations of \$1,000 and above must be publicly disclosed; and*
 - o *That a ban be imposed on anonymous donations above \$50 to political parties, associated entities, independent candidates and Senate groups.*
- (iv) *To call on the Commonwealth Government to ensure that the Australian Electoral Commission be properly resourced to enforce the laws governing political donations.*
- (v) *To write to the Prime Minister, Leader of the Opposition, Leader of the Greens, Leader of the National Party and Leader of the Nick Xenophon Team to inform them of this resolution.*

BAN

The Unit urges the Committee to recommend that Australia join the 74% of OECD countries that ban donations to political parties from corporations and organisations with government contracts or partial government ownership.³⁷ For example, in the US it is prohibited for a contractor that provides goods and/or services to the federal government or any affiliated department or agency to make any contribution to any political action committee or candidate in connection with a federal election. There is variation in limits set by different countries. For example, Austria prohibits donations from corporations if the state holds a share of at least 25%. In Chile, a ban applies to cases where the amount of the contract represents more than 40% of the annual revenue of the corporation.

The Committee should also consider strengthening measures to govern political lobbyists. According to the OECD 2013 Survey on Lobbying, as many as 84% of surveyed legislators and

³⁶ Joo-Cheong Tham, ‘Money and Politics. The democracy we can’t afford’, UNSW Press, Sydney NSW, 2010, 44.

³⁷ OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 61.

64% of lobbyists are of the opinion that information on lobbyist contributions to political campaigns should be made publicly available through, for example, a register.³⁸

CAPS

The Synod is of the view that transparency is an insufficient safeguard against political donations resulting in public policy capture, and that limits should be placed on the size of donations and the amount of campaign expenditure. 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.

The Committee should recommend a cap on political donations that can be made to both parties and individuals from both natural and legal persons. The OECD notes:³⁹

Such a ceiling plays an important role in understanding the room to manoeuvre for potential policy capture, but is very difficult to strike the right balance. If the limit is very high, it will have little impact. If the limit is very low, donors, political parties and candidates will find ways to circumvent the limit, most likely through splitting and channelling donations through multiple donors.

Thus the Unit does not make a recommendation on what limit should apply in Australia, but believes the Committee should identify the appropriate limit for the Australian context. The High Court ruling in *McCloy versus New South Wales* found that capping political donations is compatible with the Constitution.⁴⁰ NSW currently caps donations to political parties at \$5,800 and to candidates at \$2,500.

The Synod notes the submission by Associate Professor Joo-Cheong Tham to this Committee pointing out that the High Court has ruled that it is possible to control and regulate political donations. It has ruled that caps on political donations under Division 2A, Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*; the ban on indirect campaign contributions exceeding \$1,000 under section 96E of the same Act; and the ban on donations from property developers under Division 4A, Part 6 of the Act did not infringe the implied freedom of political communication. As Associate Professor Tham has pointed out, the upholding of the ban on property developers makes clear that provisions of selective scope are not necessarily in breach of the implied freedom; they can be compatible with the freedom if there is a demonstrated justification for such selectivity.

DISCLOSURE REFORMS

Transparency in the funding of parties and candidates is desirable because it helps ensure that everyone is playing by the rules, which in turn strengthens the integrity of, and trust in, politics, both in the eyes of the general public and among political parties themselves.

Australia should join the 65% of OECD countries where political parties are required to report on their finances in relation to election campaigns.⁴¹

In terms of donation transparency, the US *Federal Election Campaign Act (FECA) 1971* requires that the accounts of political committees contain the name and address of any person making a contribution in excess of US\$50 along with the date and the amount of the contribution. In respect to donations exceeding US\$200 a year, the required details are even

³⁸ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 87.

³⁹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 47.

⁴⁰ <https://blogs.unimelb.edu.au/opinionsonhigh/2015/10/07/mccloy-case-page/>

⁴¹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 66.

stricter in that the contributor's identity (that is name, address, occupation and employer) has to be noted in the accounts. The FECA also prescribes that any disbursement over US\$50 is to be accounted for together with the name and address of the receiver. The accounts are to be held by the committee for at least three years.⁴²

The FECA obliges political committees to submit financial reports to the Federal Election Commission, which in turn makes them publicly available in person at the FEC in Washington D.C. or on line. The FEC has developed detailed standard forms to be used, requiring, inter alia, precise information concerning the contributions, donors, disbursements and receivers. All contributions to federal candidates are aggregated on the basis of an election cycle, which begins on the first day following the date of the previous general election and ends on the date of the election day, while contributions to political parties and other political committees are based on a calendar year.⁴³

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.⁴⁴ 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.

As the OECD points out, civil society and the media play an important role in ensuring integrity around political donations:⁴⁵

No oversight mechanism is complete without the participation of civil society and media. In this regard, civil society organisations (CSOs) can be effective watchdogs and have proved instrumental in advancing transparency and anti-corruption efforts in the field of political finance....

Public disclosure of any donations of \$1000 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. To ignore the need for a modest cap places personal and party interests before the public interest.

The OECD has pointed out that political donation reform on its own is not enough to ensure that public policy is not captured by the cashed-up businesses, organisations and individuals, arguing:⁴⁶

They need to be part of an overall integrity framework that includes the management of conflict of interest lobbying. On their own, political finance regulations are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying and other activities. Therefore, integrity measures such as increasing transparency in lobbying, better management of conflict of interest strengthen the political finance regulations.

⁴² OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 74.

⁴³ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 74.

⁴⁴ This is consistent with the position of Transparency International Australia, 'Political Finance and Donations', Position Paper #7, January 2016, 2.

⁴⁵ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 28.

⁴⁶ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 16.

PUBLIC FUNDING

These recommendations should be supported by a balanced private and public funding scheme. 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.⁴⁷ 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.⁴⁸ Paired with donation limits, public funding can also limit the advantage and close the gap between competitors with vastly different funding amounts. A third potential advantage as highlighted by International IDEA, is that public funding can be used as a safeguard to ensure that political parties follow other limit and reporting regulations.

It is our understanding that on a per voter basis Australia has very high spending on elections compared to many other OECD countries. 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 \$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.⁴⁹

Further, as the table below shows, compared to the figures above for the 2013 Federal election, Australia has a very high proportion of election funding from private sources increasing the case for expenditure and donation caps. Australia would be at the bottom of the table based on the figures above for the 2013 Federal election where 86% of the funds spent on the election appear to have come from private sources. In Germany, corporate donations are only 7% of the annual income of all parties in Germany.⁵⁰

Table of split between public and private funding to political parties in selected OECD countries, 2007 to 2015.⁵¹

Jurisdiction	% Funding of political party income	
	Public %	Private %
Greece	90	10
Turkey	90	10
Poland	54-90	10-46
Slovak Republic	87.5	12.5
Spain	87.5	12.5
Belgium	85	15
Italy	82	18
Portugal	80	20
Denmark	75	25
Finland	75	25
Iceland	75	25
Sweden	75	25
Norway	67.4	32.6
Hungary	60	40

⁴⁷ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 38.

⁴⁸ Edts Falguera E, Jones S & Ohman, 'Funding of Political Parties and Election Campaigns: A handbook on political finance', International IDEA, Sweden, 2014, 22.

⁴⁹ Paper by Ken Coghill, Monash University, 2016.

⁵⁰ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 46.

⁵¹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 38.

Netherlands	35	65
United Kingdom	35	65

A cap on political funding, along with disclosure and regulation and careful consideration of public funding eligibility and allocation criteria will ease government resources spent on elections as well as create a more just and trustworthy system.

e) any other related matters

The Synod would make a distinction between organisations and businesses campaigning for particular policy outcomes and when organisations and businesses campaign for certain parties or candidates to be elected. It desirable for the AEC to regulate and oversee campaign activities that are explicitly aimed at getting particular parties or candidates elected, or against particular parties or candidates getting elected.

For example, the Synod would argue it is legitimate for business groups to campaign publicly for corporate tax cuts (a policy position we do not support ourselves) and try to persuade the community this is a good idea, or for unions to campaign for secure work or funding for education and health services. These are policy outcomes and any political party can adopt these policy positions and voters can decide if they support these causes and then vote accordingly. The Synod would not support this type of public campaign being restricted. This is different to political donations being paid to a political party with the tacit aim of getting a policy position adopted, which becomes behind the scenes private capture of public policy, even if the political party then makes the policy public.

In all cases, political donations directed towards getting a particular party elected (or not elected) should be regulated. This should not extend to donations to organisations who are publicly campaigning to a policy outcome and are neutral in which party delivers the policy outcome.

Dr Mark Zirnsak
Director
Justice and International Mission Unit
Synod of Victoria and Tasmania
Uniting Church in Australia

Annexure 5 – Submission 23 from the Anglican Church Southern Queensland

Social Responsibilities Committee
Anglican Church Southern Queensland
St Martin's House
373 Ann St Brisbane Q 4000



Committee Secretary
Senate Select Committee into the Political Influence of Donations
Parliament House
CANBERRA ACT 2600
By email: politicaldonations.sen@aph.gov.au

9 October 2017

Dear Committee Secretary

The Social Responsibilities Committee (the SRC) of the Anglican Church Southern Queensland welcomes this opportunity to make a submission to Senate Select Committee *Inquiry into the Political Influence of Donations* (the Committee).

We make two key points to the Committee:

- Firstly, there is a serious issue here, but it is not simply about the rules by which politics is conducted and how we better regulate its conduct. The questions it raises are not only legal or economic, but involve ethical and moral judgements. Moreover, though regulation is certainly part of it, we must understand our *body politic* as a social and cultural phenomena and respond accordingly.
- Secondly, given this understanding, we encourage the Committee to deepen and broaden this enquiry, or recommend to the Parliament that it do likewise. Through robust and diverse public dialogue we might arrive at a more shared understanding of what values and standards are expected from our common political life, and a reaffirmation of our foundational, democratic values.

This is a serious challenge we need to address

With ongoing public scandals and investigations involving Parliamentarians dealings with donors, questions regarding donations from foreign entities to both major political parties, and recent, alarming revelations of *Operation Belcarra*, by our own Crime and Corruption Commission (CCC) in Queensland - it has become clear to the Australian public that there is a lack of transparency and accountability with the current systems of political financing, across all levels of Government. It further seems as if foundational principles such as the “public interest” and “conflict of interest” are not well enough understood, or safeguarded.

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.

In recent years studies have shown waning public support for democracy and high levels of cynicism in the Australian voting public, with the ANU noting of the 2016 election that ‘public satisfaction with our democratic processes and public trust in the politicians we elect are at some of the lowest levels ever recorded.’¹

Yet it is a positive indication that political financing is also an issue many Australians are engaged with and concerned about, regardless of their political affiliations, and that there are high levels of support for making strong reforms to the system.²

Specific legislative initiatives, such as those put forward by learned Professors of law, should be given serious consideration. These are practical measures that might improve the integrity and transparency of the system, and which include: more robust and timely disclosure rules; potential limits or caps on donations; potential limits or caps on election expenditure, including by third parties; reform to the public funding; and greater consideration to enforcement, including ensuring sufficient resourcing in our electoral bodies to undertake their statutory duties.

Along with such proposals, we too share concerns about any practices, or the use of any corporate, or other mechanisms, designed to obfuscate where donations have come from and to avoid transparency.

Reclaiming our civic life, for the common good.

If there is at least a *prima facie* case that money grants access, and access creates influence, is it fair or equitable that “high-net” individuals, or corporations are able to uniquely participate in our governance, in ways that promotes their own self-interest or ideology? That the voices of those who are most marginalised, or even potentially disadvantaged by decisions, are not seen or heard in similar ways? How should our lawmakers, and our community, now judge the blurred dividing line between vested interest, and the public interest?³

Our shared civic life is diminished when small sections of society are able to capture the attention of Government, and secure favourable conditions or decisions for their own vested interests, at the expense of our common good.⁴ This is not to say that the two cannot overlap, but that the time has certainly come for much more serious examination of these issues, as the integrity of our political system and political discourse is also of huge importance to the very wellbeing and maintenance of our democratic and pluralist society.

We suggest this current Inquiry might be viewed as the starting point for a much more robust and public dialogue that is needed about not just political financing system *per se*, but the related issues of money, lobbying and influence within our political system (though these are all ostensibly largely driven by the need for parties to raise campaign funds.)

¹ See for instance see the Lowy Institute polls <https://www.lowyinstitute.org/publications/2017-lowy-institute-poll> or the ANU ANU-Social Research Centre research of 2014: <http://cass.anu.edu.au/news/news/20140819/anu-builds-social-research-capacity-finds-decline-satisfaction-democracy>. Or the recent ANU election study findings can be accessed here: <http://www.anu.edu.au/news/all-news/voter-interest-hits-record-low-in-2016-anu-election-study>

² See for instance the work of Zim Nworkora here: <https://theconversation.com/australians-care-about-political-finance-and-they-want-to-see-the-system-tightened-59366> and here: www.tandfonline.com/doi/abs/10.1080/10361146.2014.989810#.V0V-o01f1i4

³ See for instance comments from the Managing Director of Transfield Holdings, to this effect here: www.theguardian.com/australia-news/2016/may/23/transfield-boss-says-political-donations-bought-access-to-mps?CMP=soc_568/. Further, the flipside of this position, described by developer Robert Sharpless, appearing before the CCC in April, 2017, discussed being co-opted into campaign donations, suggesting a ban on donations “would make my life so much easier.” Transcripts: www.ccc.qld.gov.au/corruption/operation-belcarra-public-hearing/transcripts-operation-belcarra#day6

We encourage the Committee to continue and deepen this Inquiry, and/or recommend to the Commonwealth Parliament that these issues be taken up further and more deeply explored; that greater and more diverse public engagement is undertaken; and that additional expert voices from the domains of ethics, moral and political philosophy, and culture and anthropology could also be sought.

For this is not just a matter of finding technical solutions to a broken system, but an opportunity for conducting a public dialogue to better understand the democratic values and standards to which we are committed as a nation, and ensuring that, through good dialogue and engagement processes, we continue to debate, affirm and inculcate such values – for the long term benefit of our democratic representatives, business, and community alike.

Conclusion

Thank you for the opportunity to participate.

We would welcome any ongoing engagement from the Committee, its participating members or other members of the Parliament about these issues.

Peace,

The Very Reverend Dr Peter Catt

Dean, St John's Cathedral
Chair, Social Responsibilities Committee
Anglican Church Southern Queensland

Annexure 6 – Submission 25 and supplementary submission 25.1 from the Foundation for Alcohol Research and Education



Foundation for Alcohol Research & Education

FARE Submission to the Senate Select Committee into the Political Influence of

October 2017





STOPPING
HARM
CAUSED BY
ALCOHOL

About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to stop the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For over a decade, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harms by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

FARE is guided by the World Health Organization's (2010) *Global strategy to reduce the harmful use of alcohol* for stopping alcohol harms through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email info@fare.org.au.

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Summary

Alcohol harm and its associated costs are significant. Each day, 15 Australians die and a further 430 are hospitalised because of alcohol.¹ These figures understate the significant impact that some individuals' alcohol use has on others, including violence on our streets and in our homes, vandalism, road traffic accidents, child maltreatment and neglect, and lost productivity in the workplace.²

The level of harm that children sustain as a result of alcohol consumption is unacceptable. More than one-fifth (22 per cent) of Australian children are negatively affected by the drinking of others.³ Problematic drinking by their primary caregiver substantially affects 142,582 Australian children, with 10,166 already in the child protection system as a result.⁴ Children can also be directly impacted by alcohol use during pregnancy, which may result in a series of lifelong disabilities known as Fetal Alcohol Spectrum Disorders (FASD).

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. This is particularly important in relation to political donations, which corporations routinely use to influence decisions in their favour.

There has been increasing community concern about the undue influence that results from political donations. FARE's *2017 Annual Alcohol Poll* revealed that the majority (72 per cent) of Australian adults believe that political parties should not be able to receive donations from the alcohol industry and over half (55 per cent) believe that alcohol industry donations influence governments' decision-making.⁵

FARE welcomes the opportunity to make a submission to this review of the influence of corporate political donations. This submission addresses each of the Terms of Reference and provides several examples of how corporate political donations from the alcohol industry appear to have been used to influence public policy decisions. These are a small sample of available case studies, but are useful in highlighting the manifest risks associated with alcohol industry involvement in political processes.

FARE would welcome the opportunity to present more detail about these findings to the Select Committee into the Political Influence of Donations.

Recommendations

1. As matter of priority, ban all donations from the alcohol industry including donations from producers, retailers (on and off-licence venues) and associated member organisations and lobbyists.
2. Ban the use of associated entities to prevent political parties from continuing to conceal the identity of their donors.
3. Require immediate disclosure of political donations to allow voters to see, in real time, attempts to influence political decisions.
4. Remove the disclosure threshold and require all donations and other receipts to be immediately reported and published.

The level of influence that political donations exert over the public policy decisions of political parties, Members of Parliament and Government administration.

Alcohol industry influence on policy decisions

It is well accepted that the alcohol industry has a vested interest in alcohol policy development and implementation.⁶ Its financial success is dependent on the consumption of alcohol – the more alcohol consumed, the larger the profits of the industry. Evidence suggests that alcohol harm is directly associated with the amount that is consumed. For this reason, industry profitability is in direct conflict with the health and wellbeing of the population. It is therefore important that appropriate measures are established to safeguard against the influence of political donations from the alcohol industry in particular.

The World Health Organization (WHO) has stated, in the clearest possible terms, that alcohol policy development should be free from industry influence. Dr Margaret Chan, then Director General of the WHO, stated that “In WHO’s view, the alcohol industry has no role in formulating policies, which must be protected from distortion by commercial or vested interests”.⁷ Despite this, the alcohol industry has significant influence in alcohol policy development both in Australia and internationally. This includes the influence applied through political donations, lobbying against evidence-based policies and co-opting policy makers in an effort to secure private and business outcomes ahead of the public interest. In addition to directly influencing outcomes, corporate political donations assist corporations to influence policy decisions through other means as well. For example, corporate political donations provide access to politicians, establishing relationships that may later be used.

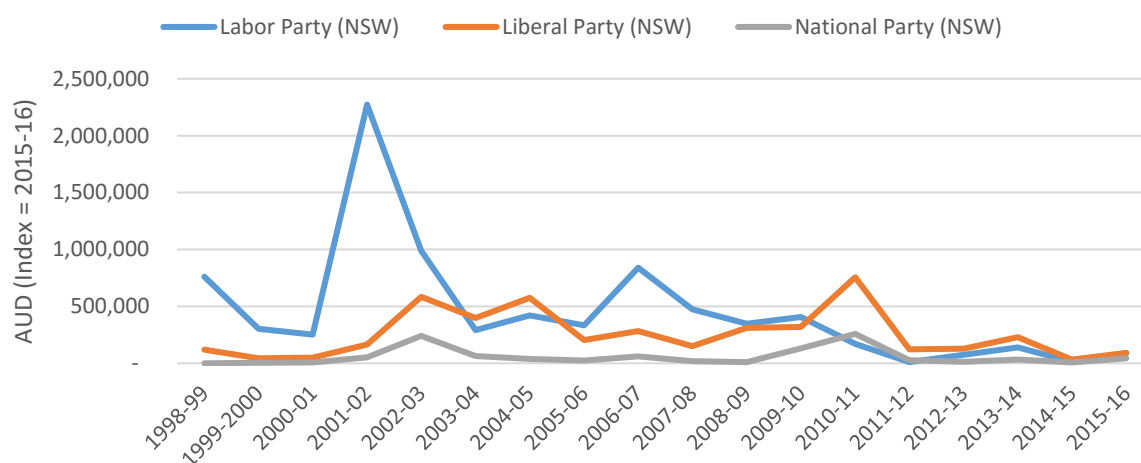
Given the harmful consequences of alcohol industry involvement in policy decision-making, it is worthwhile examining trends in past donations. This has been facilitated by Democracy for Sale, an initiative of the Australian Greens that collates data from the Australian Electoral Commission (AEC). Democracy for Sale also categorises businesses to allow analysis of trends over time. The following examples highlight potential risks of alcohol industry involvement in policy decisions regarding their regulation. While not providing a complete set of such risks, they help to illustrate the need for reform to establish adequate safeguards in the future.

Case Study 1: Hotel donations to the Carr NSW Labor Government

One of the most disturbing examples of apparent alcohol industry influence through political donations comes during the Carr Labor Government in NSW. Under this government, NSW gaming laws were liberalised in 1997 to allow poker machines in pubs and hotels, removing previous regulation that had restricted them to clubs and casinos.⁸ A surge in donations saw \$2.3 million (in 2015-16 terms) donated to the NSW Labor Government in the 2001-02 financial year (see Figure 1). This peak was driven by a large increase in donations from pubs and hotels that had mainly not donated in other years. This included an apparently co-ordinated effort, with 15 different hotels/pubs each donating \$57,000 (in 2015-16 terms). There were also a series of smaller donations from other

businesses in the industry. As a result, there were 79 separate donors from the alcohol industry in that year, compared with an average of just 18 across the period. This surge in donations from hotels saw a quadrupling of alcohol industry receipts. They were followed in 2003 with reforms that increased taxes on poker machines in licensed clubs, the main competitors to hotels. While the change is likely to have been driven in part by the opportunity to increase government revenue through gambling taxes, it is noteworthy that the primary beneficiaries (hotels) of several policies introduced over the period demonstrated strong financial and political connections with the Carr Labor Government.

Figure 1 – Political donations and other receipts from the alcohol industry by major party (NSW), 1998-99 to 2015-16



Case Study 2: Commonwealth Government – Wine Equalisation Tax and Rebate

Other examples of attempted influence by the alcohol industry through political donations are evident in trends associated with changes to the alcohol tax system. The current approach to taxing alcohol is a complex arrangement that does not adequately recognise the extent of harms that result from the consumption of alcohol in Australia. The Henry review of the alcohol tax system described it as incoherent,⁹ with the most illogical part of the alcohol taxation system being the Wine Equalisation Tax (WET). Wine, traditional cider, perry and mead are taxed under the WET on the basis of their wholesale price. This is in contrast to all other alcohol products sold in Australia, which are taxed on the basis of the volume of pure alcohol they contain.

The WET provides an incentive to produce large volumes of low quality wine. This is concerning because low prices fuel increased consumption, leading to higher levels of alcohol harm. The WET favours large producers, who benefit from greater economies of scale and are therefore able to produce cheaper bulk wine. To counter this distortion, the WET rebate was introduced to support small rural and regional wineries in Australia who were disadvantaged under the WET.¹⁰ This is an inefficient and wasteful arrangement that has led to a system that is not achieving its objectives, with some producers receiving the rebate even though they have remitted no WET.

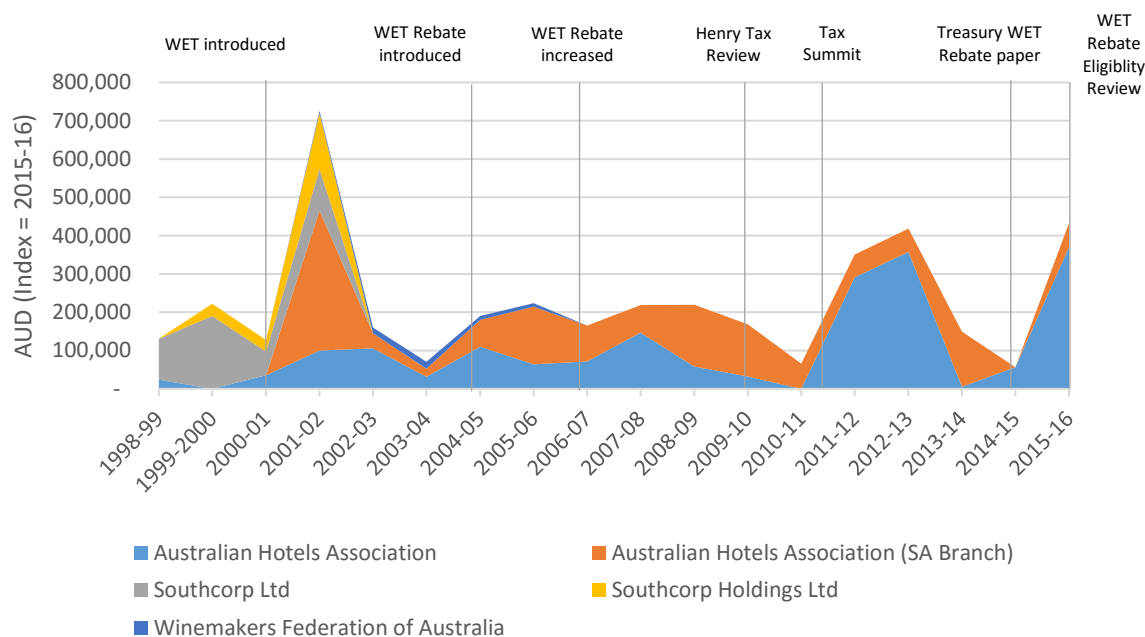
Research from the Parliamentary Budget Office identified that the effective rate of taxation on \$15 cask wine (4L) in 2014-15 was \$2.99/LAL, compared with an average across all alcohol classes of \$36.05/LAL.¹¹ Tax on cheap cask wine in 2014-15 was there just 8.3 per cent (or less than 1/12) of the average rate across all classes of alcohol. Other categories of wine also had excise rates markedly lower than the average, including \$7 bottles and \$15 bottles (with rates of \$7.97/LAL and

\$17.07/LAL respectively).¹² More expensive wines, however, are taxed higher than the average rate. For example, a \$40 bottle pays an effective rate of \$45.54/LAL.¹³

Southcorp was one of the largest wine producers in Australia in the period preceding the introduction of the Wine Equalisation Tax (WET). The company owned Penfolds, Lindemans and Wynns, and was in the process of acquiring Rosemount.¹⁴ In the lead-up and immediately following the introduction of the Wine Equalisation Tax in 2000, there was a series of donations from Southcorp to the Liberal National Party Coalition. These totalled more than \$675,000 in 2015-16 terms (see Figure 2). In the 12 months leading up to the introduction of the WET, Southcorp donated more than \$220,000 in 2015-16 terms (see Figure 2). This represented approximately one quarter (24 per cent) of all alcohol industry donations across the Commonwealth and each state and territory government in that year.

Another organisation that has publicly supported the WET and its rebate is the Australian Hotels Association (AHA). The South Australian branch has had a particular interest in the WET and its rebate, as a major wine-producing region.¹⁵ A marked increase in donations from the SA Branch of the AHA was evident in 2001-02, which flowed predominantly to the Howard Government. Under that Government, the WET rebate was introduced and later increased to \$500,000 per annum.

Figure 2 – Political donations and other receipts from winemakers and the Australian Hotels Association



In 2010, the Australia’s Future Tax System (Henry) review identified that “current taxes on beer, wine and spirits are incoherent” and recommend that all alcohol tax is moved to a volumetric system.¹⁶ This would involve the abolition of the value-based WET and presumably its rebate. The report recognised the large amount of harm inflicted by the current approach, identifying that “In Alice Springs, a 2-litre wine cask costs \$10.99, which includes roughly \$1.59 of wine equalisation tax. An equivalent volume of alcohol in full-strength beer would attract \$7.48 in excise, and in spirits \$16.45”. Shortly after, a substantial increase in donations from the AHA was observed. The AHA donated \$650,000 in the two years to 2012-13, including \$300,000 to the federal Liberal Party. At the same time, the AHA called publicly for the continuation of the WET and its rebate.¹⁷

Donations resided again before increasing in 2015-16, following release of a Treasury discussion paper that recommended reform and potential abolition of the WET Rebate.¹⁸ Despite announcing significant reforms to the WET rebate in the 2016-17 budget, these were quickly watered down and delayed. As a result, the WET and its rebate remain largely unchanged despite 11 separate government and parliamentary reports recommending that a volumetric system be applied in place of the current value-based tax.^a

Case Study 3 - Northern Territory off-premise outlet regulation

The Northern Territory (NT) provides a more recent example of the issues inherent in political donations. It has been alleged that the NT branch of the Australian Hotels Association (AHA) funnelled political donations through its members to the Labor Party and met leaders of that party to illegally influence public policy decisions in a manner that would benefit the hotels industry.^{19,20} In this example, it is alleged that one part of the alcohol industry has improperly influenced policy to gain a competitive advantage against another. Improper influence was obtained by directing funds through member organisations, the AHA has previously directed donations directly to both sides of the political divide. In the lead up to the 2012 election, \$150,000 was donated to each of the Country Liberal Party and the Labor Party. These stand out as the only declared alcohol industry donations to the NT political entities in the set published by the AEC, which dates back to 1998-99.

Motivations and reasons why entities give donations to political parties and political candidates

The entrenched relationship between alcohol industry bodies and the political system was explored in research commissioned by FARE previously. This included examination of political donations to parties in Victoria and Queensland,^{21,22} which revealed a variety of concerning trends in corporate political donations from the alcohol industry. It also highlighted challenges relating to associated entities. For example, the Cormack Foundation, which is an associated entity used to channel money from anonymous donors to the Victorian Liberal party, was found to hold shares in and receives dividends from alcohol industry companies. In this way, the financial relationships of political parties and their members with alcohol industry interests are extensive and varied. These relationships warrant serious scrutiny to safeguard against undue influence of corporate political donors. FARE has

^a Government and parliamentary reports that have recommended a volumetric tax be applied to wine include the:

1. 1995 Committee of inquiry into the wine grape and wine industry
2. 2003 House of Representatives Standing Committee on Family and Community Affairs inquiry into substance abuse
3. 2006 Victorian inquiry into strategies to reduce harmful alcohol consumption
4. 2009 Australia's future tax system (Henry Review)
5. 2009 National Preventative Health Taskforce report on *Preventing alcohol related harms*
6. 2010 Victorian inquiry into strategies to reduce assaults in public places
7. 2011 WA Education and Health Standing Committee inquiry into alcohol
8. 2012 Australian National Preventive Health Agency *Exploring the public interest case for a minimum (floor) price for alcohol, draft report*
9. 2012 Australian National Preventive Health Agency *Exploring the public interest case for a minimum (floor) price for alcohol, final report*
10. 2014 House of Representatives report on the *Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities*.
11. 2017 Interim report of the Senate Committee on the *Effect of red tape on the sale, supply and taxation of alcohol*.

also provided a submission to the [2014 NSW Expert Panel on Political Donations](#), this submission provides further evidence on the influence of political donations by the alcohol industry.

The inherent contradiction of corporate political donations

There is an unacknowledged contradiction in the political donation system in Australia. While it is corrupt for a business to receive special benefit as a result of political donations, it is similarly illegal for corporate executives to spend money in a manner not intended to increase their profits. Only when a business benefits *indirectly* does the executive meet their fiduciary obligation to the shareholders while avoiding improper benefit through corruption of the democratic system. To benefit indirectly, corporate donations must be motivated by a belief in one party's ability to deliver superior economic outcomes. These outcomes must have the broadest possible effect, as special benefit to a particular industry, for example, is inconsistent with the donation requirements outlined above. Donations from an individual business should support all businesses equally through general economic growth. It is for this reason that corporate donations are often justified on the basis that they 'support the democratic system'. Any other motivation or outcome would deservedly draw serious criticism.

Yet corporate executives' fiduciary obligation to maximise profit requires that the expected return on their investment in economic growth must be greater than their outlay. Their share of the benefit received from supporting one party over another, spread equally over all businesses in the economy, must be larger than the amount that they have donated. When considered from this perspective, the belief that corporate political donations are made in a manner consistent with laws governing both donations and the behaviour of executives acting in the interest of incorporated entities becomes unsustainable. With \$75 million donated by corporations to Australian political parties in 2015-16 alone, there is clearly no shortage of businesses with apocalyptic projections for the economic outcomes if any party other than the beneficiary of their donations wins the next election.

Such strong beliefs in the superiority of one party over another suggest that donations from any particular corporation should be relatively stable over time. Donations should generally not fluctuate between parties and should certainly not follow political power. Despite this, research has shown that donations do vary as a function of parties' status as government or opposition, proximity to the next election and polling results.²³ While it comes as no surprise to even casual observers that donations appear to be made in a manner designed to improperly influence government decisions, this behaviour is illegal and warrants greater scrutiny than it is currently afforded.

While it may be difficult to establish that political donations are made with the intention of influencing decisions, several strong indications are provided by the patterns of political donations over time, recipient, and proximity to key alcohol policy decisions. This is in contradiction to legislation and an unconscionable corruption of our democratic system. 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. If donations are genuinely made in the interest of supporting the democratic system, they should be allowed only to the extent that they do not directly influence outcomes.

The use of shell companies, trusts and other vehicles to obscure the original source of political donations

It is common for political parties to establish corporations to act as intermediaries between donors and the party with the intention of obscuring proper scrutiny of these financial relationships. One widely publicised example is the Free Enterprise Foundation, which the NSW Electoral Commission found is used by senior Liberal Party officials as a means of offering anonymity to donors, including property developers, from whom donations are illegal in the state.²⁴ In the same manner, associated entities are able to conceal the identity of other banned donors, including those from the alcohol industry. Other examples include Parakeelia, associated with the Liberal Party, and the John Curtin House Limited, associated with the Australian Labor Party.²⁵ 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.

How to improve the integrity of political decision-making through our political donations regime and the public funding of elections

There is compelling evidence that political donations have been used previously in an attempt to influence policy decisions. Given the real conflict between the interests of the alcohol industry and those of the community, it is recommended that political donations from that alcohol industry and associated bodies are banned immediately.

Until this policy is adopted, precautions should be established to reduce the risk associated with corporate political donations. In addition, such measures should be applied to all donations to safeguard against undue influence from any corporation. These should be designed to facilitate proper scrutiny of political donations through enhanced identification, timeliness and complete disclosure.

- a) *Identification* would primarily involve banning the use of associated entities. A corporation that is established for the sole purpose of funnelling funds from anonymous donors to political parties is in clear contradiction with the proper functioning of government.
- b) *Timeliness* would involve immediate disclosure of political donations, allowing improved scrutiny of any association between donations and policy outcomes.
- c) *Complete disclosure* would see the removal of thresholds for reporting political donations. These were ostensibly introduced to protect small businesses from punitive action of unions, but safeguards can and should be established in ways that do not facilitate corruption of democratic systems. At the very least, thresholds should be relative to the cumulative value of donations in each financial year. The current approach, which sets a disclosure threshold for individual donations, is clearly open to being circumvented.

Recommendations

The following specific recommendations are made:

1. As matter of priority, ban all donations from the alcohol industry including donations from producers, retailers (on and off-licence venues) and associated member organisations and lobbyists.
2. Ban the use of associated entities to prevent political parties from continuing to conceal the identity of their donors.
3. Require immediate disclosure of political donations to allow voters to see, in real time, attempts to influence political decisions.
4. Remove the disclosure threshold and require all donations and other receipts to be immediately reported and published.

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**STOPPING
HARM**
CAUSED BY
ALCOHOL

Foundation for Alcohol Research & Education

FOUNDATION FOR ALCOHOL RESEARCH & EDUCATION

PO BOX 19 DEAKIN WEST ACT 2600
02 6122 8600 | info@fare.org.au | www.fare.org.au

ISBN 978-0-6481593-1-5

Supplementary submission: Select Committee on the Influence of Corporate Political Donations

6 November 2017

**STOPPING
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The alcohol industry has no place in policy development

“In WHO’s view, the alcohol industry has no role in formulating policies, which must be protected from distortion by commercial and vested interests.”

- Dr Margaret Chan, Director of the World Health Organisation (BMJ, 2013)

There is a long history of the alcohol industry influencing public policy using political donations

- Witness the record of alcohol industry donations from 1998-99 to 2015-16
- FARE's submission presents three case studies:
 - Commonwealth (WET)
 - Northern Territory (take-away liquor floorspace)
 - New South Wales (hotels and poker machine tax reforms)
- These case studies show clear evidence that donations are positively correlated with policy outcomes that benefit the alcohol industry

The alcohol industry has donated more than \$33m since 1998-99

- More than \$33 million (in 2015-16 terms) was donated by the alcohol industry between 1998-99 and 2015-16
- An average of \$1.8 million per year
- The top 10 donors were responsible for approximately two-thirds (\$20m)
- In 2015-16 alone, \$1.3 million was donated
- Of this, \$1.1 million was donated by the top 10 donors

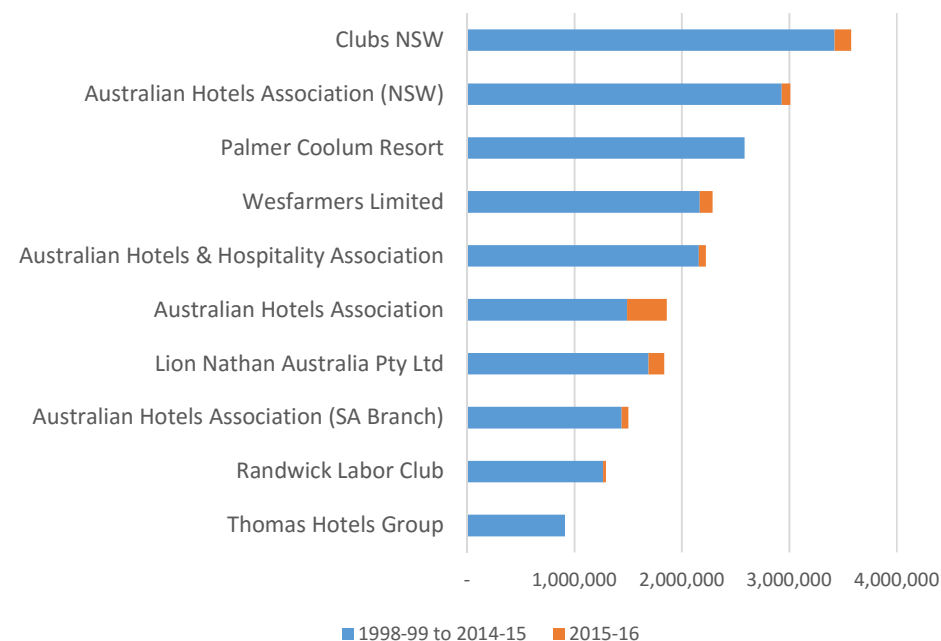


Figure 1: Top 10 donors, 1998-99 to 2015-16/ Top 8 Donors, 2015-16

Corporate political donations may explain the introduction and survival of the preferential Wine Equalisation Tax (WET)

- Introduced on 1 July 2000, replacing existing tax and franchise fees
- Applies to wine, cider, perry and mead
- Value-based, at 29 per cent of the cost at last wholesale point
- Accompanied by a \$500,000 WET Rebate for small producers
- Encourages production of cheap alcohol, which is taxed less
- Removes price lever, undermining government control over consumption levels and ability to recover cost
- 11 separate government reports have recommended a volumetric approach – most recently the Productivity Commission

Large donations from the alcohol industry coincided with introduction of the WET

- Southcorp, a major wine producer at the time, donated \$675,000 in the four years to 2001-02
- In 2001-02, the SA Australian Hotels Association donated \$360,000, split equally between SA Liberal and Labor parties
- SA wine producers and hotels have a particular interest in the WET
- 129 of 300 hotels in Australian winemaking regions are in SA

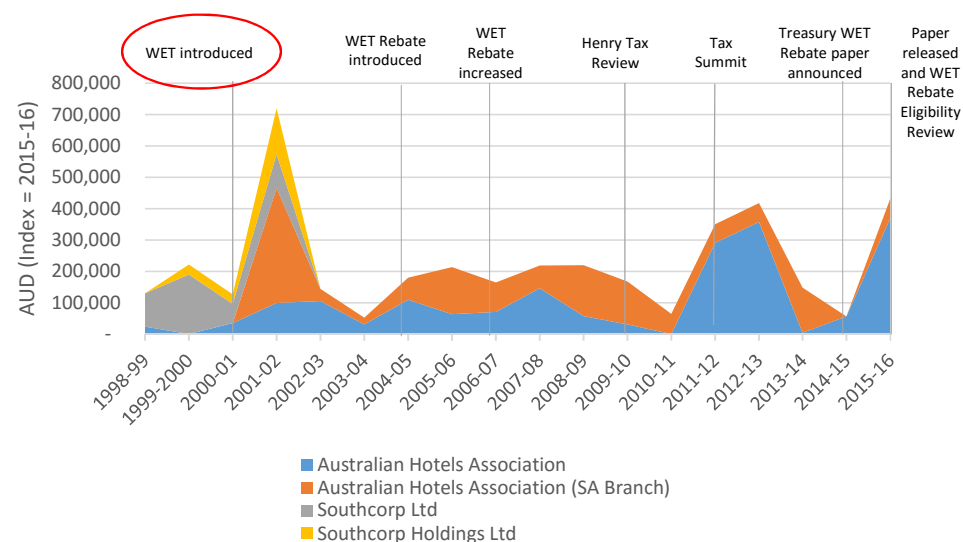


Figure 3: Donations from Southcorp and AHA (National and SA Branch)

Large donations from the alcohol industry have followed formal recommendations for abolition of the WET

- In 2010, the Government's Henry review recommended moving to single volumetric rate
- Labor Government quickly ruled out changing alcohol tax
- In 2011-12, \$291,000 was transferred to the federal LNP by the alcohol industry
- The Henry review recommendation still has not been adopted

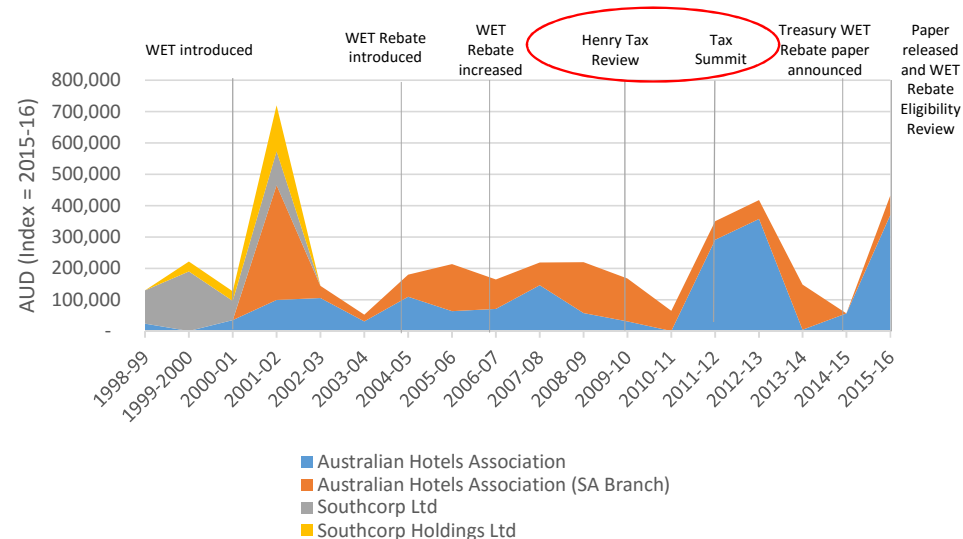


Figure 3: Donations from Southcorp and AHA (National and SA Branch)

Large donations have also been associated with the WET Rebate

- Discussion paper proposing changes to the WET Rebate released in August 2015
- Large increase in donations in 2015-16, across a variety of parties and jurisdictions
- The largest donations were \$100,000 to the SA Liberal Party and \$50,000 to the federal LNP
- Changes announced in the 2016-17 budget were later reduced and delayed

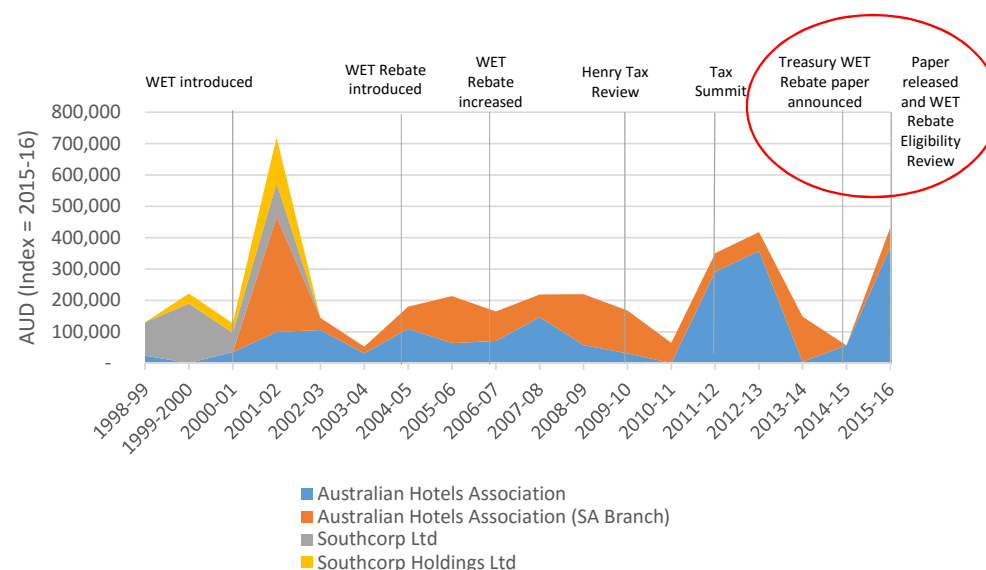


Figure 3: Donations from Southcorp and AHA (National and SA Branch)

This analysis suggests that political outcomes can be bought

- The alcohol industry made \$33 million in donations between 1998-99 and 2015-16
- Alcohol policy decisions have favoured continuation of a tax system that is harmful from both an economic and health perspective
- Decisions have often been accompanied by donations from industry bodies with vested interests
- Industry interests have prevailed, despite being in conflict with those of the general public
- As a priority, governments must act to address the influence of alcohol industry donations over public policy

As a priority, donations from the alcohol industry must be banned

- Adopt a principle-based approach to political donations
 - Prohibit use of associated entities to conceal donor identities
 - Require immediate disclosure of political donations
 - Remove the disclosure threshold and require that all donations and other receipts be reported and published in real time
- ...and ban all donations from the alcohol industry

Thank you

Michael Thorn

www

www.fare.org.au



info@fare.org.au



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**STOPPING
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Foundation for Alcohol Research & Education

Annexure 7 – Submission 33 from Transparency International Australia



**TRANSPARENCY
INTERNATIONAL
AUSTRALIA**

TRANSPARENCY INTERNATIONAL AUSTRALIA

ABN 23 068 075 525

E: info@transparency.org.au
P: +613 9877 0369
PO Box 2041
Blackburn South VIC 3130
Australia

16 October 2017

Select Committee into the Political Influence of Donations
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

politicaldonations.sen@aph.gov.au

Submission of Transparency International Australia – Select Committee Enquiry into the Political Influence of Donations

TI Australia (TIA) is part of a global coalition dedicated to the fight against corruption and the promotion of transparency, integrity and accountability at all levels and across all sectors of society including government and business. TIA is Australia's foremost civil society advocacy and research group in the fight against corruption.

[TIA's position paper](#) available on our [website](#) reflects its continuing concerns since 2005 that there are serious problems and irregularities in our political donations systems nationwide.

The High Court of Australia (in McCloy's case) upheld a ban on property development donations in NSW. The court stated the position succinctly.

“Guaranteeing the ability of the few to make large political donations to secure access to those in power is antithetical to the underlying principles of representative government...equal access for all.”

Recently TIA published a report “[Corruption Risk: Mining Approvals in Australia](#)”. This report represents the Australian research component for Transparency International's broader report from the “Mining for Sustainable Development Programme”. (The broader report addresses where and how corruption can get a foothold in the mining approval process. It involved detailed research in some 20 countries worldwide).

TIA's report was intended as an essential resource for government, industry, civil society and the public. The programme's aim is to shine a light on the corruption vulnerabilities in the mining approval process and to provide a road map for better policy and practice.

In the Australian research report TIA's CEO, Serena Lillywhite, stated “the assessment also identified a high potential for industry influence ... and policy capture in the awarding of mining approvals. Greater regulation of political donations, lobbyists and the movement of staff between government and industry would help reduce risks that could enable corruption to occur”.



www.transparency.org.au

The report notes that the mining industry has disclosed donations of \$16.6m to major political parties over the last ten years and warns that the unregulated system of political donations can allow special interest groups to attempt to influence policy making at all levels of government.

The Problem

TIA believes the present donations system in Australia represents a serious corruption of the political and democratic process. As a consequence, this issue has contributed to a collapse of support for democratic institutions and a distrust of politicians generally.

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

There is a perception that many important decisions are made in the interest of the rich and powerful, not in the interest of the general community. There are many factors contributing to this perception and the present fractured donation system is certainly one of them.

A further worrying aspect is that the laws currently in force are easily flouted. Recently, the NSW Electoral Commission penalised the State Liberal Party for breaching electoral rules. The Liberal Party had used the Free Enterprise Foundation to disguise donations from donors banned by state laws, such as property developers. This sorry saga is told in full in the NSW ICAC's important report – Operation Spicer.

Questions asked in the Select Committee enquiry

The principle question asked is – Why are large donations made to political parties? The answer is simple and universally acknowledged: something significant is expected in return for a significant payment. This justification has been cited as a reality by persons as diverse as President Donald Trump and the respected Australian businessman Luca Beligiorno Nettis (“You give in order to have given back”). The sad reality, as history shows, is that often something very significant is given in return and this does not always correspond with the public interest.

What is to be done?

TIA believes that 10 steps need to be urgently taken.

1. The disclosure threshold must be reduced to \$1,000.
2. Real time disclosure must apply: on-line real time continuous disclosure of donations to political parties and campaigns should be introduced in all jurisdictions.
3. The splitting of donations among individuals and various party divisions or organisations (to avoid the disclosure threshold) must be outlawed and punishable as a criminal offence.
4. A consistent donation regime among the states and Commonwealth should be introduced urgently.

5. Consideration should be given to banning donations from certain groups as in NSW e.g. property developers, Tobacco and Gaming industries. Others may be considered.
6. There should be a complete ban on foreign donations.
7. Spending by parties on overall election campaigns or in individual seats should be capped.
8. A National Integrity Commission with powers of overarching oversight should be established as a matter of urgency. The system should include a Parliamentary Integrity Commissioner who can refer serious breaches to the Integrity body.
9. A public register of beneficial ownership of companies – who owns and controls them? – should be established and available freely to the enforcement agencies, journalists and the public at large.
10. The sanctions for breach of the rules should be increased significantly and enforced vigorously.

TIA is happy to supplement this submission in any form acceptable to the Committee. TIA's reports (referred to above) can be found on our [website](#) or provided in hard copy.

Yours faithfully

The Hon. Anthony Whealy QC
Chairman, TI Australia

Annexure 8 – The Australia Institute (2017) The tip of the iceberg: Political donations from the mining industry



The **Australia Institute**

Research that matters.

The tip of the iceberg

Political donations from the mining industry

The mining industry has disclosed donations of \$49.9 million to federal political parties over the last decade. Of donations to major parties, 81% went to the Coalition, often in years donors paid no company tax and lobbied for approvals and particular policy reforms.

Discussion paper

Hannah Aulby

September 2017

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

OUR PHILOSOPHY

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

OUR PURPOSE - 'RESEARCH THAT MATTERS'

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Level 1 Endeavour House, 1 Franklin St
Manuka, ACT 2603
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au

Acknowledgement

The Australia Institute would like to acknowledge the financial support for this project received from the Australian Conservation Foundation and the World Wildlife Fund.

Summary

Political donations in Australia are difficult to monitor as many go unreported. Only donations over \$13,000 are disclosed to the Australian Electoral Commission. The majority of donations are likely to be under this disclosure threshold or hidden through other means, such as through associated entities or party fundraising events.

Despite these shortcomings, the disclosures that do exist allow for analysis of which companies make major, disclosed donations to which political parties. This report focuses on donations made to political parties by resource companies as disclosed to the Australian Electoral Commission. This includes donations over \$13,000 made to state and federal political parties. The poor quality of data provided by the AEC makes more detailed analysis difficult.¹

This report finds that:

- The mining industry has disclosed donations of \$16.6 million to major political parties over the last ten years (2006-07 to 2015-16)
- Disclosed mining industry donations to political parties have increased from a base of \$345,000 in 2006-07 to a peak of \$3,788,904 in 2010-11
- 81% of these donations went to the Coalition, including 71% to the Liberal Party
- Mining industry disclosed donations reached over \$1 million for the first time in 2007-08, the first year that carbon pricing policy was taken to an election in Australia
- Mining company donors often make significant political donations in years they pay no company tax
- Donations correlate with the election cycle, timelines on project approvals, and debates on key industry policies such as the mining tax and carbon price

This influence is just the tip of the iceberg. Significant sources of political donations are hidden from public view, for example donations under \$13,000, donations given through party fundraising events, and some donations hidden through associated entities. Mining companies have a much larger political expenditure budget, including spending on lobbying, advertising and entertaining political representatives. And political donations and expenditure are indicative of much broader political influence

¹ Edwards (2016), *submission to the Inquiry into and report on all aspects of the conduct of the 2016 Federal Election*, Submission 91, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions

through other means, as demonstrated by the corruption of the mining licence process in NSW revealed by the NSW ICAC.

To reveal the full extent of mining industry political influence, exerted through political spending and other means, the Australia Institute recommends:

1. Improved disclosure and regulation of political donations and expenditure; and
2. The establishment of a federal ICAC, with public hearings to publicly investigate and expose corruption in federal politics and the public service

Introduction

Australia has weak regulations around political donations disclosure and opaque presentation of the data by our electoral commissions. The Australian Electoral Commission (AEC) requires only donations to political parties over the threshold of \$13,000 to be publicly disclosed, which it publishes annually in pdf or excel formats that are difficult to understand.

The AEC was established in 1984 under the Hawke Government, and set donation disclosure thresholds at \$1,500. This was increased by the Howard Government in 2006 to \$10,000, indexed to inflation. Labor governments attempted to lower this disclosure threshold to \$1,000 in 2008 and 2010.² The 2008 attempt was referred to committee, deferred and then lapsed. The 2010 attempt passed the House of Representatives but was held up in the Senate, eventually lapsing at the end of the 43rd Parliament.³ Both attempts were opposed by the Coalition, and some commentators have also cited opposition from the Labor Right.⁴

New South Wales and Queensland governments have introduced their own lower thresholds, which means that state political parties are required to report to the state electoral commissions any donations over \$1000. Other states have no lower thresholds, meaning that the lax federal disclosure laws also impact on the transparency of state political parties and elections.

Hiding political donations is not difficult, for example by donating multiple times below the \$13,000 threshold. Scrutiny can further be avoided by donating through associated entities, or by payments to attend a party fundraising events. Examples of the use of associated entities to hide donations were uncovered by NSW ICAC during the Operation Spicer investigation.

² Holmes (2012) *Electoral and political financing: the Commonwealth regime and its reforms*, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/ElectoralFinancing

³ Parliament of Australia (2010) *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010* http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4477

⁴ Millar (2015) *Timeline of Australian political funding reform failure*, <http://www.smh.com.au/federal-politics/political-news/michaels-test-story-20150617-ghq6ha>

Despite these shortcomings, some insight can be gained as to the scale of mining and fossil fuel industry influence in this area. The available data indicates a dramatic increase in disclosed political donations from the sector over the last ten years.

This report looks at total political donations reported to the AEC from the mining industry over the last ten years, including disclosed donations over \$13,000 to state and federal parties. Many donations go unreported, or are hidden in the poor quality of disclosure data.⁵ The report provides some analysis of disclosed donations based on the top donating companies, the receiving political parties and their policy platforms, and the scale of mining industry donations compared to other political donors.

Political donations disclosure returns from 2006-07 to 2015-16, available on the Australian Electoral Commission periodic disclosures website, were collated and analysed. Donors were sorted by sector, with companies and well known executives involved in mining and petroleum production or exploration separated and analysed.

Disclosed political donations from the mining industry to major parties totalled \$16.6 million, with \$13.5 million going to the LNP Coalition and \$3 million to the ALP, and increased levels of donations in years surrounding elections and important tax debates.

The political donations disclosed to the Australian Electoral Commission are just a fraction of the total political donations made by the industry, and political donations are just a fraction of the total political expenditure spent by the mining industry to influence the policy making process. The influence of mining companies, particularly in terms of expenditure, is further obscured through the use of industry bodies, including the Minerals Council of Australia and APPEA, to coordinate lobbying, donations and political expenditure.

The report does not include:

- Mining industry donations made through associated entities
- Donations of \$1,000 or over declared to the NSW and QLD electoral commissions, as this data is only available in the two states with lower thresholds and would also create duplicates in the data
- Other forms of political expenditure used by the mining industry to exert influence, including spending on lobbying, advertising and entertaining (not in the public domain). Individual mining companies do not report their political

⁵ Edwards (2016), *submission to the Inquiry into and report on all aspects of the conduct of the 2016 Federal Election*, Submission 91, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions

expenditure to AEC, however the Minerals Council of Australia disclosure is indicative of larger industry political spend

- Donations from Clive Palmer to the Palmer United Party were excluded and analysed separately, to avoid distortions in the data (see Section 2)

Improved regulation and disclosure of political donations and expenditure would allow for more detailed analysis.

The impact of the political donations in this report could be further understood when seen alongside the access to policy decision makers given to the mining industry, as well as the public and private campaigning undertaken by the industry to further its interests. A federal ICAC with public hearings is needed to investigate and expose the full extent of industry undue influence on public policy making.

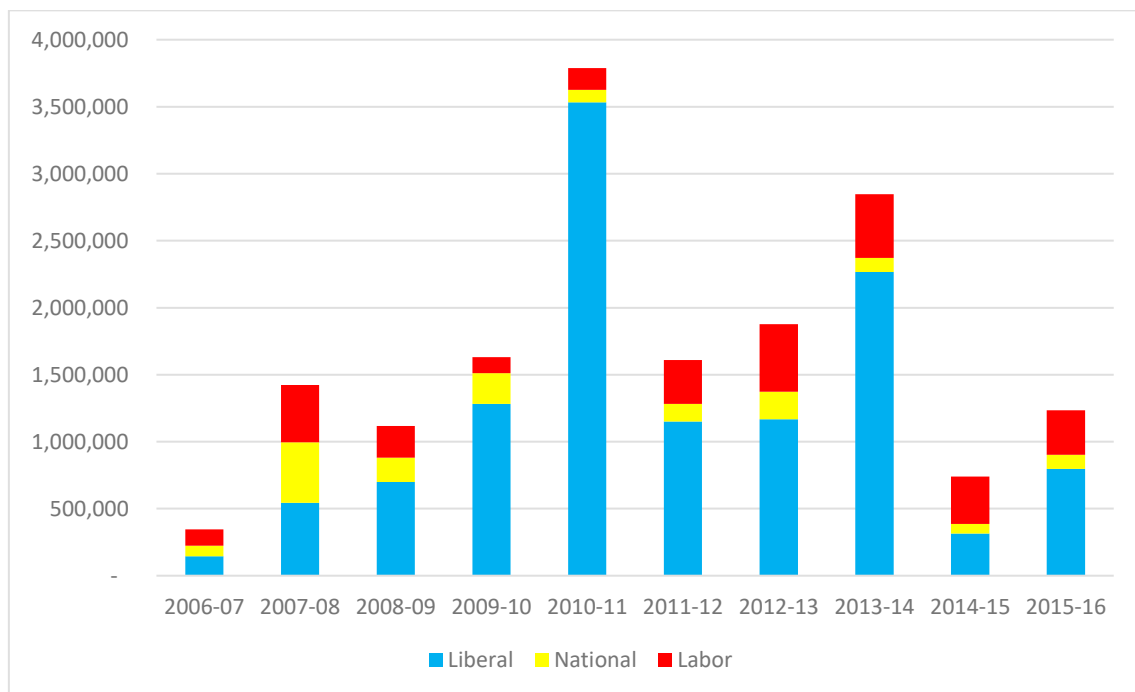
“The MCA was at the forefront of the debates over the carbon and mining taxes; and their abolition (expected after July 2014) will be in no small part due to the council’s determined advocacy on both issues.”⁶ – Minerals Council of Australia 2013 Annual Report

⁶ http://www.minerals.org.au/news/2013_annual_report_minerals_council_of_australia

Disclosed mining industry political donations to the major parties

Over the past ten years the mining industry has spent millions of dollars on political donations. From 2006 to 2016, AEC records show the industry reports giving \$16.6 million to the major parties, with 81% of this going to the LNP Coalition, including 71% to the Liberal Party of Australia, see Figure 1 below.

Figure 1: Disclosed donations to major parties from resource sector 2006-2016



Source: AEC Annual Returns <http://periodicdisclosures.aec.gov.au/>

At the beginning of decade disclosed political donations from the mining industry were \$345,000. This increased dramatically to reach above \$1 million for the first time in 2007-08, at \$1,422,500. At the start of the decade disclosed political donations from the mining industry were fairly even across the parties, until 2008-09 when political donations to the Liberal Party shot up to \$700,180. Donations to the major parties peaked in 2010-11 at \$3,787,584 and again in 2013-14 at \$2,847,680. Over the decade, 71% of disclosed mining industry donations were given to the Liberal Party, and 81% to the coalition of the Liberals and Nationals.

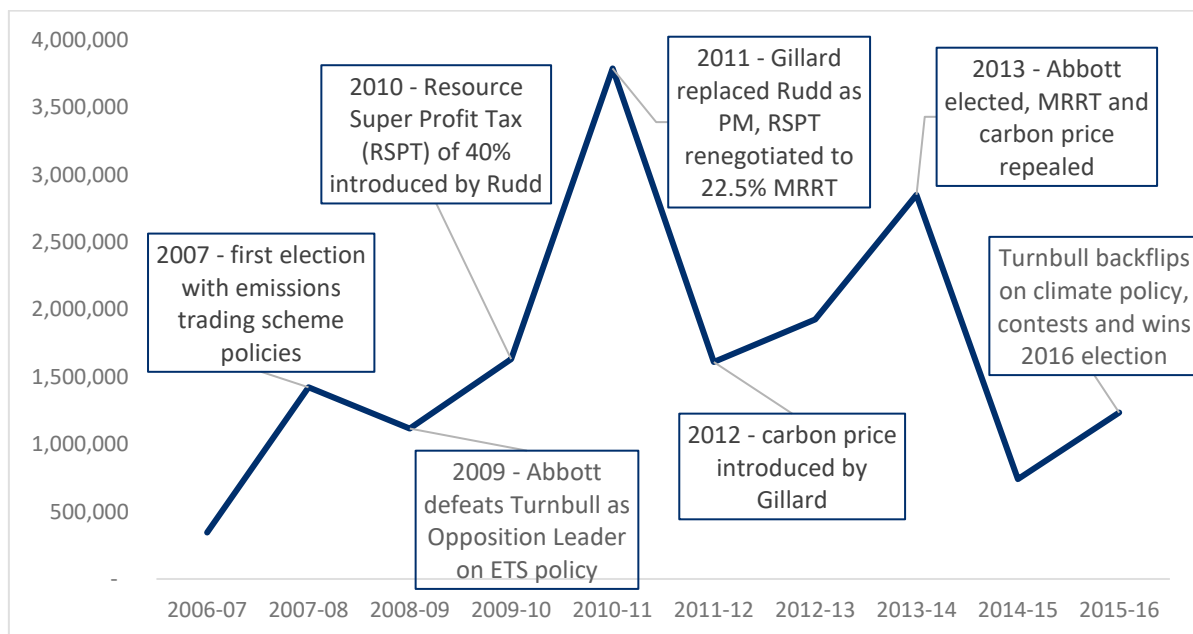
As shown in Figure 2, political donations spiked in 2007, 2010, 2013 and 2016 following the election cycle. Donations from the mining industry increased dramatically in the

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. The 2016 election saw disclosed donations peak at \$1.2 million.

Note that this data is only from donations reported to the AEC, and does not include donations disclosed separately to the QLD and NSW state electoral commissions, which would bring this total figure up significantly. It also does not include all donations from the mining industry made through associated entities, or donations below the \$13,000 disclosure threshold.

Disclosed mining industry political donations reached their highest point in 2011 surrounding the mining tax debate, peaking in 2010-11. Kevin Rudd introduced the bill in 2010 at a 40% tax rate, and the mining industry launched a major campaign against it. This peak and related political events are shown in Figure 2 below:

Figure 2: Total disclosed mining industry donations and selected political events



Source: AEC Annual Returns <http://periodicdisclosures.aec.gov.au/>

Figure 2 shows that the second largest year of political donations from the mining industry was in 2013-14, another election year where the mining tax and carbon price featured strongly. Disclosed donations peaked increased again in 2015-16 coinciding with the 2016 election, but to a far lesser degree than the elections with a strong focus on mining taxation and carbon pricing.

Disclosed mining industry political donations to the minor parties

The above figures, and the figures in the next section on donating companies, exclude donations from mining companies and executives to the Palmer United Party (PUP), as the scale of industry donations to PUP would have distorted the data. As seen in Table 1 below, PUP accepted over \$33 million from the industry in just two years.

Table 1: Donations from mining companies and executives to Palmer United Party

Donor	2013-14	2014-15	Total
Queensland Nickel	\$15,216,400	\$5,991,381	\$21,207,781
Mineralogy	\$8,238,689	\$3,628,346	\$11,867,035
Mr Clive Frederick Palmer	\$101,833	\$2,000	\$103,833
Total	\$23,556,922	\$9,621,727	\$33,178,649

Source: AEC Annual Returns <http://periodicdisclosures.aec.gov.au/>

The analysis in Section 1 also excludes donations to the minor parties, shown below in Table 2 below.

Table 2: Donations from mining companies to the minor parties

Receiving party	2010-11	2011-12	2012-13	2013-14
Independents/other		\$660	\$50,000	\$3,300
Greens	\$1,320			

Source: AEC Annual Returns <http://periodicdisclosures.aec.gov.au/>

Section 3: Donating companies

Table 3: Top 20 major party disclosed political donors from the mining industry

Rank	Company	Total amount	Years donated	Paid company tax?
1	Mineralogy	\$3,055,600	2005-06, 2006-07, 2007-08, 2008-09, 2010-11, 2011-12	No 2013-14 Not reported 2014-15
2	Woodside Energy	\$1,400,762	2008-09, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16	Yes 2014-15 Yes 2013-14
3	Brickworks	\$1,273,080	2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14	Yes 2014-15 No 2013-14
4	Santos	\$1,149,059	2005-06, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16	No 2014-15 Yes 2013-14
5	Washington H Soul Pattinson	\$996,900	2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14	No 2014-15 No 2013-14
6	Wesfarmers	\$673,000	2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2015-16	Yes 2014-15 Yes 2013-14
7	Origin Energy	\$642,152	2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16	No 2014-15 Yes 2013-14
8	Chevron	\$612,993	2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16	No 2014-15 No 2013-14
9	Minara Resources	\$504,500	2010-11, 2012-13, 2013-14	Not reported
10	Nimrod Resources	\$500,000	2013-14	Not reported
11	Queensland Nickel	\$500,000	2010-11	Not reported
12	Panoramic Resources	\$407,209	2009-10, 2010-11, 2011-12, 2012-13, 2014-15	No 2014-15 No 2013-14
13	AGL	\$405,343	2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15	Yes 2014-15 Yes 2013-14
14	Linc Energy	\$323,699	2010-11, 2011-12, 2013-14	Not reported
15	Beach Energy	\$281,300	2010-11, 2012-13, 2013-14	Yes 2014-15 Yes 2013-14
16	Hancock Prospecting	\$284,430	2011-12, 2012-13, 2013-14, 2014-15, 2015-16	Yes 2014-15 Yes 2013-14
17	NSW Minerals Council	\$218,540	2008-09, 2010-11, 2011-12, 2012-13, 2013-14	Not reported
18	Independence Group	\$210,999	2010-11	Yes 2014-15 Yes 2013-14
19	Sandfire Resources	\$195,000	2010-11, 2011-12, 2012-13	Yes 2014-15 No 2013-14
20	Felix Resources	\$157,500	2007-08, 2008-09	Not reported

Sources: ATO Corporate Tax Transparency <http://data.gov.au/dataset/corporate-transparency>, AEC Annual Returns <http://periodicdisclosures.aec.gov.au/>

Top 5 Donor Profiles

Mineralogy

Mineralogy donated over \$3 million to the major parties from 2005-2012. Its biggest donations were \$420,000 in 2008-2009, \$755,000 in 2009-10, and \$459,900, all to the Liberal Party, before owner Clive Palmer established the Palmer United Party. It was also during this period that the company was applying for the environmental approval of its China First mine in the Galilee Basin.⁷

Despite being the number one mining company donor to major parties over the last decade, Mineralogy paid no company tax in the period it was making the majority of its political donations. Mineralogy and its subsidiaries reported net losses of \$58.5 million in 2008-09, \$29 million in 2009-10 and \$11.4 million in 2010-11,⁸ yet made political donations of \$605,000 in 2008-09, \$956,000 in 2009-10, and \$459,900 in 2010-11.⁹

Woodside

Woodside disclosed political donations of \$12,375 in 2008-09 and \$16,500 in 2010-11. It ramped up significantly from 2011-12, giving over \$100,000 to both the Liberals and the ALP annually since then. During this period Woodside sought federal environmental approval for its controversial Browse LNG at James Price Point, which it subsequently dumped in 2013.¹⁰ Its largest single donation was \$181,150 to the Liberal Party in the lead up to the 2013 election. In 2015-16 Woodside donated \$250,480 to the major parties, as it urges against changes to the oil and gas tax regime.¹¹

⁷ Lauder (2013), *Waratah Coal welcomes Galilee Basin mine approval despite environmental conditions*, <http://www.abc.net.au/news/2013-12-21/waratah-coal-welcomes-approval-of-galilee-basin-mine/5170912>

⁸ Manning (2012), *Magnates company paid no tax*, <http://www.brisbanetimes.com.au/business/magnates-company-paid-no-tax-20120411-1wsl2.html>

⁹ AEC Periodic Disclosures <http://periodicdisclosures.aec.gov.au/Party.aspx>

¹⁰ Chambers (2013), *High costs kill off Woodside's \$50bn Browse LNG plant*, <http://www.theaustralian.com.au/national-affairs/high-costs-kill-off-woodsides-50bn-browse-lng-plant/story-fn59niix-1226619543660>

¹¹ Garvey (2017), *Don't tinker with tax, warns Woodside chief*, <http://www.theaustralian.com.au/business/mining-energy/dont-tinker-with-tax-warns-woodside-chief/news-story/3453d55f00b3a333c32027fbef29598d>

Brickworks

Washington H Soul Pattison, parent company of the New Acland mine expansion, has a 44% share in Brickworks. Brickworks donated \$1.27 million over the decade in political donations, with the highest being \$434,000 donated to the Liberals in 2010-11. Brickworks campaigned strongly against the carbon price from 2011-2014,¹² including hosting visits from Tony Abbott during his 2011 anti-carbon price campaign. NSW Independent Commission Against Corruption has revealed that Tony Abbott's Chief of Staff took advice on carbon price related questions to ask during parliamentary question time from Brickworks managing director.¹³ Brickworks has been linked to other political donations scandals revealed through ICAC, including that it directed funds to the Liberal Party through the New Enterprise Foundation in order to avoid scrutiny: *'the least attention attracting method of donation [to the Federal Liberal Party] is through the Free Enterprise Foundation'*.¹⁴ Brickworks paid no company tax in 2013-14.¹⁵

Santos

Santos disclosed donations of over \$1 million from 2005-2016. Its largest donation was \$227,880 to the Liberal Party in 2010-11, the same year as Santos joined the mining industry campaign against the mining tax.¹⁶ During this period Santos also acquired the controversial Narrabri gas project in the Pilliga¹⁷, and received approval for its massive Gladstone LNG project¹⁸. Santos' next largest donation was \$152,375 in 2013-14, again to the Liberals in an election year where the Liberals campaigned strongly

¹² See for example Wenn (2011), *Carbon tax will hurt housing affordability: Brickworks*, <http://www.smh.com.au/business/carbon-tax-will-hurt-housing-affordability-brickworks-20110324-1c7md.html>

¹³ McClymont et al (2014), *Peta Credlin emails to Liberal Party donor reveals 'cash for questions' link*, <http://www.smh.com.au/federal-politics/political-news/peta-credlin-emails-to-liberal-party-donor-reveals-cash-for-questions-link-20140908-10e53p.html>

¹⁴ See NSW ICAC Operation Spicer Exhibit Z83, Page 124, and NSW ICAC Operation Spicer Exhibit Z86

¹⁵ ATO (2014), *Corporate tax transparency report for the 2013-14 income year*, <https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Corporate-tax-transparency-report-for-the-2013-14-income-year/>

¹⁶ Fraser (2010), *Santos joins big mining's tax revolt*, <http://www.theaustralian.com.au/business/mining-energy/santos-joins-big-minings-tax-revolt/story-e6frg9df-1225863328166>

¹⁷ See Wilderness Society media release 19th July 2011, <https://www.wilderness.org.au/pilliga-coal-seam-gas-developments-breach-federal-environmental-law-report>, and Santos media release 18th July 2011, <https://www.santos.com/media-centre/announcements/santos-to-acquire-100-of-eastern-star-gas/>

¹⁸ Santos media release 22nd Oct 2010, *GLNG wins federal environmental approval*, <https://www.santos.com/media-centre/announcements/glng-wins-federal-environmental-approval/>

against the mining and carbon taxes. Santos paid no company tax in 2014-15, but disclosed political donations of \$168,742 that year.¹⁹

Washington H Soul Pattinson

Washington H Soul Pattinson is the parent company of New Hope Corporation, a coal company operating and attempting to expand the controversial New Acland mine in Queensland's Darling Downs.²⁰ Beginning in 2010-11, Washington has donated \$250,000 to the Liberal Party each year to 13-14, apart from 2011-12 when it donated \$200,000. Through New Hope Corporation, it has been seeking federal approval for the expansion of the New Acland mine since 2007.²¹ Washington H Soul Pattinson paid no company tax in 2013-14 or 2014-15.^{22 23}

¹⁹ ATO (2015), *2014-15 Report of Entity Tax Information*, <http://data.gov.au/dataset/corporate-transparency/resource/1e8c8ae0-81d1-4780-a669-9e4a2a6ba1a4>

²⁰ Washington H Soul Pattinson, *Current operations*, <http://www.whsp.com.au/current-operations/>

²¹ Kerr (2016), *Federal regulators delay decision over New Hope's Acland coal expansion*, <http://www.afr.com/business/mining/federal-regulators-delay-decision-over-new-hopes-acland-coal-expansion-20161017-gs457k>

²² ATO (2014), *Corporate tax transparency report for the 2013-14 income year*, <https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Corporate-tax-transparency-report-for-the-2013-14-income-year/>

²³ ATO (2015), *2014-15 Report of Entity Tax Information*, <http://data.gov.au/dataset/corporate-transparency/resource/1e8c8ae0-81d1-4780-a669-9e4a2a6ba1a4>

Conclusion and recommendations

This report shows that the mining industry spends millions of dollars on political donations, and can scale up their donations at important times as they did in 2010-11. The timing, scale and political leanings of these donations can be linked with election campaigns, leadership changes and important debates on policies such as the mining tax and carbon price.

The donations outlined in this report are just the tip of the iceberg. Significant sources of political donations are hidden from public view, for example donations under \$13,000, donations given through attendance at party fundraising events, and some donations hidden through associated entities. In addition, political donations are just part of the much larger political expenditure budget that the mining industry uses to exert influence, including spending on lobbying, advertising and entertaining political representatives. Full mining industry political expenditure is not covered by this report in part because this information is not in the public domain, with only political expenditure from some industry representative bodies, and not individual companies themselves, being reported to the AEC. Improved disclosure and regulation of political donations and expenditure is needed to understand the scale of mining industry influence exerted through political spending.

Political donations are also an indicator of a broader industry strategy of political influence. With the majority of political donations and political expenditure hidden, and industry influence likely extending into the realm of personal and financial relationships, the public currently has little knowledge of how this industry is influencing our policy decisions. The implications of this influence was demonstrated in NSW by anti-corruption investigations called Operation Jasper and Operation Acacia. The NSW anti-corruption commission (NSW ICAC) found that a complex web of personal relationships, favours, and mutual financial interests resulted in the issuing of mining licences without any proper process. A federal ICAC is needed to reveal the extent of mining industry influence at a federal level, beyond political donations and expenditure.

The Australia Institute recommends:

1. Improved disclosure and regulation of political donations and expenditure; and
2. The establishment of a federal ICAC, with public hearings to publicly investigate and expose corruption in federal politics and the public service

Annexure 9 – The Australia Institute (2017) Queensland watchdog asleep at the gate: A comparison of the Queensland and NSW anti-corruption commissions



The **Australia Institute**

Research that matters.

Queensland watchdog asleep at the gate

A comparison of the Queensland and NSW anti-corruption commissions

*The Queensland CCC has major design flaws that
render it far less effective than the NSW ICAC,
leading to fewer corrupt conduct findings and
minimal public exposure of systemic corruption*

Discussion paper

Hannah Aulby
April 2017

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The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

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Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au

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Executive Summary

The Queensland Crime and Corruption Commission (Queensland CCC) has major design flaws that render it far less effective than the NSW Independent Commission Against Corruption (NSW ICAC) in exposing systemic corruption. The NSW ICAC makes more findings of corrupt conduct, holds more public inquiries, and tackles systemic corruption cases of public significance. Over the observed period the NSW ICAC made corrupt conduct findings against 123 people, held 28 public inquiries, and investigated cases involving complex networks of corruption within the public sector. The Queensland CCC made corrupt conduct findings against 37 people, held no public hearings, and tackled cases involving one or two public sector employees involved in minor fraud. Differences in the design of each body impact their respective effectiveness, including the definition of corrupt conduct within the legislation and the conduct of public inquiries.

The report compares the legislative design of each body as well as their respective effectiveness in exposing systemic corruption. As well as differences in design, the report finds that the Queensland CCC has been conservative in its interpretation of the Queensland Crime and Corruption Act, which again has led to it having less impact. The report also finds that Queensland government pre-election promises to strengthen the CCC and expand its definition of corrupt conduct have not been met, and in fact 2017 amendments limit the definition of corrupt conduct.

The report makes the following recommendations:

Recommendation #1: The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, and adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct.

Recommendation #2: The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

Recommendation #3: The federal government should create a federal Independent Commission Against Corruption based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.

Introduction

Each state and territory, apart from the ACT, has an anti-corruption commission. These bodies vary in design features and effectiveness, but in essence are designed to expose corruption and provide independent oversight of government. Currently there is no federal anti-corruption commission, or indeed any effective mechanism to ensure scrutiny of our federal parliamentarians or other federal public officials.

Public distrust of federal government is growing, with a recent poll by the Australia Institute finding 85% of Australians believe there is corruption in federal politics. In addition, there is overwhelming public support for a federal ICAC, with the same poll finding over 82% of respondents supportive.¹

To design an effective federal anti-corruption watchdog ‘with teeth’ it is important to look at the experience of state based anti-corruption commissions. This report compares the design and effectiveness of the NSW and Queensland anti-corruption commissions, and distils the key design features that are critical to a commission’s success.

It finds that key features, including the definition of corrupt conduct and the ability to conduct public hearings in the course of investigations, render the NSW ICAC far more effective than the Queensland CCC. It also finds that challenges to the NSW ICAC’s jurisdiction impacted its effectiveness, a trend that looks likely to continue following the attacks in 2016 on the NSW ICAC Chief Commissioner’s independence.

¹ Polling reported in Farr, 17th January 2017, *Overwhelming majority believes polities are corrupt*, <http://www.news.com.au/finance/work/leaders/overwhelming-majority-believes-polities-are-corrupt/news-story/0f181019b1f1dcdd1485e262f5419b13>

History of the CCC and the ICAC

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

The New South Wales Parliament passed the *Independent Commission Against Corruption Act 1988* (NSW) (*ICAC Act*) in 1988, in response to growing public concern about corruption among government ministers, the judiciary and at senior levels of the police force. The NSW ICAC was then established in March 1989.² It remained relatively unchanged in its functioning until a High Court challenge to the NSW ICAC's jurisdiction began in December 2014. The case, *Independent Commission Against Corruption vs Cunneen & Ors*, considered whether the NSW ICAC had acted outside its jurisdiction by investigating allegations that Margaret Cunneen, a NSW Crown Prosecutor, had engaged in corrupt conduct contrary to the ICAC Act. It was alleged that Ms Cunneen had adversely affected the behaviour of a police officer in an interaction between her daughter in law and the police officer.

The High Court found that the NSW ICAC had overreached in its interpretation of the definition of corrupt conduct, specifically in its understanding of the scope of the phrase 'adversely affect' the official function of a public official. The court limited the interpretation of 'corrupt conduct' in the ICAC Act to conduct that adversely affects the 'probity of the exercise of an official function by a public official', rather than the 'efficacy' of that function.³ In effect, the decision means that the NSW ICAC can only investigate cases where the conduct of a third-party results in a public official acting dishonestly. The NSW government responded to the High Court's findings through its own review of the NSW ICAC, led by former Chief Justice of the High Court Murray Gleeson AC and Bruce McClintock SC. In 2015 the recommendations of the review were accepted by NSW Parliament, including an expansion of the definition of corrupt conduct to further focus on fraud, collusive tendering and dishonest use of public money in public administration. The review found no need to limit the definition of

² *History, NSW ICAC*, accessed 8th March 2017, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>

³ High Court, *Judgement, Case S302/2014, Independent Commission Against Corruption vs Cunneen & Ors*, http://www.hcourt.gov.au/cases/case_s302-2014

corrupt conduct as it found that this issue had already been resolved by the High Court.⁴

The operation of the NSW ICAC was altered once again in 2016 with the enactment of the *Independent Commission Against Corruption Amendment Act 2016* (NSW). This Act significantly altered the structure and governance of the NSW ICAC. According to the then NSW ICAC Commissioner Megan Latham, the Act ‘effectively strips the Commission of the authority of a “Chief Commissioner”, and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.’⁵ The Act caused the premature termination of the tenure of the Chief Commissioner, without meeting the legislated requirements for this termination, and according to former NSW ICAC Commissioners and the former NSW Director of Public Prosecutions (DPP), threatens the independence of future commissioners as they may fear similar political intervention.⁶ These changes were made without consultation with the Parliamentary ICAC Committee, or ICAC Commissioners or staff.⁷

Former NSW DPP Nicholas Cowdery said that this ‘appeared to be nothing more than a device to remove the commissioner, cloaked in some other reforms that were probably unnecessary.’ He followed that he was ‘concerned with the principle of independence of the commissioner, akin to judicial independence, enshrined in the legislation... independence is essential to the effective exercise of the commission's powers.’⁸ Former NSW ICAC Commissioner David Ipp said that ‘The government has shown that, despite what is in the legislation, if it wants to, it will get rid of any ICAC commissioner if they don't like what they're doing.’⁹

⁴ *Report, Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, 30th July 2015

⁵ *Statement regarding the Independent Commission Against Corruption Amendment Bill 2016*, 15th November 2016, <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

⁶ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

⁷ Ibid.

⁸ Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

⁹ Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html>

QUEENSLAND CRIME AND CORRUPTION COMMISSION

In 1987 a far-reaching commission of inquiry began in Queensland under the leadership of Tony Fitzgerald QC in response to media reports of corruption in the police service. The Fitzgerald Inquiry lasted 2 years and made over 100 recommendations, including the establishment of an anti-corruption body named the Criminal Justice Commission.¹⁰

The Criminal Justice Commission investigated police and public service misconduct and major crime until 1997 when its crime function was given to the Queensland Crime Commission. In 2001 the *Crime and Misconduct Act 2001* (QLD) merged the functions again under the Crime and Misconduct Commission.¹¹

The Crime and Misconduct Commission operated unchanged until 2014, when the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) introduced by Premier Campbell Newman retrospectively changed the *Crime and Misconduct Act 2001* (QLD) to the *Crime and Corruption Act 2001* (QLD).¹² These amendments stripped the commission of its corruption prevention and official misconduct investigation functions, and required Ministerial approval to undertake research in certain areas. It also changed the management structure of the CCC, giving more power to the CEO, and required complaints to be made via statutory declaration with penalties for complaints deemed vexatious.¹³

The Palaszczuk Government came to power in 2015 after making election promises to restore the full integrity of the Queensland CCC before the Newman changes, and widen the definition of corrupt conduct.¹⁴ The *Crime and Corruption Amendment Act 2015* (QLD) restores the Queensland CCC's corruption prevention function, removes the requirement for Ministerial approval prior to research, and removes the need for complaints to be made via statutory declaration. It also reinstates the former

¹⁰ See <http://www.ccc.qld.gov.au/about-the-ccc/the-fitzgerald-inquiry> and <http://www.ccc.qld.gov.au/about-the-ccc/history>

¹¹ *History, Crime and Corruption Commission*, accessed 8th March 2017, <http://www.ccc.qld.gov.au/about-the-ccc/history>

¹² *Changes to the Crime and Misconduct Act 2001 and the RTI Act*, Office of the Information Commissioner, 1st July 2014, <https://www.oic.qld.gov.au/about/news/changes-to-the-crime-and-misconduct-act-2001-and-the-rti-act>

¹³ *Crime and Misconduct and Other Legislation Amendment Act 2014*

¹⁴ Letter to the Australia Institute from the Deputy Leader of the Opposition, 19th January 2016, https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/84/attachments/original/1421735160/ALP_response.pdf?1421735160

management structure of the CCC.¹⁵ It does not, however, deal with the more critical issues of widening the definition of corrupt conduct and reinstating the official misconduct investigative function of the CCC, leaving it unable to investigate many issues of public sector and parliamentary misconduct.

In the 23rd March 2017, Attorney General Yvette D’Ath tabled the *Crime and Corruption and Other Legislation Amendment Bill (2017)* (QLD), stating in the press release that this bill would strengthen the CCC and widen the definition of corrupt conduct as promised pre-election.¹⁶ In reality this amendment bill would remove the former definition of corrupt conduct in Section 15(2) in the CCC Act and replace it with a more limited definition.¹⁷ In the explanatory notes for the bill it is stated that this is because ‘public sector conduct’ is dealt with effectively within the Public Service Commission, and that the definition needed to be simplified to assist the public service in their ‘interpretation and understanding’.¹⁸ By simplifying the definition, the bill effectively limits it. This leaves a key election promise unfulfilled, and weakens rather than strengthens, the CCC.

¹⁵ *The Crime and Corruption Amendment Act 2015*

¹⁶ Queensland Government, 23rd March 2017, *Palaszczuk Government moves to strengthen CCC powers*, media release, <http://statements.qld.gov.au/Statement/2017/3/23/palaszczuk-government-moves-to-strengthen-ccc-powers>

¹⁷ Queensland Parliament, 2017, *Crime and Corruption and Other Legislation Amendment Bill 2017*, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T506.pdf>

¹⁸ Queensland Parliament, 2017, *Crime and Corruption and Other Legislation Amendment Bill 2017*, *Explanatory notes*

Design features—how many teeth?

By comparing the *Independent Commission Against Corruption Act 1988* (NSW) and its 2016 amendments, with the *Crime and Corruption Act 2001* (QLD) and its 2014 and 2015 amendments, key design features of both bodies have been outlined in the table below.

Figure 1: Comparison of NSW ICAC and Queensland CCC design features.

	NSW ICAC	QLD CCC
Appointment of Commissioner	Appointed by Governor, with support of bipartisan committee	Nominated by Minister, with support of bipartisan committee
Independence of Commissioner	2016 Act appoints 3 commissioners each with similar power to act on behalf of the Commission, thereby ending the former independent decision making of the Commissioner ¹⁹ The 2016 Act also terminated the tenure of the Commissioner before the end of her legislated 5 year term	2015 Act restores the 2011 model of separation between the CEO and the chairperson, and the 5 member commission
Definition of corrupt conduct	Corruption that would, if proven, be a criminal offence, a disciplinary offence or grounds for dismissal Includes a long list of conduct that could pertain to corrupt <i>Full definition provided below</i>	Corruption that would, if proven, be a criminal offence or grounds for dismissal Limits conduct to collusive tendering, fraud, benefit from payment or evading tax <i>Full definition provided below</i>

¹⁹ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

Official misconduct	Includes in definition of corrupt conduct	Removed in 2014 amendments
Third parties	Includes third parties	Includes third parties
General functions	Corruption prevention, investigating and exposing corruption	Crime, corruption prevention and exposure
Public hearings	Under 1988 Act, the Commission could conduct public hearings if it deemed them in the public interest. The 2016 Act requires agreement between Assistant Commissioner and Chief Commissioner to hold a public hearing, and procedural guidelines to be tabled in Parliament	General rule that hearings are not open to the public
Ability to undertake investigations	Decision at commissions discretion, with final decision with Commissioner	Requires 'evidence' of criminal corruption required before investigation ²⁰
Complaints	Anyone can make one	Anyone can make one
Parliamentary committee	Bipartisan committee	Bipartisan committee

Source: Queensland Crime and Corruption Act 2011, Queensland Crime and Misconduct and Other Legislation Amendment Act 2014, Queensland Crime and Corruption Amendment Act 2015; NSW Independent Commission Against Corruption Act 1988, NSW Independent Commission Against Corruption Amendment Act 2016

KEY POINTS OF DIFFERENCE

As seen in the above table, there are a number of key differences in the design of the Queensland and NSW anti-corruption bodies, namely in the definition and threshold of corrupt conduct and the conduct of public hearings. The key differences are expanded upon below.

²⁰ As demonstrated by CCC response to Acland State 3 allegation, Queensland CCC, *Annual Report 2015-16* pg 42

Definition of corrupt conduct

Official misconduct is a critical term in the NSW ICAC Act that allows the NSW ICAC to pursue cases of breach of trust and fraud in public office. Many cases of public interest have been investigated under this term, which covers cases of breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition.²¹ The *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) removes this term from the definition of corrupt conduct applicable to the Crime and Corruption Commission.²² The incoming Palaszczuk Government made an election promise in January 2015 to the Queensland public to reintroduce this function, but as described on page 7 of this report the 2017 amendments instead limit the definition of corrupt conduct.

The NSW ICAC definition is much stronger in other areas also. The key section of the definition from the 1988 Act is provided below, with 2015 additions and emphasis on key strengths added:

(1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, *or*
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, *or*
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, *or*
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

- (a) *official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),*
- (b) *bribery,*
- (c) *blackmail,*
- (d) *obtaining or offering secret commissions,*
- (e) *fraud,*
- (f) *theft,*
- (g) *perverting the course of justice,*
- (h) *embezzlement,*
- (i) *election bribery,*
- (j) *election funding offences,*
- (k) *election fraud,*

²¹ *New South Wales Independent Commission Against Corruption Act 1988*

²² *Queensland Crime and Misconduct and Other Legislation Amendment Act 2014*

- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,
- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.²³

2015 additions:

- (a) collusive tendering;
- (b) fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
- (c) dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- (d) defrauding the revenue;
- (e) fraudulently obtaining or retaining employment as a public official

In contrast the Queensland definition is weaker in key areas, notably the list of conduct pertaining to corrupt conduct. The section from the Act is below, with proposed 2017 amendments and emphasis on the key weaknesses added:

- (1) Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
 - (i) a unit of public administration; or
 - (ii) a person holding an appointment; *and*
 - (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—
 - (i) is not honest or is not impartial; or
 - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment;
- (2) Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) *impairs, or could impair, public confidence in public administration; and*
 - (b) *involves, or could involve, any of the following—*
 - (i) *collusive tendering;*
 - (ii) *fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—*

²³ *New South Wales Independent Commission Against Corruption Act 1988*

- (A) protecting health or safety of persons;
- (B) protecting the environment;
- (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;
- (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
- (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
- (v) fraudulently obtaining or retaining an appointment;²⁴

Threshold of corrupt conduct investigations

Each Act has a separate threshold to what pertains to corrupt conduct. The *Crime and Corruption 2001 Act* (QLD) states that conduct will only be seen as corrupt if it would, if proven, lead to a criminal offence or grounds for dismissal.²⁵ In its application, the interpretation of this by the CCC is narrowed to focus on criminal offences, raising a concern that the CCC is focussing on cases that could be pursued by the judicial system, rather than fulfilling its role as investigating and exposing corruption. This is demonstrated by the CCC's decision not to investigate certain cases stating 'the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.'²⁶ This response also places the onus of evidence on the complainant. It is further demonstrated on the CCC website in its statement that 'the performance of the official duties of a person elected to office could not amount to corrupt conduct unless the conduct would, if proven, amount to a criminal offence.'²⁷ The NSW ICAC Acts makes the same statement regarding criminal corruption but with an important addition – conduct can be seen as corrupt if it would result in a disciplinary offence. Disciplinary offence is defined as: any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.²⁸

Public hearings

The Queensland CCC Act states that 'in general hearings will not be public'. This contrasts with the NSW ICAC Act that says that the Commission can decide to hold a public hearing if in the public interest. In the interpretation and application of the legislation, the Queensland CCC has not held a public hearing since 2009, whereas the

²⁴ *Qld Crime and Corruption Act 2001 and Crime and Corruption Amendment Bill 201*

²⁵ *Queensland Crime and Corruption Act 2011*

²⁶ Queensland CCC, *Annual Report 2015-16* pg 42

²⁷ CCC, *What the CCC investigates*, accessed 9th March 2017,

<http://www.ccc.qld.gov.au/corruption/what-the-ccc-investigates>

²⁸ *New South Wales Independent Commission Against Corruption Act 1988*

NSW ICAC holds 5-10 each year.²⁹ As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the act of hiding hearings from public view threatens the proper function of the commission. The other mechanism of exposing corruption is through reports. The NSW ICAC publishes comprehensive and easily accessible reports on its investigations on its website. There are no investigation reports on the CCC website.

²⁹ See <http://www.ccc.qld.gov.au/corruption/past-investigations/cmcc-public-hearings/cmcc-public-hearings> and NSW ICAC Results table page 7

Comparing impact - do they bite?

Figure 2 and Figure 3 below show results from each body over the period from 1st July 2012 to 30th June 2016.

This data has been compiled from NSW ICAC and Queensland CCC Annual Reports. The limited availability of results data from the Queensland CCC makes the analysis difficult. Another difficulty arises in that each commission measures slightly different factors, for example the Queensland CCC provides the number of people against whom disciplinary action was *recommended*, whereas the NSW ICAC measures the number of people against whom disciplinary action was *commenced*. For this reason we have focussed on the common elements of 'number of people subject to corrupt conduct findings' and 'number of public inquiries' as a basis for our analysis. The other data on NSW ICAC is provided for readers' interest.

The available data shows that the NSW ICAC is dramatically more effective in exposing corruption. With 5-10 public inquiries each year, NSW ICAC delivered corrupt conduct findings against 123 people over the observed period. The Queensland CCC held no public inquiries, and delivered corrupt conduct findings against 37 people.

Over the observed period, NSW ICAC had its strongest years in 2012-13 and 2013-14 with 56 and 41 people subject to serious corrupt conduct findings in those years.

The data also shows that these bodies have suffered in effectiveness as a result of recent amendments and political and judicial challenges. In 2014-15, the year the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) came into effect, the Queensland CCC received 1,534 less complaints than the year previous. It also finalised 16 less investigations than 2013-14, and recommended disciplinary action against only 6 people – 22 less than the year before.

In 2015-16 the Cunneen challenge against the NSW ICAC's jurisdiction began in the High Court. ICAC found 9 people subject to corrupt conduct findings that year, 8 less than the year before, and 24 less than 2013-14. Then Commissioner Megan Latham states in the Annual Report that 'The Commission commenced 10 full investigations this year; four fewer than last year, which reflects the interruption to the Commission's functions brought about by the uncertainty over jurisdiction.'³⁰ The results of the 2016 amendment act are yet to be seen.

³⁰ NSW ICAC, *Commissioners Foreword*, NSW ICAC Annual Report 2015-16

Figure 2: New South Wales ICAC results.

Measure	2015—16	2014—15	2013—14	2012—2013
Matters received	2,436	3,146	3,386	2,930
Preliminary investigations commenced	41	42	43	71
Full investigations commenced	10	14	10	22
Number of public inquiries	6	7	9	6
Number of public inquiry days	48	64	84	108
Number of compulsory examinations	65	127	203	257
Number of persons subject to serious corrupt conduct findings	9	17	41	56
Number of persons prosecuted	12	8	11	19
Number of persons against whom disciplinary action was <i>commenced</i>	0	1	3	4
Number of investigations finalized	58	51	63	87

Source: NSW ICAC Annual Reports 2012-2016.

Figure 3: Queensland CCC results.

Measure	2015—16	2014—15	2013—14	2012—2013
Complaints received	2974	2347	3881	4494
Number of people subject to corrupt findings	14	8	8	7
Number of people against whom disciplinary action was <i>recommended</i>	26	6	28	37
Investigations finalised	57	45	61	87
Number of public inquiries	0	0	0	0

Source: Queensland CCC Annual Reports 2012-2016.

What the data does not show is the content or topic of the investigations. For this reason case studies are provided below, showing that as well as delivering more findings of corrupt conduct the NSW ICAC has tackled much larger and systemic issues, often involving a complex web of people including parliamentarians. The case studies below show CCC cases such as academic research fraud result in the behaviour of one or two people being investigated, whereas the ICAC cases involve true 'systemic' corruption of networks within the public sector. The breakdown of allegations made to the Queensland CCC is indicative of this design flaw, with only 24 out of 6736 allegations made in 2015-16 being made on the conduct of parliamentarians, or 0.36%.³¹

The data and case studies also do not cover the scale of these investigations. As an indication, the NSW ICAC 2012-13 Annual Report states that 'in the Operation Jasper segment of the public inquiry, 86 witnesses gave evidence, and there were more than 5,000 pages of transcript generated over the 45 days of the inquiry. The Operation Acacia segment ran for 37 days, 52 witnesses gave evidence, and there were over 3,500 pages of transcript produced.'³²

³¹ CCC Corruption Allegations Data Dashboard 2015-16, <http://www.ccc.qld.gov.au/data-visualisation>

³² NSW ICAC, *Annual Report 2012-13*

Case Studies

NSW ICAC CASE STUDIES

Operation Spicer

The NSW ICAC investigated allegations that during the 2011 state election, members of the NSW Liberal Party received political donations that were undeclared under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Some donations were over the legislated cap, and others were solicited from banned donors including property developers. It also found that donations were channelled through associated entities including the Free Enterprise Foundation.³³

Operation Credo

The NSW ICAC is investigating allegations that people with financial interest in the company Australia Water Holdings were attempting to influence a lucrative deal with Sydney Water Corporation. Conduct includes claiming expenses from other business pursuits in a SWC claim, drawing from funds allocated to other purposes, and withholding information regarding Australia Water Holdings true financial position.³⁴

Operation Acacia and Jasper

The NSW ICAC conducted two investigations concerning the issuing of mining leases and licences involving former NSW Government ministers. Operation Jasper found that then Resources Minister Ian Macdonald accepted personal benefit from the Obeid family in return for decisions regarding the EOI process for mining licences and leases covering areas owned by the Obeid's. This case involved a network of people involved in corrupt conduct for financial gain.³⁵ Operation Acacia found that Macdonald also

³³ *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

³⁴ *Operation Credo*, NSW ICAC, <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

³⁵ NSW ICAC, *Annual Report 2012-13*

acted corruptly in the allocation of a mining licence to Dowles Creek Mining Pty Ltd, run by his 'mate' John Maitland, without tender and against departmental advice.³⁶

QUEENSLAND CCC CASE STUDIES

Timesheet fraud

The Queensland CCC investigated allegations of fraud in timesheets one Queensland Health employee. The employee was found guilty of dishonestly claiming \$40,000 of overtime.³⁷

Driver licence fraud

The Queensland CCC investigated allegations of fraudulent issuing and upgrading of driver licences by an employee of the Department of Transport. The employee was found guilty of fraudulently issuing or upgrading 57 licences for personal profit.³⁸

Academic research fraud

The Queensland CCC investigated allegations that a University of Queensland academic had fabricated research findings. The academic was alleged of publishing a research article based on this false data, and subsequently accepting research grant funding based on this article.³⁹

³⁶ Nicholls, November 2014, *Former Labor Minister Ian Macdonald prosecuted over Doyles Creek mine deal*, <http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html>

³⁷ Queensland CCC, *Past investigations – Timesheet fraud leads to criminal conviction*, <http://www.ccc.qld.gov.au/corruption/past-investigations/timesheet-fraud-leads-to-criminal-conviction>

³⁸ Queensland CCC, *Past investigations - CCC investigation into driver licence fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/ccc-investigation-into-driver-licence-fraud-leads-to-multiple-arrests>

³⁹ Queensland CCC, *Past investigations – Research fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/research-fraud>

Cases the CCC did not investigate

Acland Stage 3 – alleged improper influence in decision making through political donations

An allegation was made to the CCC that New Hope Coal, the proponents of the Acland Stage 3 mine expansion, influenced the decision by the Newman Government to approve the expansion, after pledging pre-election not to approve it. The allegation included evidence that New Hope made significant political donations, gifts to senior government staff, and had a high level of access to senior LNP figures.⁴⁰ In stating its reason not to investigate, the CCC states in its 2015-16 Annual Report that ‘the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.’⁴¹

Sibelco – alleged improper influence in decision making through political donations

An allegation was made to the CCC that Sibelco, a sand mining company operating on Stradbroke Island, influenced the decision by the Newman Government to extend the legislated closure of the sand mine from 2019 to 2035. The allegation included evidence of a \$91,000 mail out in Campbell Newman’s electorate prior to the election, a \$1 million pre-election campaign by Roland Pty Ltd paid for Sibelco, and a high level of access to senior LNP figures before and after the election. In responding to the allegation, the CCC stated ‘Our assessment is that while the allegation you have raised may, if proved, amount to suspected corrupt conduct, the assertion of favourable treatment for Sibelco and a connection between the donations by Sibelco and the recent legislative amendments is speculative.’⁴²

⁴⁰ ABC, *No evidence donations swayed former Newman government’s Acland mine decision, CCC says*, <http://www.abc.net.au/news/2015-12-05/ccc-clears-newman-government-donations-acland-mine/7004322>

⁴¹ Queensland CCC, *Annual Report 2015-16* pg 42

⁴² See Moore, 2014, *CCC says no inquiry into 2012 \$91,000 Sibelco sandmining ads*, <http://www.brisbanetimes.com.au/queensland/ccc-says-no-inquiry-into-2012-91000-sibelco-sandmining-ads-20141117-11ojor.html>, and The Australia Institute, 2016, *Greasing the Wheels*, <http://www.tai.org.au/content/greasing-wheels> pg 16

Discussion and Recommendations

The Queensland CCC has design flaws that make it dramatically less effective than the NSW ICAC.

A high threshold of requiring *evidence of criminal* corrupt conduct before commencing investigations undermines the purpose of the commission – to provide an independent investigative body separate to the courts to investigate and expose corruption. If a person had enough evidence to prove criminal conduct had occurred, the State could be expected to bring charges in a court of law.

The exclusion of official misconduct from the Crime and Misconduct Commission in 2014, and the creation of the Queensland CCC, severely limited the scope of corrupt conduct cases the Queensland CCC could investigate within the public service. Many corrupt conduct cases that the public expect an anti-corruption commissions to investigate are covered by this term, including breach of trust by a public official and fraud by a public official or parliamentarian in office.

An anti-corruption commission's main function is to expose corruption. By holding inquiries privately, and making its investigation reports hard to access, the Queensland CCC fails to provide the public with the opportunity to scrutinise the public sector and government.

The Palaszczuk Government made pre-election promises to strengthen the integrity of the Queensland CCC, implement the Fitzgerald Principles, and commence an inquiry into political donations with the powers of Royal Commission. These promises, particularly the reintroduction of the official misconduct role and the inquiry into political donations, have not been met. In fact the 2017 amendments to the CCC, if passed, would limit the definition of corrupt conduct and weaken the CCC.

Recommendation #1: The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, and adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct.

The NSW ICAC's effectiveness suffered from questions arising in 2015 about its jurisdiction. The impact of the 2016 amendments has yet to be seen, but it can be presumed that the challenge to its governance structures and independence of the Commissioners will limit its ability to meet its prior success record. Statements by

former Commissioners David Ipp, Anthony Whealy and former DPP Nicholas Cowdery support this assumption.

Recommendation #2: The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

In the design of a federal ICAC, the lived experience of state anti-corruption commissions should serve as evidence of the effectiveness of certain models and legislative design.

Recommendation #3: The federal government should create a federal ICAC based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.

Annexure 10 – The Australia Institute (2016) Greasing the Wheels - The systemic weaknesses that allow undue influence by mining companies on government: a QLD case study



Greasing the Wheels

The systemic weaknesses that allow undue influence by mining companies on government: a QLD case study

Hannah Aulby
Mark Ogge
June 2016



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What the Experts Say

“There is a disease at the heart of Australia’s democracy – money politics. It has resulted from a toxic combination of laissez-faire regulation of election funding and lobbying, and laissez-faire attitudes amongst the political elite. The result has been the undermining of Australia’s democracy through secrecy, acute risks of corruption, systematic conflicts of interest and a disproportionate role for monied interests in the political process.

“By documenting how Queensland mining companies use money to influence government decision-making in order to advance their commercial interests - at times at odds with the interest of the broader community - the report shines a powerful spotlight on the corrosive role of money in politics. The poll findings accompanying the report further highlight the gap between prevailing community sentiment in favour of more robust regulation of political money and politicians who insist on ‘business as usual’.

“Australia’s democracy deserves better than the status quo.”

**Joo Cheong Tham,
Associate Professor, Melbourne Law School**

“This report shows that much has to be done to ensure that the process of government in Queensland operates for the good of Queensland and not for the private interests of the mining industry.

“The current Labor government must, as the report urges, carry out its own promises to abide by the Fitzgerald principles and act to bring openness and accountability to the processes of government in Queensland. It has much to do.

“Urgent steps include the need for an open commission of inquiry into the way in which the mining industry has influenced government decision making in its favour; an increase in the powers of the CCC to investigate all forms of private influence on government decision-making; and closure of the massive loopholes in the system of regulation of the lobbying of public service and government officials by private interests including the mining industry.

“A failure to act will ensure a return to the bad old days of the Newman government, sooner rather than later.”

Stephen Keim SC

"In any decision making process, fairness demands that all interested parties are treated equally. The community is fully aware, as are the major political parties, that pressuring interested parties to pay for access to a decision maker is anathema to this principle. Take the example of a controversial property or mining development. What is the perception of a reasonable person if the well-resourced applicant pays to sup with the decision maker whilst the objector is not only not invited but cannot afford the tariff imposed. What is on offer? As former Minister, now prisoner, Nuttall now famously said at his trial: 'Nothing is for nothing'

"Not only is it wrong from the point of view of perceived and actual fairness, it is deeply flawed because it wilfully and arrogantly disregards a fundamental principle of our democracy, that those elected to govern must use the power entrusted to them for the benefit of the community. Simply put, the attributes of Government have been temporarily reposed in those elected. These attributes are not their property and are not for sale to augment the coffers of sectional interest in the form of a political part."

Gary Crooke QC,

Former Council assisting Fitzgerald Inquiry and former QLD Integrity Commissioner.

[Speaking specifically on "cash for access" fundraising by political parties.]

"This is an important study that has done the detailed work to demonstrate how political donations corrode our democracy. It demonstrates that money doesn't just buy access, it buys outcomes.

"The report calls for improvements to the disclosure system in Queensland. However, because of past corruption scandals the system in Queensland is actually one of the best in Australia.

"It is almost impossible to do a study like this on the federal government because the lobbying system is shrouded in secrecy. At the federal level the secrecy is so bad it is almost impossible to uncover corruption.

"The report demonstrates why we need to reform in Queensland, and a drastic overhaul of the political donations culture in Canberra.

" We need uniform donations and disclosure laws across all jurisdictions so that donors cannot jurisdiction shop.

"We need real time disclosure of payments, and good data on who the payments are from, and what issues before the Parliament they have interests in. The job the ACF has done here is enormously labor intensive and it is beyond the resources of most of our media outlets. If we want transparency in our political system, the lobbying information needs to be collated and provided in an accessible form.

"We need to have a public debate about how our political parties should be funded, whether companies should be allowed to donate, and whether there should be caps on donations."

Dr Belinda Edwards,

International Political Studies Program, School of Humanities and Social Sciences UNSW

“In Greasing the Wheels, the ease at which money can buy privileged access to political decision makers in Queensland is put on display. In a series of case studies, we see how mining companies have been able to gain political favours from both major parties by taking advantage of relaxed rules around donation and gifts, cooling-off periods for senior public servants, and the regulation of lobbyists. The recommendations in this report provide a guide to how to improve governance in Queensland; to ensure that money cannot buy political favours, and that the government is equally accountable to all members of the community”

Cameron Murray

Economist, University of Queensland

Executive Summary

Between 2010 and 2015 the Liberal Party of Australia and the Queensland Liberal National Party accepted over 2 million dollars in political donations from mining companies seeking approval for six highly controversial mining projects in Queensland.

While these companies sought approval and legislative changes primarily from the then Liberal National Party Queensland Government, most of the money donated by these companies went to the Liberal Party of Australia. The Queensland Liberal National Party accepted \$308,000 dollars from companies associated with these projects, while the Liberal Party of Australia accepted \$1.75 million.

Although we know that over \$3 million dollars was transferred from the Liberal Party of Australia to the Queensland Liberal National Party over this period, a lack of disclosure and transparency makes it impossible to discern the origin of these donations.

At least one of the companies examined in this report made a substantial donation to the highly controversial Free Enterprise Foundation, the opaque Federal Liberal Party fundraising body that came under the scrutiny of the NSW Independent Commission Against Corruption ICAC for allegedly concealing the origin of illegal political donations to the New South Wales Liberal Party.

These mining projects all gained extraordinary access to government ministers and extraordinary outcomes. These outcomes included legislative changes to remove environmental protections, federal and state government approval of projects despite serious environmental concerns, and even retrospective approval of illegal mining activities.

The commendable commitment by the Queensland government to institute real time disclosure of political donations can easily be circumvented if donations are made to federal political parties who then transfer the money back to the state branches without disclosing the origin on those donations.

Political donations are the tip of the iceberg of mining industry influence on our democratic process. As well as political donations, this report documents the influence of the mining industry through 'cash for access' schemes, third party fundraising vehicles, private meetings, lobbyists, gifts and the revolving door between the government, bureaucracy and the mining companies they are responsible for regulating. It also highlights the extraordinary lack of transparency in lobbying, with very few lobbyist in Queensland even covered by the lobbying register.

Although this report focuses on controversial cases during the Newman Government period, there have been few changes to the system to prevent this undue influence continuing under the Palaszczuk Government. In fact, ministerial diaries reveal that the extraordinary level of political access enjoyed by companies such as Adani continues despite the change in government.¹

The Palaszczuk Government has held at least 145 meetings with the mining and resources industry in their first year of government² and rejected independent recommendations to extend the regulation of lobbyists to cover in-house lobbyists and industry associations.³ Minister for Natural Resources and Mines, Anthony Lynham, met 87 times with the mining and resources industry in 2015, which is 50% more than his predecessor Minister Andrew Cripps during 2013.⁴ And these are just the meetings we know of. Meetings between mining industry executives and high level ministerial and departmental staff are not publicly disclosed.

There is concern that these meetings, as well as the political donations, gifts and the rotation of employees between government and industry are impacting the independence of government decision making in relation to mining.

The provision of gifts and benefits from the mining industry has also continued, with the relevant gifts and benefits register indicating that individuals from the Gasfields Commission and Department of Natural Resources and Mines enjoyed gifts such as

¹ Right to Information (RTI) request submitted 22 June 2015, to the Queensland Treasury Corporation (QTC) requesting: 1. any documents addressing funding or finance options relating to the port at Abbot Point or any of Adani's proposed projects in Queensland, 2. any documents relating to the financial viability of any Adani development proposals in Queensland, for the period "January 2014 to the present".

² The Queensland Cabinet and Ministerial Directory, Ministerial Diaries, accessed 1st March 2016, <http://www.cabinet.qld.gov.au/ministers/diaries.aspx>

³ Queensland Government Response to the Inquiry into the Report on the Strategic Review of the functions of the Integrity Commission, December 2015, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T273.pdf>

⁴ See The Queensland Cabinet and Ministerial Directory, Ministerial Diaries, Anthony Lynham 2015, <http://www.cabinet.qld.gov.au/ministers/diaries/anthony-lynham.aspx> and Diaries of the former government, Andrew Cripps 2013, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/andrew-cripps.aspx>, accessed 1st March 2016

free tickets to the rugby, ballet and the orchestra in 2015 from the very companies that their departments/authorities are charged with independently overseeing.⁵

At the same time as continuing far-reaching access for the mining industry, the Palaszczuk Government has missed out on opportunities to act positively to address the underlying problems by rejecting independent recommendations to extend the regulation of lobbyists to cover in-house lobbyists and industry associations⁶. Indeed the reported budget of the mining industry association in Queensland, the Queensland Resources Council, of \$22 million dollars in 2012 -2014[1] indicates that huge amounts of resources are being brought to bear to influence state and federal governments. It is clear that the industry lobbying association is worthy of closer scrutiny⁷.

In addition, a number of important pre-election promises that were made in relation to mining issues have not been implemented.

To prevent the continuing concern of undue influence of the mining industry on state and federal governments, urgent changes are needed. We recommend that:

1. Thorough reform of Commonwealth political donations laws is undertaken including:
 - A ban on political donations from mining companies.
 - Real time disclosure of all political donations.
 - Full transparency of the origin of political donations from federal to state political parties.
 - Lowering of the disclosure threshold for political donations to one thousand dollars.
 - The publication of ministerial diaries that identify the meetings of ministers, ministerial staff and departmental staff with lobbyists and including the agendas of those meetings.
 - Improving the transparency of the AEC database including clear identification of any business interests currently before government of those making political donations, and linking political donations to

⁵ See, for example, Gasfields Commission Queensland, Reportable Gifts and Benefits Register 1st April to 30th June 2015, <http://www.gasfieldscommissionqld.org.au/resources/gasfields/reports/gifts-and-benefits-register-q4-2014-15.pdf>

⁶ Queensland Government Response to the Inquiry into the Report on the Strategic Review of the functions of the Integrity Commission, December 2015, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T273.pdf>

⁷ <http://www.canberratimes.com.au/comment/big-coal-flexes-100-million-pr-muscle-on-soft-sell-20140506-zr5kq.html>

ministerial meetings and business interests currently before government.

2. A Special Commission of Inquiry in Queensland with public hearings is conducted with a wide remit to investigate the influence of the mining industry on public decision-making in Qld, as well as investigating links, if any, between political donations and contributions, and tenders, contracts and approvals granted to the mining and gas industry.
3. Improvements are made to the regulation of lobbyists in Queensland and federally, to include in-house lobbyists and industry associations, and to increase transparency to ensure that agendas, minutes and notes from such meetings are placed on the public record. There should also be greater transparency in relation to the content of Ministerial meetings.
4. Stricter controls are placed on post-separation employment and on the provision of gifts and benefits in Queensland and federally.
5. A review of Queensland's political donations and contribution laws is undertaken, with immediate amendments to the laws to require real time disclosure, to ban donations from the mining industry, restrict 'cash for access' programs and to place strict caps on all other donations.
6. The powers of Queensland's Crime and Corruption Commission are expanded to encompass official misconduct, to include the provision of advice on corruption prevention, and to open the CCC process up via public hearings, to ensure a stronger watchdog in the long term.

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Introduction

This report reviews the scope of mining industry influence on successive Queensland Governments, and provides a systematic assessment of the scale and nature of political donations and contributions, industry access and lobbying, the provision of gifts and benefits and the rotation of employees between the mining industry and the public sector.

A number of case studies are provided which highlight the concerns arising in the broader community as to whether decision-making on mining and unconventional gas projects are being unduly influenced by the industry. These case studies focus on political donations and access, with outlines of the impacts of the provision of gifts and benefits and the rotation of employees between the mining industry and the public sector given at the end of the report. The report suggests that there are systemic weaknesses in governance impacting decision making in relation to the mining industry.

The ultimate outcome of mining and gas projects approved under these circumstances includes negative impacts on the economy, communities and harm to the environment. The mining projects highlighted in the case studies below will lead to various poor outcomes for Queenslanders including drawdown in important groundwater aquifers, clearing of strategic cropping land, air pollution with fine particle pollution and negative impacts on other industries such as agriculture and tourism. It can also lead to perverse economic outcomes and a waste of taxpayer's money. Over the six years to 2014 around \$9 billion of Queensland taxpayer's money was spent on subsidies to the mining industry.⁸

⁸ The Australia Institute, June 2014, 'Mining the Age of Entitlement', <http://www.tai.org.au/sites/default/files/Mining%20the%20age%20of%20entitlement.pdf>

Political donations and access

The case studies contained in this report investigate 6 mining companies who made political donations and contributions to the Liberal and National parties or incurred third party electoral expenditure and had a high level of meetings with key Ministers, during the term of the Newman Government (2012-2015). They document records of legislation and approvals enacted by government in the company's favour, as well as cases of poor regulatory oversight of mining projects involving these companies.

The detailed examination of these cases reveals systematic failures in accountability and transparency of government dealings with mining companies which inevitably leads to perceptions of bias and undue influence.

We believe this can only be described as 'special treatment' from the Newman Government. However, it is notable that the advent of a new ALP Government in Qld in 2015, has changed little in regard to many of the case studies contained in this report. Despite making a number of commitments in relation to some of these matters, there has been little action in terms of the way most of these mining projects have been handled by the incoming government.

Of particular concern in relation to the Newman Government and these case studies is the scale of political donations and contributions that flowed to the LNP parties at a state and federal level from mining and gas companies during their term. A scan of donations to the Queensland LNP since the 2010/11 financial year reveals more than \$1 million in-kind support, subscriptions and direct cash donations from mining companies or prominent mining tycoons and individuals during the term of the Newman Government⁹. Over this same time period, the mining industry also donated nearly \$3 million to the Liberal Party of Australia.¹⁰ This includes donations from companies that were pursuing highly controversial projects, such as New Hope Coal's Acland Stage 3 mine expansion¹¹.

⁹ Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

¹⁰ Australian Electoral Commission, Periodic Disclosures,
<http://periodicdisclosures.aec.gov.au/Default.aspx>

¹¹ ABC, 10th May 2014, 'Acland Coal Mine: Company seeking mine expansion donated \$700,000 to the LNP, federal Liberal party,' accessed 2nd March 2016, <http://www.abc.net.au/news/2014-05-09/acland-coal-mine-liberal-party-donations/5440184>

It could reasonably be assumed by the community that the high level of political access and large flow of donations from the mining industry into the LNP could have caused a lack of independence in decision-making by the Newman Government about mining and environment policy. Whilst the Qld ALP also accepts political donations from the mining industry, the scale of contributions to the LNP is far greater than it appears to have been to the ALP from 2011 to 2015. The Qld LNP received \$1,140,734¹² in donations from the mining industry over this period and the Liberal Party of Australia received nearly \$3 million¹³, whereas the Qld ALP accepted \$91,410¹⁴ and the Federal ALP accepted \$1,266,608 over the period¹⁵.

BEACH ENERGY LTD (BEACH ENERGY)

Donations and Contributions

Electoral Commission of Queensland annual disclosure returns¹⁶ reveal the following donations and contributions to the Liberal National Party of Queensland by Beach Energy.

Received from	Return year	Amount
Beach Energy	2011/12	\$55,000
Beach Energy	2012/13	\$55,800
Beach Energy	2013/14	\$22,000
Beach Energy	2014/15	\$60,500
	Total	\$193,300

¹² Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

¹³ Australian Electoral Commission, Periodic Disclosures,
<http://periodicdisclosures.aec.gov.au/Default.aspx>

¹⁴ Electoral Commission of Queensland annual disclosure returns 2011-2015,
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

¹⁵ Australian Electoral Commission, Periodic Disclosures,
<http://periodicdisclosures.aec.gov.au/Default.aspx>

¹⁶ Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

Access

Ministerial diaries reveal the following high level access by Beach Energy to the Newman Government¹⁷. It is reasonable to assume that the meetings listed below represent only a portion of the access that Beach Energy obtained. For example, there are no ministerial diary records from 2012. Furthermore, due to the weak rules on lobbying in Queensland, any meetings with government departments go unrecorded if it is the company itself, rather than a third party lobbyist, who is participating. Therefore, the full extent of access by Beach Energy is unknown.

Ministerial Diary Entry	Meeting With	Date	Purpose	Reference
Andrew Powell, Minister for Environment and Heritage Protection	Consultant, GR Solutions, Senior Environmental Officer and Manager, Public Relations, Beach Energy	2 July 2013	'To discuss Beach Energy operations (teleconference)'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/july-2013/powell-diary-july-2013.pdf
Premier Campbell Newman	Beach Energy and other QForum members	13 November 2013	'QForum Lunch Luncheon'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/premier-diary-november-2013.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Piper Alderman, Beach Energy, Department Staff and Ministerial Staff	13 November 2013	Oil and Gas Industry South West Qld	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/cripps-diary-november-2013.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Beach Energy and others	17 February 2014	Ministerial Advisory Committee on Exploration	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/february-2014/cripps-diary-february-2014.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Beach Energy, Department Staff and Ministerial Staff	18 February 2014	Cooper Basin Trip	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/february-2014/cripps-diary-february-2014.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Managing Director and Investor Relations, Beach Energy, and other businesses	10 July 2014	'Corporate observer meetings to discuss portfolio issues'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/july-2014/powell-diary-july-2014.pdf
Jeff Seeney, Minister for State Development, Infrastructure and Planning	Andrew Cripps, Minister for Natural Resources and Mines	25 July 2013	Western Rivers meeting	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/july-2013/seeney-diary-july-2013.pdf

¹⁷ See table above, or Diaries of the former Government, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/diaries.aspx>

Changes to legal and/or policy environment that benefited Beach Energy

The *Wild Rivers Act 2005* (Qld) (Wild Rivers Act) was passed by the Queensland government in 2005. It was designed to protect the State's natural and hydrologically intact river systems. In the Channel Country, protection was provided by formal Wild River Declarations that were made for the Diamantina, Georgina and Cooper Creek River Basins¹⁸. The declarations mapped the Basins into a series of zones, to which different levels of protection were applied.

These declarations provided a number of measures to limit unconventional gas mining in certain zones, most notably:

1. Allowing only limited petroleum activities within areas mapped as high preservation or special floodplain management areas
2. Prohibiting petroleum activities within 200m of watercourses and wetlands in areas mapped as high preservation areas or special floodplain management areas
3. Prohibiting petroleum activities within 100m of nominated waterways
4. Placing additional restrictions on pipelines or flowlines in high preservation areas or special floodplain management areas

Beach Energy holds an [Authority To Prospect](#) for unconventional gas in the Cooper Basin in Queensland¹⁹, in areas that were covered by the Wild River Declarations. The Wild Rivers Act and declarations represented a significant obstacle to Beach Energy plans for unconventional gas production in the Channel Country.

During the 2012 Queensland election campaign, the Liberal National Party committed to revoke Wild Rivers Declarations for Cape York, but did not make any such commitments in relation to Wild Rivers Declarations for the Channel Country. In a February 2012 media release, the Shadow Minister for Environment instead merely stated that '*...with the Western Rivers we will work with locals and other stakeholders about appropriate environmental protections for their region*'²⁰. The understanding in the community was certainly that protections from petroleum activities which existed under the Wild Rivers Declarations would continue, and there had been no promises by the LNP to reduce such protections.

¹⁸ DERM. 2011. Georgina and Diamantina Basins Wild River Declaration; DERM. 2011. Cooper Creek Basin Wild River Declaration

¹⁹ ATP 855

²⁰ <http://www.andrewpowell.com.au/powell-media-release-lnp-will-deliver-better-wild-river-outcomes-17-february-2012/>

On coming into office, Minister Cripps established a Western Rivers Advisory Panel (WRAP) to seek community input into the development of 'alternative strategies' for the protection of the Western Rivers. The WRAP met four times. The WRAP included Local Councils, agricultural groups, NRM bodies, an Indigenous Traditional Owner representative, other stakeholders and the oil and gas industry. The final report of the WRAP, provided to the Minister in 2013, supported substantial controls on unconventional gas mining in the region²¹.

For example, all of the WRAP members (except for the Resources Sector and 2 others) '*agreed that petroleum and gas should be excluded from in-stream areas and well-off watercourses*'. All of the WRAP members (except for the Resources Sector and 1 other) '*support a buffer zone for petroleum and gas around rivers and floodplains*'. Furthermore, a majority agreed that '*alternative strategies for the protection of natural assets and values in the Basin should take precedence over petroleum and gas decisions*' and that decisions made for the protection of natural assets '*should not be able to be over-ridden by the Coordinator General*'.

Beach Energy, however, had an additional direct line to the highest level of government. Outside the WRAP process, they were meeting with the Premier, the Minister for Environment and Heritage, and the Minister for Natural Resources and Mines²². On the 29th November 2013, just two weeks after his latest meeting with Beach Energy, the then Queensland Minister for Environment and Heritage Protection issued a public notice announcing the Qld Governments intention to revoke the Wild River Declarations for the Cooper Creek, Diamantina and Georgina River Basins²³.

In March 2014, just a month after the Minister for Natural Resources and Mines had visited the Cooper Basin with Beach Energy²⁴, a new Regional Planning Interests Act (and associated regulation) was progressed through the Qld Parliament²⁵. The Regional Planning Interests Bill identifies Strategic Environmental Areas in the Channel Country region²⁶, but does very little to protect them. None of the constraints on unconventional gas mining that were contained in the Wild Rivers Declarations applied under the new regime. There are 'unacceptable uses' that apply to Strategic

²¹ https://www.dnrm.qld.gov.au/data/assets/pdf_file/0015/82500/wrap-report.pdf

²² See table above, or Diaries of the former Government, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/diaries.aspx>

²³ Referred to here http://wra.nationbuilder.com/tags/newman_government

²⁴ Diaries of the former Government, Andrew Cripps, February 2014, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/february-2014/cripps-diary-february-2014.pdf>

²⁵ Regional Planning Interests Act 2014, Queensland Parliament, accessed 2nd March 2016, <https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC011.pdf>

²⁶ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RegionPlanIntR14.pdf>

Environmental Areas in the Regional Planning Interests Regulation, but unconventional gas mining is not listed as one of those unacceptable uses²⁷.

Finally, on the 5th August 2014, the Wild Rivers Act and Wild Rivers Declarations were repealed by the Qld Parliament, by virtue of the passage of the *State Development and Infrastructure Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014* (Qld). It seems that the recommendations of the community based WRAP process had lost out to the influence wielded by the unconventional gas industry via donations and special access to decision makers.

In opposition, the Qld ALP made a number of commitments to protect pristine rivers, including those of the Channel Country. In letters to stakeholders the ALP said that *“Labor opposed the repeal of the Wild Rivers Act 2005 and we are committed to protecting pristine rivers with consent of traditional owners”*²⁸. Shadow Minister for Environment and Heritage Protection Jackie Trad also stated that Labor was committed to *‘Working with traditional owners, stakeholders and communities to legislate protections for Queensland's pristine rivers from large-scale industrial operations’*²⁹.

However, in Government, the ALP has not yet taken any action to protect Channel Country rivers and have instead moved to open up more areas in the region to the threat of unconventional gas mining, with the release of 11,000 square kilometres for expressions of interest for petroleum exploration³⁰.

The impacts of the revocation of Wild Rivers declarations in the Channel Country and release of additional petroleum exploration areas has resulted in an increased risk of negative impacts on the Lake Eyre Basin (which is one of the last unregulated or free-flowing dryland river systems in the world³¹) and on the sustainable beef cattle industry in the region.

²⁷ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RegionPlanIntR14.pdf>

²⁸ <https://wbbec.files.wordpress.com/2015/02/the-way-forward.pdf>

²⁹ <http://mysunshinecoast.com.au/news/news-display/labor-reiterates-environmental-credentials,37216>

³⁰ <http://statements.qld.gov.au/Statement/2015/5/14/qld-exploration-release-underpins-19-billion-gas-industry>

³¹ <http://www.australia.gov.au/about-australia/australian-story/australias-wild-rivers>

SIBELCO AUSTRALIA AND NEW ZEALAND (SIBELCO)

Electoral Expenditure

Electoral Commission of Queensland annual disclosure returns³² reveal that Sibelco undertook major electoral expenditure as a third party campaigner in 2011/2012.

Received from	Return year	Amount
Sibelco	2011/12	\$91,840
Sibelco	2013/14	\$2000
	Total	\$93,840

Those amounts reflect only donations disclosed in Electoral Commission Queensland disclosure returns. Sibelco's wider spending on influencing political decision making has been estimated at over \$1 million. For example, in the Qld Parliament in 2016, Minister Anthony Lynham stated that "*The LNP had no plan for the transition of this island. They did not even have a clear policy for the island until Sibelco became a significant donor in their 2012 election campaign. I am talking about a reported over \$90,000 in donations and over \$1 million in a political campaign opposing the previous Labor government*"³³.

Access

The Qld lobbying contacts register reveals the following meetings³³ between lobbyist company Rowland Pty Ltd, acting on behalf of Sibelco, with key government departments and ministerial advisers.

Mining Company Client	Lobbyist Company	Who They Met With	Date	Purpose	Reference Link
Sibelco	Rowland Pty Ltd	Senior Adviser to Premier	1/5/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=32
Sibelco	Rowland Pty Ltd	Minister, National Parks and Adviser to http://statements.qld.gov.au/Statement/2015/5/14/qld-	1/5/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=44

³² Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

³³ Qld Parliamentary Hansard, 17th March 2016

		exploration- release-underpins- 19-billion-gas- industry Minister			
Sibelco	Rowland Pty Ltd	Director-General, Department of Natural Resources & Mines, Minister, Department of Natural Resources & Mines, Deputy Director-General, Department of Natural Resources & Mines and Senior Adviser to Department of Natural Resources & Mines Minister	1/5/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=45
Sibelco	Rowland Pty Ltd	Senior Adviser, Minister for ATSIMA	7/5/2013	'Commercial-in- confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=47
Sibelco	Rowland Pty Ltd	Senior Adviser to Minister Cripps	9/5/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=36
Sibelco	Rowland Pty Ltd	Chief of Staff to Minister Powell	9/5/2013	'Commercial-in- confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=39
Sibelco	Rowland Pty Ltd	Senior Adviser to Minister Cripps	13/5/2013	'Commercial-in- confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=40
Sibelco	Rowland Pty Ltd	Senior Adviser to Minister Powell	15/5/2013	'Commercial-in- confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=43
Sibelco	Rowland Pty Ltd	Senior Adviser to Minister Cripps	28/5/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=54
Sibelco	Rowland Pty Ltd	Senior Adviser to Minister for Natural Resources and Mines.	19/6/2013	'Making or amendment of legislation'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=94
Sibelco	Rowland Pty Ltd	Minister for Environment and Heritage Protection and Chief of Staff to the Minister	18/6/2013		http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=175

Ministerial diaries list the following additional meetings between the Newman Government and Sibelco or its lobbyist, Rowland Pty Ltd.

Ministerial Diary Entry	Meeting With	Date	Purpose	References
Andrew Powell, Minister for Environment and Heritage Protection	CEO Sibelco	24 January 2013	'Mediation – forthcoming court matter (without prejudice)	http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2192.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Ministerial Staff, Department Staff, Sibelco and Rowland	1st May 2013	'Mining on Stradbroke Island'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/may-2013/cripps-diary-may-13.pdf
Premier Campbell Newman	Rowland [and a long list of other QForum members]	13th November 2013	QForum Luncheon	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/premier-diary-november-2013.pdf
Andrew Powell, Minister for Environment and Heritage Protection	External Relations Manager, Sibelco, QRC Environment Policy Adviser, APPEA Policy Director, AMEC Regional Manager, APLNG Chief Financial Officer, Ministerial Staff, Departmental Staff	7th May 2014	'To discuss Financial Assurances'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/may-2014/powell-diary-may-2014.pdf

Changes to legal and/or policy environment that benefitted Sibelco

Sibelco operates a large sand mine on North Stradbroke Island. In 2011, as community groups prepared to challenge the renewal of sand mining leases on North Stradbroke Island, the Bligh ALP Government stepped in and passed the *North Stradbroke Island Sustainability and Protection Act 2011*. The Act effectively established a process to phase-out sand-mining on Stradbroke Island by 2019, by renewing expiring mining leases until that date only and removing the rights of the community to mount a judicial review challenge against the lease renewal.

During the lead up to the 2012 election, Sibelco engaged Rowland Pty Ltd to run “*a public affairs strategy to influence opinion and political decision-making around the continuation of its sand mining operations on Queensland's North Stradbroke Island (NSI)... The strategy was extremely successful and the overall goal exceeded. The newly-elected government committed to extending sand mining operations to 2035.*” This campaign included TV advertisements aired 108 times, cinema advertising, print and online advertising, a public rally and the distribution of 98,980 personalised letters distributed to Brisbane suburbs, which included the suburb of Ashgrove which was being contested by Campbell Newman³⁴.

In addition to the publicity campaign, the level of access to the Qld LNP Government enjoyed by the company is of note. Rowland Pty Ltd claim in their report that they secured ‘*8 formal engagements with LNP representatives (including Campbell Newman and local members)*’ prior to the election, and ‘*6 post-election engagements with LNP government and departmental representatives (including Minister for Natural Resources and Mines)*’³⁵. They also indicate that they secured the ‘*establishment of a government working group*’ after the election. In fact, Ministerial diaries and the lobbyist contact register reveal an even greater number of meetings than those claimed by Rowland³⁶. Most notably, there were extensive meetings with all levels of government in relation to ‘*making or amendment of legislation*’ in May 2013³⁷.

Rowland Pty Ltd claim that they secured an LNP commitment to extending their client’s activities³⁸, stating that one of four key outcomes from the campaign was ‘*Campbell Newman publicly endorsing continuing sand mining on ABC radio prior to the election*’.

³⁴ ‘Achieving Social, Environmental and Economic Progress in an Island Community’, Rowland Pty Ltd 2011, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T4113.pdf>

³⁵ Ibid

³⁶ See table above, or Diaries of the former Government, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/diaries.aspx> and Lobbyist register, Rowland Pty Ltd <http://lobbyists.integrity.qld.gov.au/contactlog.aspx?id=215>

³⁷ Ibid

³⁸ ‘Achieving Social, Environmental and Economic Progress in an Island Community’, Rowland Pty Ltd 2011, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T4113.pdf>

In October 2013 the Newman government amended the *North Stradbroke Island Protection and Sustainability Act 2011* to allow sand mining on Stradbroke Island out to 2035, and to increase the area available for mining by 300%³⁹. There was no restoration of community objection rights. This outcome was estimated to potentially result in \$1.5 billion in additional revenue for Sibelco.⁴⁰

On the 14th June 2016, the *North Stradbroke Island Protection and Sustainability and Other Acts Amendment Act 2016* was passed by the Palaszczuk Government to return the closing date of the Sibelco sand mine to 2019.⁴¹

KARREMAN QUARRIES (KARREMAN)

Donations and contributions

Electoral Commission of Queensland annual disclosure returns⁴² reveal the following contributions to the Liberal National Party of Queensland.

Received from	Return year	Amount
Karreman Quarries	2010/11	\$25,000
Karreman Quarries	2011/12	\$50,000
	Total	\$75,000

Changes to legal and/or policy environment that benefitted Karreman Quarries

Prior to 2014, Karreman Quarries had allegedly been unlawfully extracting sand and gravel from the Upper Brisbane River for many years.⁴³ The mining caused erosion of properties upstream, leading to more sand and gravel flowing downstream to the mine

³⁹ North Stradbroke Island Protection and Sustainability and Another Act Amendment Bill 2013
<https://www.legislation.qld.gov.au/Bills/54PDF/2013/NthStradisProtSusAAAmB13.pdf>

⁴⁰ Campbell Newman lied about Stradbroke Island mining promises, 22nd January 2015,
<http://www.brisbanetimes.com.au/comment/campbell-newman-lied-about-stradbroke-island-mining-promises-20150121-12va0e.html>

⁴¹ The Parliament of Queensland, North Stradbroke Island Protection and Sustainability and Other Acts Amendment Act 2016,
<https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2016/16AC032.pdf>

⁴² Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

⁴³ 'Queensland LNP donor Karreman Quarries escapes prosecution for illegal quarrying after Deputy Premier orders legislation change', 23 June 2014 <http://www.abc.net.au/news/2014-06-23/karreman-quarries-escapes-prosecution-for-illegal-quarrying/5543896>

site, where it is extracted by Karreman Quarries⁴⁴. It has been reported that this type of instream mining was not covered by Karreman's permits⁴⁵.

In 2014 Karreman Quarries was reportedly facing legal action from the Department of Natural Resources and Mines as a result of its alleged illegal mining activities⁴⁶. No prosecution took place, however, apparently due to the operation of 'eleventh hour' amendments to the Water Act 2000 which were inserted in to the Land and Other Legislation Amendment Bill on the 5th of June 2014⁴⁷. These amendments effectively approved the mining activities retrospectively, declaring that the type of extraction Karreman was carrying out 'is lawful, and is taken to have always been lawful'.⁴⁸

Karreman Quarries donated \$75,000 to the LNP over the 2010-2012 period. Company founder and owner Dick Karreman also met with Deputy Premier Jeff Seeney on the 9th December 2013 to discuss the Mining Act⁴⁹.

NEW HOPE CORPORATION (NEW HOPE)

Donations and contributions

There are three companies of potential interest in relation to the Acland Stage 3 and Colton Coal coal mine expansions:

1. New Hope Corporation - the proponent of the two mines
2. Washington H Soul Pattinson and Company Limited - the parent company to New Hope Corporation⁵⁰.
3. Brickworks Ltd - a related company in which Washington H Soul Pattinson holds a substantial interest⁵¹

⁴⁴ ABC 7.30 Report, 23rd June 2014, 'LNP donor escapes prosecution after Queensland Government backdates law', transcript accessed 3rd March 2016, <http://www.abc.net.au/7.30/content/2014/s4031512.htm>

⁴⁵ Ibid.

⁴⁶ ABC, 4th December 2014, 'Jeff Seeney caught own officials by surprise with retrospective law change preventing possible prosecution of LNP donor', accessed 3rd March 2016, <http://www.abc.net.au/news/2014-12-04/seeney-law-change-caught-own-officials-off-guard/5935504>

⁴⁷ <https://www.legislation.qld.gov.au/Bills/54PDF/2014/LandOtherLegAmB14.pdf>

⁴⁸ See the Land and Other Legislation Amendment Act 2014 <https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC029.pdf>

⁴⁹ Ministerial diaries of the former MP Jeff Seeney, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/jeff-seeney.aspx>

⁵⁰ Australian Securities and Investments Commission, current company information for New Hope Corporation, accessed 3rd March 2016

The AEC returns reveal that approximately \$1,000,000 in donations were made from New Hope and Washington H Soul Pattinson to the Liberal Party of Australia from 2010 to 2014⁵². They also indicate that a further \$300,000 was donated by Brickworks⁵³.

Electoral Commission of Queensland⁵⁴ and Australian Electoral Commission⁵⁵ annual disclosure returns reveal the following contributions to the Liberal Party of Australia.

Received From	Return Year	Amount
Brickworks	2010/2011	\$150,000
New Hope Corporation	2010/2011	\$100,000
Washington Soul Pattinson	2010/2011	\$150,000
New Hope Corporation	2011/2012	\$100,000
Washington Soul Pattinson	2011/2012	\$100,000
Washington Soul Pattinson	2012/2013	\$250,000
Brickworks	2013/2014	\$150,000
New Hope Corporation	2013/2014	\$250,000
Washington Soul Pattinson	2013/2014	\$ 50,000
	Total	\$1,300,000

⁵¹ Washington H Soul Pattinson has a 44% interest in Brickworks according to the NSW ICAC.

⁵² Australian Electoral Commission, Annual Returns, accessed 3rd March 2016, <http://periodicdisclosures.aec.gov.au/>

⁵³ Ibid.

⁵⁴ Electoral Commission of Queensland annual disclosure returns, accessed 3rd March 2016, <https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

⁵⁵ Political Party Annual Return 2011-2012, Liberal National Party of Queensland <http://periodicdisclosures.aec.gov.au>Returns/49/PQUW2.pdf>

It is also relevant to note that the Liberal Party of Australia frequently contributes funds back to state parties, for example, substantial amounts of money have frequently flowed back to the Queensland Liberal National Party from the Liberal Party of Australia⁵⁶. Political party disclosure forms by the Qld LNP to the Australia Electoral Commission (Attachment 3) identify the following transfers received from the Liberal Party of Australia:

Return Year	Amount
2010/2011	\$2,930,976
2013/2014	\$348,182
Total	\$3,279,158

Therefore, more than \$3 million in funds has flowed from the Liberal Party of Australia to the QLD LNP over the last four years.

Access

New Hope obtained a least 7 meetings with Newman Government Ministers in 2013/2014, according to published ministerial diaries. Ministerial diaries were not published in 2012, so it is not possible to ascertain what meetings were conducted in the lead-up to the decision to accept New Hope's revised Acland Stage 3 proposal. However, the interactions in 2013/2014 show a pattern of regular interaction.

Ministerial Diary Entry	Meeting With	Date	Purpose	Reference
Andrew Cripps, Minister for Natural Resources and Mines	New Hope	6 June 2013	'Update from New Hope Group on portfolio matters'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/june-2013/cripps-diary-june-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	New Hope Group	22 June 2013	'Guest, Wallabies vs British and Irish Lions'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/june-2013/powell-diary-june-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Chief Operating Officer, New Hope Group, Corporate Affairs Manager, New Hope Group and Ministerial Staff	3 September 2013	'Update on New Hopes operations'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/september-2013/powell-diary-september-2013.pdf

⁵⁶ Australian Electoral Commission, Annual Returns, accessed 3rd March 2016, <http://periodicdisclosures.aec.gov.au/>

Andrew Cripps, Minister for Natural Resources and Mines	New Hope Group	13 November 2013	'AGM Cocktail Function'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/cripps-diary-november-2013.pdf
Andrew Cripps, Minister for Natural Resources and Mines	New Hope Group, Department Staff and Ministerial Staff	4 March 2014	'New Acland Coal Mine Stage 3 project'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/march-2014/cripps-diary-march-2014.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Chief Operating Officer, New Hope Group, Manager Corporate Affairs, New Hope, Manager Environmental Approvals and Policy, Departmental Staff and Ministerial Staff	13 March 2014	'To discuss portfolio related matters'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/march-2014/powell-diary-march-2014.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Chief Operating Officer and Manager, Corporate Affairs, New Hope Group and Ministerial Staff	10 November 2014	'To discuss portfolio related matters'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2014/powell-diary-november-2014.pdf

Changes to legal and/or policy environment that benefited New Hope Coal

In the lead-up to, and following, the 2012 Qld election, the Qld LNP made strong commitments that the Acland Stage 3 coal mine would not proceed. They indicated that they considered the Acland Stage 3 project inappropriate because of the impact it would have on rich farming land on the Darling Downs⁵⁷.

On the 29th of March 2012, five days after the election, a spokesperson for incoming Premier Campbell Newman told The Australian newspaper that: *"The LNP will not support the proposal for Acland stage three (because) it covers some areas of strategic cropping land, and would come too close to local communities."*⁵⁸

⁵⁷ Campbell Newman Slams Farm Gate Shut on Mining, The Australian, March 29 2012, accessed 3rd March 2016, <http://www.theaustralian.com.au/national-affairs/campbell-newman-slams-farm-gate-shut-on-miners/story-fnbsqt8f-1226312958263>

⁵⁸ Campbell Newman Slams Farm Gate Shut on Mining, The Australian, March 29 2012

This commitment was repeated in Parliament, when the Member for Condamine, Ray Hopper, stated on the 29th May that: *"I had the pleasure of touring this area with the minister before the election, and the minister made the announcement back then that Acland stage 3 would not go ahead under an LNP government."*⁵⁹

On the 20th February 2012, prior to the election, the LNP Candidate for Nanango, Deb Frecklington, distributed a media release in which she stated: *"After months of lobbying from local LNP candidate for Nanango Deb Frecklington, the LNP has made it clear that it will not support the proposal for Acland stage 3 that would see the expansion of the open cut coal mine digging up strategic cropping land."*⁶⁰

However, those commitments appeared to rapidly erode. In late November 2012, New Hope Coal released plans for a revised version of the Acland Stage 3 coal mine⁶¹. This revised mine plan was accepted by the Qld Government, and then in December 2014 the Qld Coordinator General recommended approval for the project.⁶² If implemented, the revised mine will destroy some 1,300 hectares of Strategic Cropping Land, cause groundwater to drop by up to 50m in some locations and may affect more than 350 water bores⁶³.

In late 2014, the LNP Government passed the *Mineral and Energy Resources (Common Provisions) Bill* through the Qld Parliament.⁶⁴ This Bill removed the rights of community groups to take objections to coordinated coal mining companies to the Qld Land Court, when the Coordinator General deemed that environmental conditions were sufficient. The passage of this Bill and the recommendations of the Coordinator General had the effect of removing the rights of communities to challenge the Acland Stage 3 coal mine in the Qld Land Court.

In opposition, the ALP made a number of commitments in relation to Acland. In a letter to Peter Wellington they wrote that *"Labor has stated publicly its concerns about the*

⁵⁹ Hansard, Queensland Parliament, 29th May 2012, pg 190

https://www.parliament.qld.gov.au/documents/hansard/2012/2012_05_29_WEEKLY.pdf

⁶⁰ Press release: Deb Frecklington, 20th February 2012,

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T5623.pdf>

⁶¹ "New Hope releases new plans in bid for expansion green light", The Chronicle, 14th November 2012, <http://www.thechronicle.com.au/news/new-hope-plans-bid-expansion-green-toowoomba/1622042/>

⁶² "New Acland Coal Mine Stage 3 Project", Department of State Development,

<http://www.statedevelopment.qld.gov.au/assessments-and-approvals/new-acland-coal-mine-stage-3-expansion.html>

⁶³ <http://www.statedevelopment.qld.gov.au/resources/project/new-acland-coal-mine/nacp-stage-3-eis-report.pdf>

⁶⁴ "Mineral and Energy Resources (Common Provisions) Act 2014,

<https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC047.pdf>

process used to approve stage 3 of the New Acland Mine, particularly the approval of the environmental impact statement just six days before Christmas in 2014. Labor will scrutinise the approvals process for this project and the impacts of this mine on local communities”.

However, in Government, Labor moved quickly to approve Acland Stage 3, with the Department of Environment and Heritage Protection approving an Environmental Authority amendment application in August 2015.⁶⁵ A purely administrative, desktop legal review of the Coordinator-General decision was carried out on 9 June 2015 and recently made public,⁶⁶ but it did not review the merits of the decision or the effect of any donations. The Department of Natural Resources and Mines commissioned a rapid social cost-benefit analysis of the mine in March 2015⁶⁷ but otherwise no promised scrutiny of the impacts of the mine on local communities has been undertaken. Labor did however deliver on other promises to restore community objection rights, thus allowing the local community to object to the mine project in the Qld Land Court.

New Hope also overturned a previously stalled approval process for the Colton Coal mine near Aldershot. The original proponent of the mine, Northern Energy Corporation, had its original proposal rejected by the Department of Environment and Heritage Protection in 2010⁶⁸. The project appeared to be stalled.

However, in March 2011 New Hope Coal and its subsidiaries took a controlling interest in Northern Energy Corporation⁶⁹. Under the ownership of New Hope, the fortunes of the Colton Coal project changed dramatically. In an extraordinarily fast turn-around, New Hope submitted a revised Environmental Management Plan for the project in May 2014, and received a draft Environmental Authority on 1st September 2014⁷⁰.

⁶⁵ <https://www.ehp.qld.gov.au/mediareleases/2015-08-28-new-acland-mine-ea-application-decision.html>

⁶⁶ <http://www.statedevelopment.qld.gov.au/resources/report/new-acland-review/new-acland-stage-3-eis-evaluation-report.pdf>

⁶⁷ <https://publications.qld.gov.au/dataset/new-acland-coal-mine-stage-3>

⁶⁸ <http://www.australianmining.com.au/news/colton-mine-postponed-deadline-moves-to-august>

⁶⁹ <http://www.asx.com.au/asxpdf/20110920/pdf/4215swpdpm3d30.pdf>

⁷⁰ <http://www.newhopegroup.com.au/content/projects/development/colton>

ADANI MINING PTY LTD (ADANI)

Donations and contributions

Electoral Commission of Queensland annual disclosure returns⁷¹ and Australia Electoral Commission annual disclosure returns⁷² reveal the following contributions to the Liberal National Party of Queensland by Adani Pty Ltd.

Donated To	Return year	Amount
Qld LNP	2012/13	\$13,800
Liberal Party of Australia	2013/14	\$49,500
Qld LNP	2014/2015	\$7,000
	Total	\$70,300

In 2013/14 the Liberal Party of Australia donated \$95,905 to the Liberal National Party of Queensland.⁷³

Access

Adani obtained 12 meetings with Newman Government Ministers in 2013/2014, according to published ministerial diaries, including numerous meetings with the Deputy Premier, Jeff Seeney. A list of the recorded ministerial meetings is provided below. Adani has also given gifts, including a silver plate worth \$575 to Jeff Popp, Chief of staff to the Deputy Premier, and a Silver bowl to worth \$740 to Jeff Seeney, Deputy Premier, which were apparently placed on display and appear not to have been retained by the recipients⁷⁴.

⁷¹ Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

⁷² Political Party Annual Returns 2013-2014 Liberal Party of Australia
<http://periodicdisclosures.aec.gov.au/Party.aspx>

⁷³ Australian Electoral Commission, periodic disclosures, 2013-14
<http://periodicdisclosures.aec.gov.au>Returns/55/SI WV2.pdf>

⁷⁴ Ministerial Gifts register, Queensland Government, <https://data.qld.gov.au/dataset/ministerial-gifts-register>

Ministerial Diary Entry	Meeting With	Date	Purpose	Reference
Andrew Powell, Minister for Environment and Heritage Protection	Adani Mining	16 January 2013	'Discussion on Adani Mining'	http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2192.pdf
Andrew Powell, Minister for Environment and Heritage Protection	GHD and guests [including Adani]	12 March 2013	'GHD Boardroom Luncheon'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/powell-diary-mar-13.pdf
Jeff Seeney, Deputy Premier	Adani Mining – Mr Harsh Mistra and Mr Samir Vora	27 June 2013	'Portfolio Matter'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/june-2013/seeney-diary-june-13.pdf
Jeff Seeney, Deputy Premier	Adani CEO	11 September 2013	'General Discussion'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/september-2013/seeney-diary-september-2013.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Adani Mining and Director-General and Ministerial Staff	19 November 2013	'Introduction of New CEO of Adani Mining'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/powell-diary-november-2013.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Adani Mining, Department Staff, Ministerial Staff, Introductory Meeting	26 November 2013	'Introductory Meeting'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/cripps-diary-november-2013.pdf
Jeff Seeney, Deputy Premier	Mr Gautam Adani, Adani Mining	17 December 2013	'Project Update'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/december-2013/seeney-diary-december-2013.pdf
Jeff Seeney, Deputy Premier	Mr Adani	4 March 2014	'Project Update'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/march-2014/seeney-diary-march-2014.pdf
Campbell Newman, Premier	Adani Mining	4 March 2014	'Meeting to Discuss Upcoming Projects'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/march-2014/premier-diary-march-2014.pdf
Jeff Seeney, Deputy Premier	Gautam Adani	15 July 2014	'Project Update'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/july-2014/seeney-diary-july-2014.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Adani Mining and Ministerial Staff	6 August 2014	'To discuss portfolio related matters'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/august-2014/powell-diary-august-2014.pdf
Jeff Seeney, Deputy Premier	Gautam Adani, Adani	13 November 2014	'Project Update'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2014/seeney-diary-november-2014.pdf

Changes to legal and/or policy environment that benefited Adani

Adani are seeking to develop the Carmichael Project in Central Qld. If it goes ahead, this mine will be biggest coal mine in Australia's history. It will pollute billions of tonnes of greenhouse gas emissions into the atmosphere, damage the Great Barrier Reef, threaten the health of the Great Artesian Basin, and drive the Black Throated Finch towards extinction. Despite these environmental impacts, the project moved easily through the assessment process after an EIS was placed on public exhibition in December 2012. The Coordinator General released his report approving the project on the 7th May 2014⁷⁵. In February and April 2016 the Palaszczuk Government granted Environmental Authority and the Mining Leases for the project.⁷⁶

As well as huge environmental impact, these approvals were given despite serious concerns about Adani's operations here and overseas. Successive governments have failed to apply regulatory rigour in addressing these concerns prior to granting approvals. In Australia, there is uncertainty about the ownership of Abbot Point Terminal 1, which has direct implications for accountability of environmental conditions. Overseas, Adani has an appalling environmental track record, with cases including the destruction of mangroves in India. In addition, there are allegations against Adani of involvement in price overvaluation and fraud, including Guatam Adani's brother and key business partner Vinod Adani and Adani Enterprises.

These issues of transparency and corporate accountability are directly relevant to Adani's suitability to operate in Australia, and should be addressed by government⁷⁷. Successive governments, including the Palaszczuk Government, have turned a blind eye to these issues. Under the Palaszczuk Government Minister Lynham has met at least 7 times with Adani. With continued access and political donations, there are concerns Adani has influenced the approval process, encouraging successive governments to ignore concerns regarding their suitability to operate.

⁷⁵ <http://www.statedevelopment.qld.gov.au/assessments-and-approvals/carmichael-coal-mine-and-rail-project.html>

⁷⁶ Sydney Morning Herald, 3rd April 2016, 'Adani Galilee basin project mine leases approved', <http://www.smh.com.au/business/mining-and-resources/adanis-galilee-basin-project-mine-leases-approved-20160403-gnx016.html>

⁷⁷ Environmental Justice Australia, *A Review of the Adani group's environmental history in the context of the Carmichael mine approval*, accessed 3rd March 2016, https://envirojustice.org.au/sites/default/files/files/envirojustice_adani_environmental_report.pdf

Uncertainty over ownership of Abbot Point Terminal 1

There appear to be inconsistencies on the matter of ownership of the Australian company Adani Abbot Point Terminal Pty Ltd between the ASIC records, company website and Adani Ports and Special Economic Zone Ltd annual report. This raises some concerns, particularly as this company is now applying for an Environmental Authority to manage Abbot Point Terminal 1. Given the Terminal is in financial difficulty,⁷⁸ with credit rating recently being downgraded to junk status,⁷⁹ the ultimate holding company should be made clear before this Environmental Authority is granted. The holding company would be ultimately responsible in ensuring the conditions of the Environmental Authority are met, particularly in the case that the financial circumstances of the Terminal preclude it from meeting the conditions independently. In order to provide certainty that the conditions of the authority will be met, the identity of the ultimate holding company must be known before Environmental Authority is granted. An inquiry into transparency is needed to further investigate the ownership of the Adani Abbot Point Terminal Pty Ltd and its Port of Abbot Point Terminal 1.

The Port of Abbot Point Terminal 1 is subject to a 99 year lease of Mundra port Holdings PTY LTD⁸⁰, a wholly owned subsidiary of the Adani Group⁸¹. This terminal is known as AAPT, Adani Abbot Point Terminal. Adani Abbot Point Terminal Pty Ltd (AAPTPL) manages AAPT⁸². The Adani Australia website states that AAPTPL is a wholly owned Australian subsidiary of Adani Ports and Special Economic Zone Ltd.⁸³ This is also on the record with ASIC dated 22/05/2015⁸⁴.

However, the Adani Ports and Special Economic Zone Ltd annual report for 2014- 2015 states that the company had initiated and recorded the divestment of its entire equity holding in Adani Abbot Point Terminal Holdings Pty Ltd (AAPTHPL) and entire Redeemable Preference Shares holding in Mundra Port Pty Ltd (MPPL) representing Australia Abbot Point Port operations to Abbot Point Port Holdings Pte Ltd, Singapore

⁷⁸ Investor Briefing: Adani Abbot Point Terminal Debt Issue, October 2013, http://www.banktrack.org/manage/ems_files/download/investor_briefing

⁷⁹ 'Moody's downgrades Adani Abbot Point Terminal's rating to Ba2; outlook negative', 14th March 2016, https://www.moody.com/research/Moodys-downgrades-Adani-Abbot-Point-Terminals-rating-to-Ba2-outlook--PR_343412

⁸⁰ Adani Australia website, Our Businesses, Adani Abbot Point Terminal 1, accessed 3rd March 2016, <http://www.adaniaustralia.com/businesses/adani-abbot-point-terminal-1>

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Australian Securities and Investment Commission, Change to Company detail, Adani Abbot Point Terminal Holdings Pty Ltd, 22nd May 2015, accessed 3rd March 2016

during the year ended March 31, 2013.⁸⁵ The consequence of this is that the holdings remain off the books of any publicly listed entity.

Environmental track record - Adani Ports and Special Economic Zone Ltd

Adani has a poor environmental track record in its overseas operations, which has implications for its suitability to operate in Australia. In Mundra, India, Adani Ports and Special Economic Zone Ltd operates one of the world's largest coal fired power stations, together with a port and special economic zone. The company has an alleged history of disregarding environmental regulations, leading to the Indian Ministry of Environment and Forests issuing a notice in 2010 asking it to show cause why its environmental approval should not be cancelled.⁸⁶ The Ministry found violations of the company's environmental approval, coastal zone regulation, and a Coastal Zone Management Plan (which is in place since 1996)⁸⁷. This resulted in destruction of mangroves and obstruction of creeks and the tidal system due to large-scale coastal reclamation.⁸⁸ This destruction continued until the mangrove forests had vanished and local creeks had disappeared.⁸⁹

Pricing overvaluation and fraud allegations

Both the company Adani Enterprises and the individual Vinod Adani have been involved in allegations of pricing overvaluation and fraud.⁹⁰

Adani Enterprises is one of six Adani subsidiaries named in an investigation over a \$4.4 billion pricing overvaluation scandal involving imported coal from Indonesia. The Directorate of Revenue Intelligence claims that companies were charging higher tariffs based on the artificially inflated costs of the imported coal, and siphoning off the profit overseas.⁹¹

⁸⁵

http://www.adaniports.com/Common/Uploads/AnnualReportTemplate/30_AReport_Annual%20Report.pdf

⁸⁶ Ministry of Environment and Forests, Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification 1991 by M/s Mundra Port & SEZ Ltd (15 December 2010), paragraphs 1-19

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat (April 2013), available at <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed 22 January 2015).

⁹⁰ See footnote 95 and 97 below

⁹¹ The Guardian, 7th April 2016, 'Adani being investigated for alleged involvement in US\$4.4bn coal-pricing scandal', <http://www.theguardian.com/business/2016/apr/07/adani-being-investigated-for-alleged-involvement-in-us44bn-coal-pricing-scandal>

The Business Profile of Abbot Point Port Holdings Pte Ltd, Singapore, one of potential owners of Abbot Point Terminal 1, lists Vinod Shantilal Adani as the authorised representative, and Atulya Resources Limited as the sole shareholder, based in the Cayman Islands⁹². A Directorate of Revenue Intelligence internal report has linked Vinod Adani with the above pricing overvaluation scandal.⁹³ In addition to this, recent Panama Papers leaks have also revealed Vinod Adani is entwined in a transparency scandal involving changing his name on formal records 2 months after setting up GA International Inc in the Bahamas.⁹⁴

These issues of transparency and corporate accountability should be directly relevant to Adani's suitability to operate in Australia, and should be addressed by government.

⁹² Accounting and Corporate Regulatory Authority (Singapore), Business Profile (Company) of Abbot Point Terminal Holdings Pte Ltd, accessed 20th January 2016

⁹³ Directorate of Revenue Intelligence internal report. December 2013, as reported by The Economic Times, Indian Express & Mining Weekly, <http://indianexpress.com/article/business/companies/sit-cbi-to-look-into-adani-group-case/>, http://articles.economicstimes.indiatimes.com/2014-01-02/news/45799234_1_adani-group-dri-revenue-intelligence, <http://www.miningweekly.com/article/indian-agencies-uneearth-468bn-illegal-coal-imports-2015-01-06>

⁹⁴ Indian Express, 5th April 2016, 'Panama Papers: 2 months after Adani brother set up firm in Bahamas, request to change name to Shah', <http://indianexpress.com/article/india/india-news-india/panama-papers-india-2-months-after-adani-brother-set-up-firm-in-bahamas-a-request-to-change-name-to-shah/>

LINC ENERGY LTD AND CARBON ENERGY LTD

Donations and contributions

Electoral Commission of Queensland and Australian Electoral Commission annual disclosure returns reveal the following contributions by Linc Energy to the Qld Liberal National Party and the Liberal Party of Australia. Linc Energy have contributed \$337,999 to the Liberal/National parties since 2010/2011⁹⁵.

Received By	Return Year	Amount
Liberal Party of Australia	2010-2011	\$55,000
Qld LNP	2010-2011	\$25,000
Qld LNP	2011-2012	\$99,999
Liberal Party of Australia	2012-2013	\$33,000
Liberal Party of Australia	2013-2014	\$100,000
Liberal Party of Australia	2014-2015	\$25,000
	Total	\$337,999

⁹⁵ See Australian Electoral Commission, Annual disclosure returns, <http://periodicdisclosures.aec.gov.au/> and Electoral Commission of Queensland, Annual disclosure returns, <http://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

Access

According to the Lobbyists Contact Register, lobbyists acting on behalf of Carbon Energy and Linc Energy had five meetings with key department staff, including two meetings with the Office of the Premier, in 2013 and 2014.

Mining Company Client	Lobbyist Company	Who They Met With	Date	Purpose	Reference Link
Linc Energy	Barton Deakin	Minister Mark McArdle	14/5/2013	'Commercial-in-confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=6
Linc Energy	Barton Deakin	Paul Leven, Deputy Director Policy – Office of the Premier	19/5/2013	'Commercial-in-confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=16
Carbon Energy	Next Level Strategic Services	Chief of Staff, Minister for Natural Resources and Mines	17/4/2014	'Commercial-in-confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=387
Carbon Energy	Next Level Strategic Services	Chief of Staff, Minister for Environment and Heritage Protection	17/4/2014	'Commercial-in-confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=388
Carbon Energy	Next Level Strategic Services	Director of Policy, Office of the Premier	17/4/2014	'Commercial-in-confidence'	http://lobbyists.integrity.qld.gov.au/contactlogdetails.aspx?id=389

Ministerial Diary entries for 2013 and 2014 reveal extensive, high level access by Linc Energy and Carbon Energy to the Qld Government.

Ministerial Diary Entry	Meeting With	Date	Purpose	Reference
Andrew Cripps, Minister for Natural Resources and Mines	Carbon Energy, Minister Powell, Ministerial and Department Staff	4 March 2013	'Industry Briefing'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/cripps-diary-mar-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Acting CEO Carbon Energy, Chairman Carbon Energy, Minister for Natural Resources and Mines*	4 March 2013	'NRM Industry Briefing'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/powell-diary-mar-13.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Linc Energy, Minister Powell, Ministerial and Department Staff	5 March 2013	'Industry Briefing'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/cripps-diary-mar-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Linc Energy and Minister for Natural Resources and Mines	5 March 2013	'NRM Industry Briefing'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/powell-diary-mar-13.pdf

Andrew Powell, Minister for Environment and Heritage Protection	'GHD and guests' [including Adani, Linc Energy]	12 March 2013	'GHD Boardroom Luncheon'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/powell-diary-mar-13.pdf
Jeff Seeney, Deputy Premier	Peter Bond, Linc Energy	17 April 2013	'UCG Industry in Qld'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/april-2013/seeney-diary-apr-13.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Linc Energy, Ministerial Staff and Department Staff	21 May 2013	'General Industry Discussion'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/may-2013/cripps-diary-may-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Acting CEO, President, Clean Energy, Linc Energy, Minister for Natural Resources and Mines, Ministerial and Departmental Staff,	21 May 2013	'To discuss UCG'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/may-2013/powell-diary-may-13.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Carbon Energy, Ministerial Staff and Department Staff	22 May 2013	'General Industry Discussion'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/may-2013/cripps-diary-may-13.pdf
Andrew Powell, Minister for Environment and Heritage Protection	Carbon Energy, Ministerial Staff and Departmental Staff	30 October 2013	'Briefing on progress by Carbon Energy'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/october-2013/powell-diary-oct-2013.pdf
Jeff Seeney, Deputy Premier	Peter Bond, Linc Energy	21 November 2013	'Project Issues'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/seeney-diary-november-2013.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Department Staff and Ministerial Staff	25 February 2014	'Tenure and Conditionings'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/february-2014/cripps-diary-february-2014.pdf
Andrew Cripps, Minister for Natural Resources and Mines	Carbon Energy, Departmental Staff and Ministerial Staff,	8 October 2014	'Update on Blue Gum Gas Project'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/october-2014/cripps-diary-october-2014.pdf
Andrew Powell, Minister for Environment and Heritage Protection	CEO Carbon Energy and Marina CID, Ministerial Staff,	14 August 2014	'To discuss portfolio related matters'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/august-2014/powell-diary-august-2014.pdf
Jeff Seeney, Deputy Premier	Carbon Energy	10 October 2014	'Project Update'	http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/october-2014/seeney-diary-october-2014.pdf

Changes to legal and/or policy environment that benefited Linc Energy and Carbon Energy

Linc Energy has been running an Underground Coal Gasification (UCG) trial project, known as the Chinchilla Demonstration Facility, which commenced in 1999. Local communities raised serious concerns about the operation of the plant as early as 2011, but no action was taken by the Qld Government⁹⁶. At the same time, Carbon Energy was trialing a UCG pilot project at its Bloodwood Ck site, near Dalby⁹⁷. In 2013 a Newman Government commissioned report from the Independent Scientific Panel (ISP) found no environmental issues from either projects and gave full approval for the trials to continue.

In April this year, however, UCG was banned in Queensland, in recognition of the environmental harm that these trials caused.⁹⁸ This came after the Linc site was placed under a 320 square kilometre excavation caution zone as a result of gases from combustion by-products being found in the soil in February 2015⁹⁹, and after a 2015 Supreme Court hearing found that there had been ongoing toxic gas leaks into the air and groundwater since 2008 at the site.¹⁰⁰ There are questions as to why no evidence of this level of environmental harm was noted in the Newman Government ISP report, and why the trials were allowed to continue despite obvious environmental and community concerns.

The Newman Government first sought advice from an Independent Scientific Panel (ISP) on UCG in November 2012¹⁰¹. The Panel was led by Chris Moran from the Sustainable Minerals Institute – a centre which is funded substantially by the mining

⁹⁶ <http://www.queenslandcountrylife.com.au/news/agriculture/agribusiness/general-news/linc-site-causes-big-stink/2251382.aspx>

⁹⁷ <http://www.carbonenergy.com.au/irm/content/bloodwood-creek-australia.aspx?RID=221>

⁹⁸ Queensland Government Media Statements, 18th April 2016, 'Underground coal gasification banned in Queensland', <http://statements.qld.gov.au/Statement/2016/4/18/underground-coal-gasification-banned-in-queensland>

⁹⁹ <https://www.ehp.qld.gov.au/management/hopeland.html>

¹⁰⁰ ABC, 17th March 2015, 'Linc Energy allegedly failed to report series of dangerous gas leaks at Chinchilla plant, court documents reveal', <http://www.abc.net.au/news/2015-03-17/linc-energy-accuse-failing-report-series-of-dangerous-leaks/6323850>

¹⁰¹ Queensland Independent Scientific Panel for Underground Coal Gasification. June 2013. Independent Scientific Panel Report on UCG Pilot Trials.

industry¹⁰². The ISP was charged with evaluating ‘various technical and environmental factors’ and reporting ‘the outcomes of the trial activities’¹⁰³.

The Panel concluded that both Carbon Energy and Linc Energy had demonstrated ‘*capability to commission and operate a gasifier*’¹⁰⁴. The report did not identify any environmental issues with either project, despite purporting to have reviewed large amounts of data from them.¹⁰⁵

In July 2013, the Minister for Natural Resources and Mines, Andrew Cripps, released the ISP report and announced publicly that Carbon Energy and Linc Energy would be allowed to continue their active UCG trials¹⁰⁶. In the lead-up to that announcement 8 high level meetings took place with Carbon Energy and Linc Energy including a meeting with the Deputy Premier, several meetings with the Ministers for Environment and Heritage Protection and Natural Resources and Mines, and a meeting with the Premier’s Office¹⁰⁷. The Newman Government took no other action and released no other information publicly about alleged Linc Energy environmental incidents during its time in office.

It later emerged that there had been serious problems with the Linc Energy project at the Chinchilla project site, for many years, including ongoing dangerous gas leaks into the air and groundwater.¹⁰⁸

In April 2014, Linc Energy was charged by the Qld Government with four counts of causing serious environmental harm at the Chinchilla pilot site¹⁰⁹. Very little information was released about the nature of the harm or the extent of the alleged

¹⁰² The Australian, 5th October 2011, ‘Institute shy about industry cash’, accessed 3rd March 2016, <http://www.theaustralian.com.au/higher-education/institute-shy-about-industry-cash/story-e6frgcjx-1226158446605>

¹⁰³ Queensland Independent Scientific Panel for Underground Coal Gasification. June 2013. Independent Scientific Panel Report on UCG Pilot Trials.

¹⁰⁴ Queensland Independent Scientific Panel for Underground Coal Gasification. June 2013. Independent Scientific Panel Report on UCG Pilot Trials.

¹⁰⁵ Ibid.

¹⁰⁶ Qld Government Media statements, 8th July 2013, ‘Report recommends way ahead for UCG industry’, <http://statements.qld.gov.au/Statement/2013/7/8/report-recommends-way-ahead-for-ucg-industry>

¹⁰⁷ Queensland Cabinet and Ministerial Directory, Diaries of the former government, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/diaries.aspx>

¹⁰⁸ ABC, 17th March 2015, ‘Linc Energy allegedly failed to report series of dangerous gas leaks at Chinchilla plant, court documents reveal’, <http://www.abc.net.au/news/2015-03-17/linc-energy-accuse-failing-report-series-of-dangerous-leaks/6323850>

¹⁰⁹ Queensland Cabinet and Ministerial Directory, Media statements – Andrew Powell, 11 April 2014, ‘Linc Energy charged for allegedly breaching environmental laws’, <http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/diaries.aspx>

incidents. At the time, the Mayor of Western Downs Regional Council, Ray Brown, suggested the incidents subject to prosecution had occurred 9 months earlier, and asked *'Why has it taken 9 months to jump on this?....The concern I have is that landowners were only informed last Friday. Why has it taken this long for our landowners to be informed?'*¹¹⁰

In February 2015, immediately after coming into power, the incoming Palaszczuk Government imposed a 320 square kilometre excavation caution zone around the Linc Energy site, at Hopeland¹¹¹. It stated that it had detected certain gases associated with combustion by-products in soil profiles greater than 2m deep in the Hopeland area, and it subsequently filed a fifth charge against Linc Energy¹¹². Subsequent reports have suggested that there were environmental problems with the Linc Energy site in 2012, and even as far back as 2008¹¹³. In April 2016, Linc Energy entered into voluntary administration, leaving at least \$29 million in clean-up costs unpaid.¹¹⁴

¹¹⁰ <http://www.governmentnews.com.au/2014/04/queensland-government-hits-underground-coal-gasification-player-linc-energy-environmental-damage-charges/http://www.governmentnews.com.au/2014/04/queensland-government-hits-underground-coal-gasification-player-linc-energy-environmental-damage-charges/>

¹¹¹ <https://www.ehp.qld.gov.au/management/hopeland.html>

¹¹² <http://www.abc.net.au/news/2015-06-10/linc-energy-legal-action-widened-alleged-ugc-contamination/6535098>

¹¹³ ABC, 17th March 2015, 'Linc Energy allegedly failed to report series of dangerous gas leaks at Chinchilla plant, court documents reveal', <http://www.abc.net.au/news/2015-03-17/linc-energy-accuse-failing-report-series-of-dangerous-leaks/6323850>

¹¹⁴ See The Australian, 'Linc Energy Enters Voluntary Administration', <http://www.theaustralian.com.au/business/mining-energy/linc-energy-enters-voluntary-administration/news-story/01bdfbb7ae6ebc89f30679ae2520fc03?login=1>, and Courier Mail, 'Linc Energy Could Leave Taxpayers with a 29 million bill for cleanup' <http://www.couriermail.com.au/news/queensland/linc-energy-could-leave-taxpayers-with-a-25-million-bill-for-cleaning-up-dalby-plant/news-story/8a0569138530098afb0d6b3cef10bc3c>

Revolving Door

Another community concern is the ‘revolving door’ between government and the mining industry in Queensland. The apparent ease with which individuals can shift between positions within the mining industry and positions within government, and back again, and the number of high level shifts which have occurred in Qld, have the potential to undermine public confidence in government independence in matters pertaining to the mining industry in Qld.

The ‘revolving door’ raises numerous concerns for the community, including concerns that Government staff may have an eye to future employment when making decisions, that sensitive knowledge may be transferred directly to mining companies when staff switch across, and that mining company staff who re-enter government may provide preferential treatment to mining interests including the secondment and promotion of other mining company staff from inside and outside government.

For example, it has emerged that public servants who did assessment work for CSG to LNG projects now work for the industry they assessed¹¹⁵. Shane McDowall, a former deputy co-ordinator general with the Government, now sits on the board of the Flinders Group as managing director¹¹⁶ alongside former senior public servants Phil Dash, who worked on the assessment of QGC and Santos's Gladstone LNG project¹¹⁷, and former deputy co-ordinator general Geoff Dickie both of whom also now work for Flinders¹¹⁸, which is a privately-owned project management company contracted to UK

¹¹⁵ ‘Revolving Doors – Queensland’, Jeremy Buckingham MP, accessed 21st March 2016, <http://jeremybuckingham.org/2015/03/27/revolving-doors-queensland/>

¹¹⁶ See LinkedIn, Shane McDowall <https://au.linkedin.com/in/shane-mcdowall-36252535> and Revolving Doors Queensland, <http://jeremybuckingham.org/2015/03/27/revolving-doors-queensland/>, accessed 8th March 2016

¹¹⁷ Flinders Hyder website, ‘Flinders Group welcomes Environmental and Land specialist Phil Dash to the team’, <http://www.flindersgroup.com.au/welcome-to-environment-and-land-specialists-phil-dash-to-the-team/>

¹¹⁸ See Rowland website, ‘Rowland appoints top mining and infrastructure advisor’, <http://www.rowland.com.au/rowland-appoints-top-mining-and-infrastructure-advisor/>, and Queensland Exploration Council website, ‘Working Groups’, <http://www.queenslandexploration.com.au/who/working-groups/>, accessed 8th March 2016

energy giant BG Group’s Queensland CSG subsidiary QGC¹¹⁹. On the board of the Flinders Group is John Cotter Jnr, son of the Chair of the Gasfields Commission¹²⁰.

The full extent of job-swapping between mining companies and roles as political advisors and in the senior ranks of the bureaucracy is not well understood. There are also examples that flow in the other direction, senior and influential government roles being filled by coal and gas company operatives, without any cooling off period, including the former Premier Campbell Newman’s chief of staff, Ben Myers, who formerly worked for QGC¹²¹. In fact, the offices of the then Premier, Minister Seeney and Minister Cripps all contained ex-mining industry employees¹²². For example, Matt Adams, formerly development manager at Ambre Energy, which proposed an open-cut coal mine on the rich farmland at Felton became a senior policy adviser to Deputy Premier Jeff Seeney¹²³.

The following is a list of known high profile shifts between the mining industry and the Qld Government in recent years, where direct moves were made from mining to government or vice versa, without any apparent cooling off period:

Name	Government positions	Industry positions	Reference
Jim Belford	2007-2009: Principal Environmental Investigator, EPA	September 2011 – present: Team Leader, Environmental Compliance, Santos Ltd	LinkedIn, Jim Belford, https://au.linkedin.com/in/jim-belford-a3332b9a
	2009-2010: Manager, Regional Investigations, EPA	August 2014 – present: Senior Advisor, Governance, Assurance and Approvals, Santos Ltd	
	2010-2010: Director, Petroleum and Gas, DERM		
	2010-2011: Director, LNG Enforcement, Qld Government		
Shane McDowall	July 2008 – June 2010: Deputy Coordinator General, Department	August 2010 – March 2014: Managing Director, Flinders Group	See LinkedIn, Shane McDowall https://au.linkedin.com/in/shane-mcdowall-36252535 and Revolving Doors Queensland,

¹¹⁹ Flinders Hyder website, ‘Our Projects’, 21st March 2016, <http://www.flindersgroup.com.au/projects/>

¹²⁰ Flinders Hyder website, ‘Our People’, 21st March 2016, <http://www.flindersgroup.com.au/team/board-of-directors/>

¹²¹ LinkedIn, Ben Myers, accessed 8th March 2016, <https://au.linkedin.com/in/benmyers1>

¹²² See LinkedIn, Mitch Grayson, <https://au.linkedin.com/in/mitchgrayson>, LinkedIn, Lisa Palu, <https://au.linkedin.com/in/lisa-palu-a78183b3>, and LinkedIn, Matt Adams, <https://au.linkedin.com/in/matt-adams-743211b2>, accessed 8th March 2016.

¹²³ LinkedIn, Matt Adams, accessed 8th March 2016, <https://au.linkedin.com/in/matt-adams-743211b2>

	Infrastructure and Planning	March 2014 – present: Business Leader, Hyder Consulting (Flinders Hyder are a land/acquisition and approvals consultancy provides services to the resources sector)	http://jeremybuckingham.org/2015/03/27/revolving-doors-queensland/
Andrew Brier	2009 – 2010: Statewide Manager, Major Projects, Qld Government 2010 – January 2012: General Manager, Coal and Coal Seam Gas Operations, Qld Government July 2012 – March 2013: General Manage, Gasfields Commission	January 2012 – July 2012: Compliance Manager, Santos Ltd March 2013 – present: Double B Advisory (consultancy providing services to both the resources sector and the government)	Gasfields Commission Queensland, 'Andrew Brier a real coup', media statement 20th August 2012, http://www.gasfieldscommission.qld.org.au/what-s-happening/andrew-brier-a-real-coup.html , and LinkedIn, Andrew Brier, https://au.linkedin.com/in/andrew-brier-234b1196
Phil Dash	2007-2012: Assistant Coordinator General, Major Projects	2012-2014: Senior Associate and Sector Lead for Mining and Resources with Flinders Hyder (consultancy providing services to the resources sector)	Department of Infrastructure, Annual Report 2007, Executive Management Team, http://www.statedevelopment.qld.gov.au/resources/publication/past-annual-report/7DIP_Annual_Report_Executive_management_team.pdf Flinders Hyder website, 'Flinders Group welcomes Environmental and Land specialist Phil Dash to the team', http://www.flindersgroup.com.au/welcome-to-environment-and-land-specialists-phil-dash-to-the-team/ Revolving Doors Queensland, http://jeremybuckingham.org/2015/03/27/revolving-doors-queensland/
Rod Kent	2007-2010: Manager, Environmental Regulator January 2010 – December 2011: Director of Compliance, UCG and Coal Seam Gas, Environmental Regulator Qld Government	January 2012 – February 2015: Manager Landholder Relations, Santos Ltd April 2015 – present: consultant, Quaysource (consultancy providing services to the resources sector)	LinkedIn, Rod Kent, https://www.linkedin.com/in/rodkent
Geoff Dickie	2007: appointed Acting Deputy Coordinator General, Major Projects	2010: appointed Inaugural Chair of the Queensland Exploration Council 2011: appointed Strategic Advisor in the Public and Government Affairs group, Rowland Pty Ltd (lobbying firm which provides	Department of Infrastructure, Annual Report 2007, Executive Management Team, http://www.statedevelopment.qld.gov.au/resources/publication/past-annual-report/7DIP_Annual_Report_Executive_management_team.pdf 'Rowland appoints top mining and infrastructure advisor',

		services to the resources sector, including Sibelco)	http://www.rowland.com.au/rowland-appoints-top-mining-and-infrastructure-advisor/ Queensland Exploration Council, About us http://www.queenslandexploration.com.au/who/
James Purtill	2000-2006: Director General, EPA 2006-2008: Public Service Commissioner 2013-2015: Director General, Department of Aboriginal & Torres Strait Island & Multicultural Affairs 2015-present: Director General, Department of Natural Resources and Mines	2009-2012: General Manager Sustainability, Santos GLNG 2012-2013: Consultant with Ranbury Management Group and Landroc (consultancies that provide services to the resources sector)	LinkedIn, James Purtill, https://www.linkedin.com/in/james-purtill-b93a3a49
Alan Feely	Executive Director, Parks and Wildlife Service Deputy Director General of the Department of Aboriginal & Torres Strait Islander & Multicultural Affairs	NSW Manager Environment and Water, Santos Ltd	See Mindhive website, https://mindhive.org/people/Alan-Feely , and Jeremy Buckingham MP website, Revolving Doors Queensland, http://jeremybuckingham.org/2015/03/27/revolving-doors-queensland/
David Edwards	March 2012-July 2015: Director General, Department of State Development	August 2009-March 2012: Manager Strategy and Market Development, GHD (consultancy that provides services to the resources sector)	LinkedIn, David Edwards, https://au.linkedin.com/in/david-edwards-68a7498
Stephen Bizzell	2013-2016: Non-executive Director, Queensland Treasury Corporation	1999-2010: Executive Director, Arrow Energy Currently non-executive director at 8 energy and resources companies	LinkedIn, Stephen Bizzell, https://au.linkedin.com/in/stephen-bizzell-88796537
Mitch Grayson	March 2012-September 2012: Senior Media Advisor, Qld Premier Campbell Newman November 2013-February 2015: Senior Media Advisor, Qld Premier Campbell Newman	October 2012-November 2013: Senior Media and Communications Advisor, Santos GLNG	LinkedIn, Mitch Grayson, https://au.linkedin.com/in/mitcgrayson
Lisa Palu	April 2012-November 2012: Senior Policy Advisor, Qld Premier Campbell Newman	May 2011-April 2012: Media and Communications Advisor, Arrow Energy	LinkedIn, Lisa Palu, https://au.linkedin.com/in/lisa-palu-a78183b3

Ben Myers	April 2011-March 2012: Director of Strategy, Qld Government March 2012-February 2015: Chief of Staff, Qld Premier Campbell Newman	May 2010-April 2011: Communications Manager, QGC	LinkedIn, Ben Myers, accessed 8th March 2016, https://au.linkedin.com/in/benmyers1
Neil McGregor	2014-2015: Director, Public Sector Renewal, Department of Premier and Cabinet 2015: Director, Strategy, Department of Premier and Cabinet 2015-2016: Director, Business Performance and Infrastructure, Department of Premier and Cabinet	2010-2012: General Manager Business Development, Ambre Energy 2012-2014: Company Secretary and GM Corporate Communication, Ambre Energy	LinkedIn, Neil McGregor, http://au.linkedin.com/pub/neil-mcgregor/37/5aa/40
Matt Adams	March 2012-February 2015: Senior Policy Advisory, Office of the Deputy Premier Jeff Seeney	2010-March 2012: Manager Business Development, Ambre Energy	LinkedIn, Matt Adams, https://au.linkedin.com/in/matt-adams-743211b2
Les Cox	March 2014-February 2015: Senior Policy Advisor, Minister for Natural Resources and Mines	2010-January 2014: various roles at Arrow Energy	LinkedIn, Les Cox, http://au.linkedin.com/pub/les-cox/9/b8/a18
David Usasz	November 2011-October 2014: Director, Queensland Investment Corporation Ltd	January 2008-December 2013: Director Ambre Energy	LinkedIn, David Usasz, accessed 8th March 2016, https://au.linkedin.com/in/david-usasz-ab211535
Jeff Popp	March 2012-February 2015: Chief of Staff, Office of the Deputy Premier Jeff Seeney	2010-April 2012: Communications Manager, AECOM (major mining delivery and assessment service provider)	LinkedIn, Jeff Popp, http://au.linkedin.com/pub/jeff-popp/16/566/250?trk=pub-pbmap
Anne Syvret	2002-2008: Chief of Staff and Ministerial Advisor, Bligh and Beattie Governments	2008-December 2015: Manager Compliance and Regulatory Change, Origin Energy	LinkedIn, Anne Syvret, https://au.linkedin.com/in/anne-syvret-b30409109

While people must be free choose their place of employment, it is important that the movement of staff between the mining industry and government does not compromise government decision making in relation to the environmental and social impacts of the industry. Greater transparency of employees' industry connections and stricter controls on post-separation employment must be put in place to ensure maximum independence in departmental and ministerial offices.

Gifts and benefits

The quantity and quality of gifts being bestowed by mining companies on Queensland Government bureaucrats, and acceptance of those gifts by those public servants, is also an issue that is raising questions about the down-grading of the public interest in mining decision-making in Queensland.

Public Service Commission Directive Number 22/09 outlines the ethical considerations and procedures involved in the giving and receiving of gifts and benefits by employees and agents of the Qld Public Service¹²⁴. The Directive does not prevent the acceptance of gifts and benefits. Instead, it requires that *'if offered a gift or benefit, a public service employee or agent must always consider whether a gift or benefit is appropriate to accept'*. Furthermore, gifts or benefits received or given with a retail value of more than \$150 must be recorded in an agency's gifts and benefits register.

We have compiled a summary of the gifts given by mining companies or their representatives and received by representatives of Queensland Government agencies, since 2012, based on a review of the relevant gifts and benefits registers¹²⁵.

Attachment 1 provides a table of all the gifts and benefits provided by mining and associated companies to Qld public servants, as reported in the Gifts and Benefits Registers for the Department of Premier and Cabinet¹²⁶, Department of Natural Resources and Mines¹²⁷, Gasfields Commission¹²⁸ and Department of Environment and Heritage Protection¹²⁹. The vast majority of these gifts were designated as being retained by the employee.

There were 112 gifts and benefits received by public servants in these departments from the mining industry and associated companies from 2012 to 2015. The gifts ranged from complimentary tickets to conferences and networking events that are relevant to the work being undertaken by the public servants in question, to access to mining company suites at the football and private meals. Small gifts such as these bring a personal dimension to an otherwise professional relationship and potentially a sense of obligation for the public servant involved.

¹²⁴ <http://www.psc.qld.gov.au/publications/directives/assets/2009-22-gifts-benefits.pdf>

¹²⁵ See Queensland Ministerial Gifts Register and departmental gifts registers

¹²⁶ <https://data.qld.gov.au/dataset/department-of-the-premier-and-cabinet-gifts-and-benefits-register>

¹²⁷ <https://data.qld.gov.au/dataset/gifts-and-benefits-registerdepartment-of-natural-resources-and-mines>

¹²⁸ <http://www.gasfieldscommissionqld.org.au/gasfields/about-us/right-to-information.html>

¹²⁹ https://www.ehp.qld.gov.au/about/rti/publicationscheme/ourlists.html#gifts_and_benefits_register

As a result of the acceptance of these gifts, almost every month, while Queensland agencies are assessing new coal and gas projects, or monitoring existing operations, their senior managers have also been accepting gifts and attending functions with the companies that own those projects¹³⁰. This does raise questions as to whether these benefits are indeed ‘appropriate to accept’ under the circumstances. For example, are gifts of chocolates and wine given by the Jellinbah Group and their Lake Vermont coal mine subsidiary to three public servants engaged in mine inspection and compliance work¹³¹. Of greater concern, perhaps, is that on 32 occasions from 2012-2015, mining companies treated senior Queensland public servants in agencies that assess, oversee or monitor mining projects to private dinners, tickets to corporate boxes at football matches or high-end events such as Ballet or the Opera¹³².

There is concern that this activity severely compromises assessment processes and compliance monitoring for a range of high profile coal and gas projects. The companies that provided the most gifts included Arrow Energy, Santos, Aurizon, New Hope and Adani.

The sharing of dinners and football matches suggests a degree of intimacy these mining companies have with senior public servants whose agencies are responsible for representing the public interest by properly and impartially assessing and regulating mining in Queensland. By contrast, organisations that advocate for the public interest are rarely awarded this degree of access. It is unrealistic to claim that such familiarity is not accompanied by a degree of confidence, support and favour.

It is difficult to understand how the relevant government agencies can reach the conclusion that acceptance of these types of gifts – private dinners and access to corporate suites at the football – is ‘appropriate to accept’ in accordance with the relevant public service directive. Notably, there are no notes available on the topics discussed at these events, and no agenda, minutes or any form of record of meeting provided to the public.

The vast number of gifts and benefits conferred, the degree of intimacy it is allowing and the absence of records of topics discussed, would suggest that changes are

¹³⁰ See Queensland Ministerial Gifts Register <https://data.qld.gov.au/dataset/ministerial-gifts-register>

¹³¹ Gifts and Benefits register, Department of Natural Resources and Mines, October-December 2013, https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0012/120054/gifts-and-benefits-register-dec-2013-quarter.pdf

¹³² See Queensland Department of Natural Resources and Mines gifts and benefits register, <https://www.data.qld.gov.au/dataset/gifts-and-benefits-registerdepartment-of-natural-resources-and-mines>

needed to the directive to provide greater confidence amongst the community that these types of gifts and benefits are not unduly influencing government decisions.

Discussion

The cases covered in this report reveal systematic issues with governance and decision-making on mining in Queensland, which raise substantial community concern. The report showcases mining companies providing substantial political donations and contributions, gaining far-reaching access to all levels of government and bestowing substantial gifts and benefits, whilst individuals switch between government and the mining industry with disturbing regularity.

At the same time, under the Newman Government, key mining companies gained significant legislative outcomes in their favour and experienced inadequate or delayed scrutiny of their opaque company structures and history of environmental management. In a number of cases, these favourable outcomes have continued under the ALP Government, despite pre-election promises to the contrary

There have been no substantial changes to decision making processes on mining in Queensland, which means that concerns about these issues continue under the current government, and are likely to continue under future governments. Certainly, under the current ALP Government increased levels of political access by the mining industry are raising on-going community concerns. For example, publicly available records show the Palaszczuk government met 145 times with the mining industry in their first year of government, with Resources and Mines Minister Anthony Lynham accounting for a staggering 87 of these meetings.

Many meetings, including through advisors and departmental staff, are not publicly available and therefore the full influence of the mining industry on the current government is hard to ascertain. Through Queensland Government department gifts registers we can see, however, that the influence of the mining industry continues under the Palaszczuk government at a ministerial level and at a departmental level.

The perceived systemic failings of governance in relation to the mining industry in Qld is leading to mining projects being approved that have adverse impacts on local communities and the environment, including damaging water resources, reducing air quality and harming other industries.

Political donations and contributions

Political donations and contributions have long been a serious cause of concern for the community, due to the perceived bias they may introduce to decision-makers in favour of donors. As described in this report, the Qld LNP received at least \$1M in donations from the mining industry and associated individuals, and the Federal LNP received at least \$3M, from 2011 onwards. As highlighted above, a number of political donors were the subject of legislative changes or other measures that appear to have been beneficial to their interests.

In NSW, a series of corruption inquiries by the Independent Commission Against Corruption have resulted in findings of corrupt conduct in relation to mining administration in that state¹³³ and have drawn attention to political donations by mining interests¹³⁴.

Various jurisdictions have, over recent years, been looking more closely at laws to restrict or constrain political donations. NSW has perhaps gone furthest in this regard, banning political donations from certain industries that are perceived as a corruption risk¹³⁵, capping the maximum amount that can be donated to individual candidates (set at \$2,000) and parties (set at \$5,000), and placing additional donation disclosure requirements on proponents who make a planning application under the NSW Environmental Planning and Assessment Act 1979¹³⁶. These measures have been upheld by the High Court of Australia, which rejected claims that they were an impermissible restriction on freedom of political communication¹³⁷.

In her letter to Peter Wellington of the 5th February 2015, Anastacia Palaszczuk made the following commitments in relation to political donations and contributions in Queensland:

“A Labor Government will reintroduce the \$1,000 disclosure threshold for electoral donations introduced by the previous Labor Government”.

¹³³ See for example <http://www.abc.net.au/news/2014-11-20/ian-macdonald-eddie-obeid-to-be-prosecuted/5905540> and <http://www.australianmining.com.au/features/corrupt-conduct-over-mount-penny-tenement-icac-s-v>

¹³⁴ <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

¹³⁵ See section 96GA of the NSW Election Funding, Expenditure and Disclosures Act 1981 http://www5.austlii.edu.au/au/legis/nsw/consol_act/efeada1981443/s96ga.html

¹³⁶ http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s147.html

¹³⁷ <http://www.smh.com.au/nsw/high-court-upholds-statewide-ban-on-political-donations-from-property-developers-20151005-gk21ja.html>

“Further, in relation to real-time disclosure of donations, Labor will work with the Electoral Commission of Queensland and the other parties to develop a real-time online system of disclosure of electoral donations”.

“Once the new independent chair of the anti-corruption watchdog is appointed, Labor will hold a public inquiry into links, if any, between donations to political parties and the awarding of tenders, contracts and approvals. The anti-corruption watchdog has the powers of a standing Royal Commission and will be able to thoroughly investigate these issues”.¹³⁸

In 2015, the Qld Government passed the Electoral and Other Legislation Amendment Bill 2015¹³⁹ which reintroduces a \$1,000 disclosure threshold for electoral donations. However, the Qld Government has yet to deliver a real-time online system of disclosure. Notably, the Qld electoral laws still fall far short of NSW laws because they do not create any caps on the size of donations nor do they place any prohibitions on donations from industries that are recognised as a potential corruption risk.

Cash for Access Through Third Party Fundraising Entities

Large political donations have also been made by mining companies examined in this report to Federal political parties¹⁴⁰. Federal parties donate back to state parties but there is no transparency as to the original source of such donations.¹⁴¹

For example, in 2010/11, as it sought environmental approval for its disastrous and now banned Underground Coal Gasification project in Queensland Linc Energy donated \$213,000 to the Liberal Party of Australia¹⁴². From 2010 to 2014 New Hope Coal and its associated companies donated around \$1 million dollars to the Liberal Party of Australia¹⁴³. Over the same period, over \$3 million has flowed from the

¹³⁸ Letter exchange between Peter Wellington and Anastacia Palaszczuk, <http://www.peterwellingtonmp.com/Letter%20Exchange%202015.pdf>

¹³⁹ <https://www.legislation.qld.gov.au/Bills/55PDF/2015/ElectoralOLAB15.pdf>

¹⁴⁰ Australian Electoral Commission, Periodic Disclosures, <http://periodicdisclosures.aec.gov.au/Default.aspx>

¹⁴¹ Electoral Commission of Queensland annual disclosure returns <https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

¹⁴² Australian Electoral Commission, Periodic Disclosures, <http://periodicdisclosures.aec.gov.au/Default.aspx>

¹⁴³ Ibid.

Federal Liberal Party to the Queensland LNP¹⁴⁴. The lack of transparency in such transactions makes it impossible to establish the original source of these donations.

Federal and state political parties also have opaque fundraising forums through which companies can pay for access to ministers at fundraising events. A number of mining companies, including some of those listed in this report, participate in the Queensland LNP fundraising body, QForum¹⁴⁵. It is unclear how subscriptions and event attendance are accounted for in disclosure returns, but it is clear that payment to QForum has obtained direct access for mining companies to key government ministers.

Furthermore, at least one of the companies examined in this report made a substantial donation to the highly controversial Free Enterprise Foundation, the opaque Federal Liberal Party fundraising body that came under the scrutiny of the NSW Independent Commission Against Corruption ICAC¹⁴⁶.

Former Queensland Integrity Commissioner Gary Crooke described these types of ‘cash for access’ practices as ‘bipartisan ethical bankruptcy’¹⁴⁷. Mr Crooke stated that “Not only is this behaviour wrong from the point of view of perceived and actual fairness, it is deeply flawed because it wilfully and arrogantly disregards a fundamental principle of our democracy: that those elected to govern must use the power entrusted to them for the benefit of the community”.¹⁴⁸

Crime and Corruption Commission Inquiry

The Qld Government has not yet implemented its commitment to Peter Wellington, as quoted above, to hold a public inquiry, run by the Crime and Corruption Commission, into “links, if any, between donations to political parties and the awarding of tenders,

¹⁴⁴ Electoral Commission of Queensland annual disclosure returns
<https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/annual-disclosure-returns>

¹⁴⁵ See, for example, Diary of Campbell Newman, November 2013,
<http://www.cabinet.qld.gov.au/ministers/diaries/previous-cabinet/assets/november-2013/premier-diary-november-2013.pdf>

¹⁴⁶ The Australian, 15th February 2015, ‘Acland mine put on hold following scandal’,
<http://www.theaustralian.com.au/national-affairs/acland-mine-deal-put-on-hold-following-scandal/news-story/10f25647f0d6cf1d31aeec23d91fc591>

¹⁴⁷ Gary Crooke QC (2015) Qld election: bipartisan ethical bankruptcy, ABC, The Drum.
<http://www.abc.net.au/news/2015-01-23/crooke-qld-bipartisan-support-for-ethical-bankruptcy/6042508>

¹⁴⁸ Ibid.

contracts and approvals”¹⁴⁹. The Qld ALP also made other commitments relating to the CCC in the lead-up to the election, which have not been implemented, stating in a letter to Lock the Gate Alliance that “Labor is committed to creating a reformed corruption watchdog with powers equivalent to the Independent Commission Against Corruption in NSW”¹⁵⁰.

Notably, the scope and powers of the Crime and Corruption Commission were weakened considerably under the Newman Government (despite already having some notable limitations) by virtue of the passage of the *Crime and Misconduct and other Legislation Amendment Act 2014* (Qld).

The changes mean that:

- The Commission lost the function of preventing corruption
- The powers of the CCC to focus on official misconduct have been removed
- The CCC has to seek Ministerial approval prior to commencing research into specific topics
- The thresholds for referral to the CCC have been increased
- All complaints to the CCC have to be done by means of a statutory declaration
- Serious penalties now apply for complaints deemed as vexatious
- The original corporate governance of the CCC has been changed, giving broader powers to the CEO
- The CCC can now delegate investigations to other agencies¹⁵¹

These changes raise serious questions as to whether the CCC has the requisite powers to properly conduct the promised inquiry into possible links between political donations and contributions and decisions. Over the last 2 years, community groups have made specific complaints to the CCC about both Sibelco and the Stradbroke Island sand-mining issues, and New Hope Coal and the Acland Stage 3 expansion. In both cases, the CCC has refused to investigate the matters, suggesting that its scope and function may be insufficient to address the types of issues that raise considerable public concern relating to probity, transparency and accountability of government.¹⁵²

¹⁴⁹ Letter exchange between Peter Wellington and Anastacia Palaszczuk, <http://www.peterwellingtonmp.com/Letter%20Exchange%202015.pdf>

¹⁵⁰ 22nd January 2015, letter from Qld ALP to Lock the Gate Alliance

¹⁵¹ See the Crime and Misconduct and Other Legislation Amendment Act 2014 which introduced the changes <https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC021.pdf>

¹⁵² See Brisbane Times, 18th November, ‘CCC says no inquiry into 2012 \$91,000 Sibelco sandmining ads’, <http://www.brisbanetimes.com.au/queensland/ccc-says-no-inquiry-into-2012-91000-sibelco-sandmining-ads-20141117-11ojor.html>, and Brisbane Times, 4th December 2015, ‘CCC drops Acland

Furthermore, although the ALP committed to a ‘public inquiry’ in their letter to Peter Wellington, the CCC is governed by section 177 of the *Crime and Corruption Act 2001* (Qld) which specifies that ‘generally, a hearing is not open to the public’ but which does allow the CCC to exercise a discretion to make hearings public under certain circumstances.¹⁵³ However, there does not appear to be any mechanism for the Qld Government to direct the CCC to hold public hearings.

There are several reforms currently underway in Queensland relating to the CCC. These include:

- The introduction of the *Crime and Corruption Amendment Bill 2015* into the Queensland Parliament¹⁵⁴
- A review of the CCC being undertaken by the Parliamentary Crime and Corruption Committee¹⁵⁵
- An issues paper on the definition of corrupt conduct in the *Crime and Corruption Act 2001*¹⁵⁶

The proposed amendments contained in the Crime and Corruption Amendment Bill 2015 are relatively limited, and are largely focused on reinstating some of the powers that were removed by the Newman Government amendments. The changes will:

- Reinstating the CCC’s corruption prevention function
- Removing the requirement for ministerial approval for research activities undertaken by the CCC
- Removing the requirement for a statutory declaration for corruption complaints

However, they appear insufficient to enable the CCC to thoroughly investigate potential links between political donations and contributions and the awarding of ‘*tenders, contracts and approvals*’. Most notably, they do not reinstate official misconduct as a matter that falls within the purview of the CCC.

Lobbyists

In 2011, the then-Qld Integrity Commissioner, David Solomon, made a detailed submission to the review of the *Integrity Act 2009* which was being undertaken by the

donations complaint’, <http://www.brisbanetimes.com.au/queensland/ccc-drops-acland-donations-complaint-20151204-glg0pr.html>

¹⁵³ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandCorruptionA01.pdf>

¹⁵⁴ <https://www.legislation.qld.gov.au/Bills/55PDF/2015/CrimeandCorruptionAmB15.pdf>

¹⁵⁵ <https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/five-year-review>.

¹⁵⁶ <https://www.getinvolved.qld.gov.au/gi/consultation/2907/view.html>

Department of Premier and Cabinet¹⁵⁷. The Commissioner identified a major loophole in relation to the regulation of lobbyists by the Integrity Act – namely that it only regulated ‘third-party lobbyists’ and did not regulate in-house lobbyists who were lobbying directly for the company they worked for. Furthermore, the Act did not regulate industry associations as ‘lobbyists’. Therefore, the Act was in fact only regulating a small proportion of the lobbying activity to which the government is subjected.

This has been evident in the analysis conducted for this report. Whilst all Ministerial meetings are recorded in Ministerial diaries, meetings with public servants are only made known to the public via the lobbyists contact register IF they are conducted by a third-party lobbyist. Therefore, in the case studies conducted above, there is far more information available on meetings with the public service held by Sibelco, who used a third-party lobbyist and were therefore required to disclose meetings, than for any other mining company. Furthermore, the monthly register of lobbyists’ contacts is generally quite limited, suggesting that many companies are using in-house lobbyists, and the fact that it represents a loophole under the Integrity Act may well explain the shift to in-house lobbyists. However, there is no public transparency in relation to such meetings.

In light of the loopholes which he had identified, the then Integrity Commissioner recommended that in-house lobbyists and industry associations should be covered by Queensland’s regulations on lobbyists, and that a sanctions regime be introduced for breaches of certain sections of the *Integrity Act 2009* relating to lobbyists¹⁵⁸. His calls were echoed by the incoming Integrity Commissioner appointed in 2014, Richard Bingham¹⁵⁹. However, the Solomon recommendations were never implemented, and Bingham’s calls for a broadened definition of lobbyists were similarly rejected by the Newman Government.

In 2015, Professor Peter Coaldrake was tasked with conducting a ‘Strategic Review of the Functions of the Integrity Commissioner’¹⁶⁰. The review concluded that *‘The current Lobbyist regulation arrangements are ineffective in achieving the intent of the Act in that they apply only to a modest proportion of those engaged in lobbying activity*

¹⁵⁷ <http://www.integrity.qld.gov.au/assets/document/catalogue/integrity-act-review/ics-submission-to-dpc-review-of-integrity-act.pdf>

¹⁵⁸ <http://www.integrity.qld.gov.au/assets/document/catalogue/integrity-act-review/ics-submission-to-dpc-review-of-integrity-act.pdf>

¹⁵⁹ <http://www.brisbanetimes.com.au/queensland/integrity-commissioner-calls-for-more-transparency-on-lobbyists-20141126-11unz2.html>

¹⁶⁰ Final Report, Strategic Review of the Functions of the Integrity Commissioner’, 8th July 2015, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2015/5515T804.pdf>

*in Queensland. A separate but related finding is that the disproportionate focus of the current regulation regime has had the unintended consequence of driving a significant amount of lobbying activity underground.’ It recommended that ‘the definition of lobbyists should be expanded to include regulation of in-house lobbyists and other professionals discharging the lobbying function’.*¹⁶¹

However, once again, it appears that the Queensland Government has chosen to ignore the advice of the experts. Instead, the Parliamentary Finance and Administration Committee which considered the Coaldrake Review, recommended that *‘the current definition of lobbyists contained in the Integrity Act be maintained and that there be no changes to the scope of the lobbyist register’*¹⁶². The Queensland Government has accepted that recommendation.

RECOMMENDATIONS

This report outlines cases which raise serious concerns about the influence that is exerted by mining companies on public decision-making in Qld. It highlights the extraordinary access which mining companies have to decision-makers, even though only a portion of meetings are required to be made public, due to weaknesses in the definition of lobbyists. Even for meetings which are caught by the requirements for notification, there is no requirement to provide meaningful information about the purpose or content of such meetings, and they are frequently merely flagged as ‘commercial-in-confidence’.

This report confirms that the powers of the CCC, as currently constituted, are unlikely to be sufficient to properly deliver on the Qld ALPs promise to conduct a ‘public inquiry’ into the links between political donations and contributions and tenders, contracts and approvals. The weaknesses of the CCC, its lack of transparency, and the number of issues which this report identifies, ranging from political donations and contributions, to far-reaching political access, limited transparency, the provision of gifts and benefits and the revolving door between government and the mining industry, suggests that a far broader inquiry is required. Therefore, a Special Commission of Inquiry is recommended into the influence of the mining industry on public decision-making in Qld.

It is notable that very little has changed in relation to public accountability and transparency since the Qld ALP Government was elected in early 2015. Records show

¹⁶¹ Ibid. pg 2

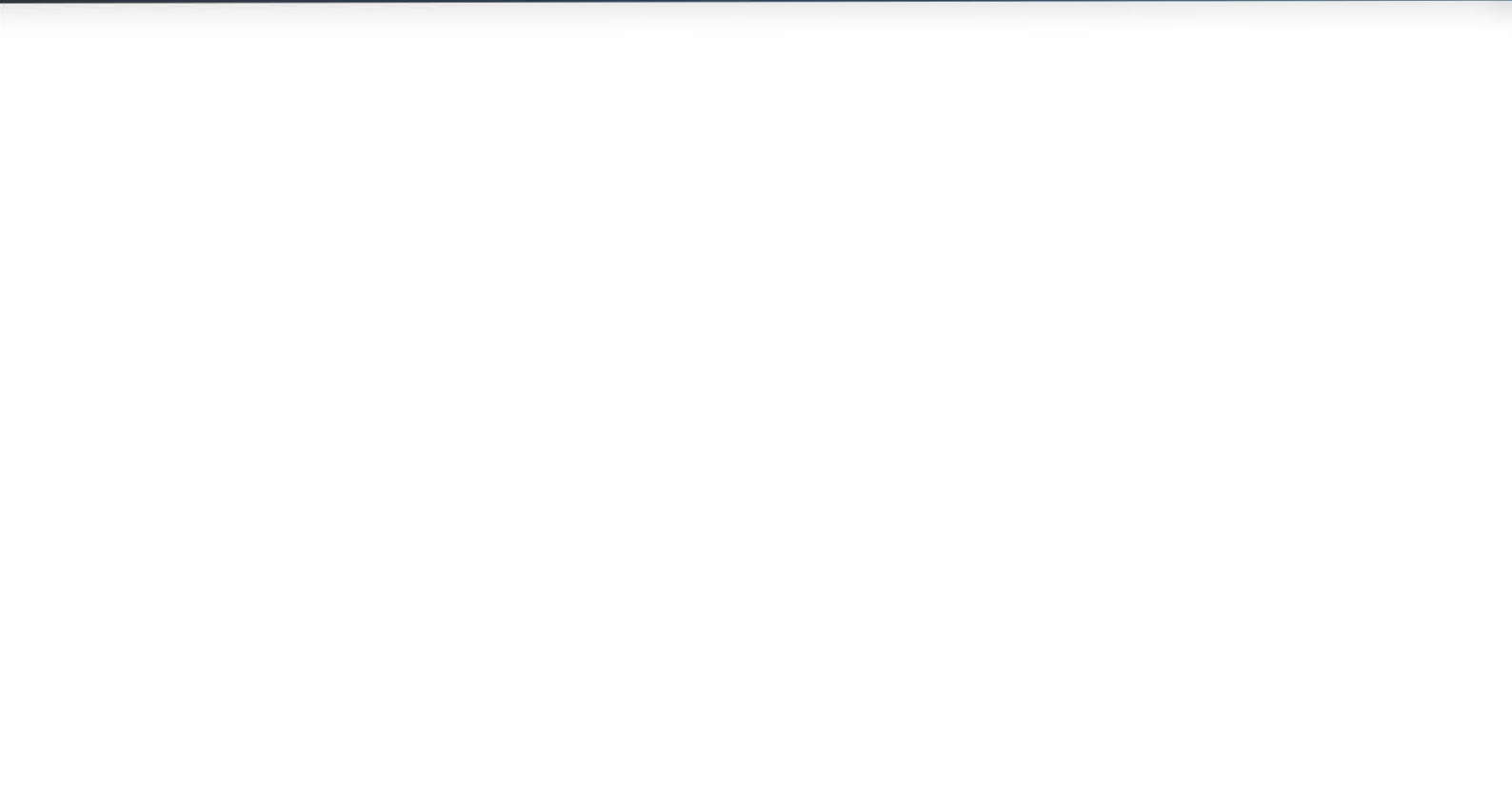
¹⁶² See recommendation 6

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T273.pdf>

that the ALP Government has met with mining companies 145 times, accepted \$91,410 in donations (plus additional donations made at a Federal level), and rejected independent recommendations to extend the definition of lobbyists to cover in-house lobbyists and industry associations. The 'Fitzgerald Principles' which all parties committed to in the lead-up to the last Queensland election, have not been met.

To prevent the continuing malaise in public trust due to the undue influence of the mining industry on the Qld Government, urgent changes are needed. We recommend that:

1. A Special Commission of Inquiry with public hearings is conducted with a wide remit to investigate the influence of the mining industry on public decision-making in Qld, as well as investigating links, if any, between political donations and contributions, and tenders, contracts and approvals.
2. Improvements are made to the regulation of lobbyists to include in-house lobbyists and industry associations, and to increase transparency to ensure that agendas, minutes and notes from such meetings are placed on the public record.
3. Stricter controls are placed on post-separation employment and on the provision of gifts and benefits.
4. Political donations and contributions laws are amended to require real time disclosure, to ban donations from the mining industry, to prohibit 'cash for access' schemes, and to place strict caps on all other donations.
5. The powers of the Crime and Corruption Commission are expanded to encompass official misconduct, to include the provision of advice on corruption prevention, and to open the CCC process up via public hearings.



Annexure 11 – ACiDs

ACID - Electoral Legislation (Political Donations) Amendment Bill 2018

Amendments during consideration in detail to be moved by Michael Berkman, Member for Maiwar

1 Clause 3 (Amendment of s 2 (Definitions))

Page 4, line 11—

omit, insert—

- (1) Section 2, definition *political donation*—
omit.
- (2) Section 2—

2 Clause 4 (Amendment of s 197 (Definitions))

Page 4, line 17—

omit, insert—

- (1) Section 197, definition *political donation*—
omit.
- (2) Section 197—

3 After clause 5

Page 6, after line 22—

insert—

5A Omission of s 274 (Meaning of *political donation*)

Section 274—

omit.

4 Clause 7 (Insertion of new ss 307A and 307B)

Page 9, lines 15 to 18—

omit, insert—

7 Insertion of new ss 307D and 307E

After section 307C—

insert—

307D Offence about particular prohibited

5 Clause 7 (Insertion of new ss 307A and 307B)

Page 9, line 29, ‘307B’—

omit, insert—

307E

6 Clause 8 (Amendment of s 308 (Recovery of payments))

Page 10, lines 18 to 20—

omit, insert—

Section 308(1), ‘section 236(3), 271(6) or 276’—

omit, insert—

section 236(3), 271(6), 276 or 281A

7 Clause 9 (Amendment of s 385 (Offences under this part are summary))

Page 10, line 23 to page 11, line 3—

omit, insert—

Section 385(1), ‘to 307C’—

omit, insert—

to 307E

8 Clause 10 (Insertion of new s 385A)

Page 11, line 4 to page 12, line 14—

omit, insert—

10 Amendment of s 385A (Proceedings for indictable offence)

Section 385A(2), after ‘section 307B’—

insert—

of 307E

9 Clause 12 (Amendment of s 106 (Definitions for part))

Page 12, lines 20 to 24—

omit, insert—

(1) Section 106, definition *political donation*—
omit.

(2) Section 106—

insert—

political donation see section 112A.

prohibited corporate donor, for division 1B,
see section 113H.

10 Clause 13 (Insertion of new s 113)

Page 12, line 25 to page 13, line 1—

omit, insert—

13 Insertion of new s 112A

Part 6, division 1—

insert—

112A Meaning of *political donation*

11 After clause 13

Page 15, after line 8—

insert—

13A Omission of s 113A (Meaning of *political donation*)

Section 113A—

omit.

12 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 9, ‘1A’—

omit, insert—

1B

13 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 12, ‘1A’—

omit, insert—

1B

14 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 15, ‘113A’—

omit, insert—

113H

15 Clause 14 (Insertion of new pt 6, div 1A)

Page 16, line 16, ‘113B’—

omit, insert—

113I

16 Clause 14 (Insertion of new pt 6, div 1A)

Page 16, line 31, ‘113C’—

omit, insert—

113J

- 17 Clause 14 (Insertion of new pt 6, div 1A)**
Page 18, line 5, ‘113B’—
omit, insert—
113I
- 18 Clause 15 (Insertion of new ss 194D and 194E)**
Page 18, line 15, ‘113B’—
omit, insert—
113I
- 19 Clause 15 (Insertion of new ss 194D and 194E)**
Page 18, line 27, ‘1A’—
omit, insert—
1B
- 20 Clause 17 (Amendment of schedule (Dictionary))**
Page 20, line 26, ‘113’—
omit, insert—
112A
- 21 Clause 17 (Amendment of schedule (Dictionary))**
Page 20, line 28—
omit, insert—
1B, see section 113H.