

POLITICAL DONATIONS

ESTIMATES BRIEF - Hot Issue

Senate Standing Committee on Finance and Public Administration
Supplementary Estimates - October 2016

GENERAL POLITICAL DONATIONS ARRANGEMENTS

Issue:

General Political Donations Arrangements

Recent debate on donations

- The Special Minister of State announced on 14 September 2016 that the matter of political donations will be looked at by the Joint Standing Committee on Electoral Matters (JSCEM). (Referral attached)
- Changes to the donations system should not be made in a knee-jerk response to Senator Sam Dastyari's recent troubles.
- The recent debate has seen a number of views on political donations, and suggestions about how to improve the system.
- A number of people, including the Prime Minister, have made the very reasonable observation that ideally only individuals on the electoral roll should be able to donate to political parties.
- In the wake of a recent High Court decision, where NSW laws to restrict political donations to only those on the electoral roll were partially struck down, this proposal would need to be looked at very carefully, as a number of law professors have observed.
- Professor Anne Twomey highlighted the NSW ban was restrictive of the implied constitutional freedom of expression for organisations:

"[The view was] they have a legitimate interest in governmental action and the direction of its policy and may seek to influence the outcome of elections,"

"This includes unions and corporations. Any ban at the commonwealth level would face the same constitutional problems (unless the high court were to change its approach)."

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- Professor George Williams suggested that it may not be possible to ban certain donors unless there was a clear danger that the source may corrupt but that caps on donations may be possible:

“The answer is not to ban corporate and union donors, but to limit donations from all sources to a reasonable level, say \$5,000.”

“This would limit the ability of any donor to exercise undue influence. It is possible to ban certain donors, but only where it can be shown that there is a danger that donations from that source may corrupt or otherwise damage the political process.”

- In contrast, former Prime Minister John Howard does not believe that the current system needs to change, but wants to improve the timeliness of donation disclosure:

“The one big change that’s needed is more timely disclosure of donations. Transparency is the key.”

- Making significant changes to the political donations system should not be rushed through to distract from Senator Dastyari. This matter needs to be looked at in detail by the Joint Standing Committee on Electoral Matters (JSCEM).

Coalition’s position

- Arrangements for political donations need to be looked at in detail by the Joint Standing Committee on Electoral Matters (JSCEM).
- The Government believes that it is important that all political parties, associated entities and donors follow the appropriate Federal and/or state disclosure laws.
- Where there is a donation over the threshold, it is required to be disclosed to the Australian Electoral Commission by both the donor and the recipient.
- Financial disclosure returns must be lodged by 20 October each year and are published on the [AEC website](#) on the first working day in February of the following year.
- Annual returns from political parties, donors and associated entities are all available of the Australian Electoral Commission website.
- The Coalition does not support banning certain groups from participating in the political process.

Labor attack points

- Labor did nothing to change the political donations system in six years, despite having the numbers in both chambers.
- It must be remembered that Labor did consider this issue whilst in Government and they even had legislation drafted. In fact, on 17 November 2010, Labor passed the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010* through the House of Representatives.
- This Bill would have lowered the donations disclosure threshold to \$1000 and restrict foreign and anonymous donations.
- Labor, however, decided that through the three years it controlled the Senate with the Greens that this matter was not a political priority. Political donations reform was such a minor issue that they let their own piece of legislation lapse!
- Clearly Labor now think it is in their political interest to change the disclosure threshold.
- If there is an issue with political donations in this country, it is that Labor as the alternative government remains a wholly-owned and operated subsidiary of the trade union movement.
- Changing the disclosure threshold will do nothing to change this.
- The 2014/15 annual returns released on the AEC website at the beginning of February provide dozens of examples of Labor's reliance on the unions for funds in each of its state branches and at a national level:
 - The Australian Meat Industry Employees Union in NSW gave \$30,654 to the NSW Labor Party.
 - The SDA gave \$274,725 to the NSW Labor Party.

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- The South Australian SDA also gave \$329,503 to the SA Labor party branch.
- The CFMEU Northern Mining and NSW Energy District Branch gave \$42,748 to the NSW Labor Party
- The CFMEU Construction and General Division gave \$85,244 to the NSW Labor Party
- United Voice gave \$150,000 to Labor's Victorian branch.
- The CFMEU Queensland gave Queensland Labor \$186,095.
- The CPSU gave \$34,650 to the ACT Labor branch.
- Labor takes union donations on the one hand, and at the same time has fought tooth and nail against the Royal Commission and against the Australian Building and Construction Commission.
- As we have seen from the Royal Commission into Trade Union Governance and Corruption, Labor has even failed to disclose some of its donations.
- It is interesting that Labor have decided to talk about political donations when the Leader of the Opposition had trouble declaring a \$40,000 donation to his election campaign when he was a candidate.

Greens attack points

- The Australian Greens demonstrate their hypocrisy in this matter.
- This motion states that political donations have a corrupting influence, except of course if the donation is to the Australian Greens, who like to be holier-than-thou on this matter.
- The Greens wish to ensure that their donors are exempt from donations reform but those who donate to other groups are punished.
- I note that the Greens' policy on funding and disclosure, as published on their website, has the Greens calling for '*bans on political donations from commercial enterprises and caps on individual political donations*'
- The Greens are the recipient of the largest corporate donation in Australian political history from Wotif founder Graeme Wood, who gave them \$1.6million back in 2010.
- Mr Wood later said that the Greens winning the balance of power in the Senate meant he had received 'a good return on investment'. Given that the Greens went on to advance, at every turn, his bid for the purchase of the Triabunna wood chip mill, he is probably right.

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- I also note that their website indicates that the Greens hold themselves to a higher standard than other parties, apparently requiring the disclosure of donations to them every quarter.
- But their own rules did not apply to all of their donors, it seems. The quarterly disclosure rule was apparently waived for Mr Wood. The then-National Manager of the Greens, Brett Constable, said in a JSCEM hearing on 8 August 2011 that this rule was waived 'out of respect' so as 'not to draw undue attention' to the donation.
- This had the effect that Mr Wood's donation was not disclosed by the Greens until after the 2010 federal election.
- Interestingly, the Greens don't seem to be opposed to union donations either. Coincidentally, they were recipients of a \$300,000 donation from the ETU and \$125,000 worth of donations from the CFMEU according to their 2013/14 disclosure.

Background

Australian Electoral Commission's Role

The Australian Electoral Commission (AEC) acts independently from Government in administering the disclosure provisions of the *Commonwealth Electoral Act 1918*. The Special Minister of State does not direct the AEC in its activities and plays no active role through the AEC in the identification of persons with a disclosure obligation.

Disclosures

Election disclosure returns of donations received and electoral expenditure are lodged by candidates after House of Representatives and Senate elections. Unendorsed and jointly endorsed Senate groups also must lodge election disclosure returns of donations received and electoral expenditure incurred by the group collectively. The transactions of an endorsed Senate group are incorporated into the annual returns to be lodged for the relevant political party.

As the election campaigns of many political parties are conducted centrally by the party, the election returns lodged by most endorsed candidates and jointly endorsed Senate groups report nil donations received and nil electoral expenditure incurred. The bulk of election disclosures, therefore, will be incorporated into the annual disclosure returns lodged by political parties.

Donors to candidates lodge disclosure returns of their donations where donations to an individual candidate total above the disclosure threshold. Donors must also disclose the details of donations they received that total above the threshold from a single source which were used to fund their donations to candidates. As most donations made

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in support of endorsed candidates are received by, or on behalf of, the relevant political party, there are usually only a small number of election donor returns lodged.

Political parties and their associated entities lodge annual disclosure returns totalling all receipts, payments and outstanding debts for each financial year.

Donors to political parties lodge annual, financial year disclosure returns when they have made donations totalling above the disclosure threshold to a single political party. Donors must also disclose the details of donations they received that total above the threshold from a single source which were used to fund their donations to a political party.

Persons who incurred political expenditure totalling above the disclosure threshold must lodge annual returns listing that expenditure as well as providing details of donations they received greater than the threshold that were used to fund their expenditure. Political expenditure covers forms of broadcasting and publishing matter relevant to an election campaign, and expenditure on opinion polling and research relating to an election.

The disclosure threshold applicable to the 2016 federal election disclosure returns is for sums over \$13 200. The disclosure threshold applicable to the 2015-16 annual disclosure returns is for sums over \$13 000. The difference in the disclosure thresholds is due to the sum being indexed to CPI for each financial year.

Key dates

Election disclosure returns due for lodgement	17 October 2016
Annual disclosure returns of political parties and associated entities due for lodgement	20 October 2016
Annual disclosure returns of donors to political parties and persons who incurred political expenditure due for lodgement	17 November 2016
Publication of election disclosures on AEC website	19 December 2016
Publication of annual disclosures on AEC website	1 February 2017

Referral by Special Minister of State Senator the Hon Scott Ryan to the Joint Standing Committee on Electoral Matters

That the following matters be referred to the Joint Standing Committee on Electoral Matters for inquiry and report:

1. *All aspects of the 2016 Federal election and matters related thereto, and without limiting the scope of the committee's inquiry, with particular reference to:
 - a. *The application of provisions requiring authorisation of electoral material to all forms of communication to voters;*
 - b. *The potential applicability of 'truth in advertising' provisions to communication to voters including third-party carriage services;*
 - c. *The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities; and,*
 - d. *The potential application of new technology to voting, scrutiny and counting, with particular reference to its application to remote voting, ADF personnel on deployment and supporting vision-impaired voters.**
2. *The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.*
3. *The current donations, contributions, expenditure and disclosure regime, its application and timeliness and alternative approaches available to Parliament.*
4. *The extent to which fundraising and expenditure by third parties is conducted in concert with registered political parties and the applicability and utilisation of tax deductibility by entities involved in campaign activities.*
5. *Any matters related to the terms outlined above.*

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In considering these matters, the Committee is encouraged to consider previous inquiries and reports of past committees, regulatory developments implemented by States and Territories and recent determinations of the High Court with respect to these.

The Committee is requested to provide a report in respect of item 1a by December 1, 2016, and item 2 by March 3, 2017.

Released under the Freedom of Information Act 1982