

Discussion paper for the inquiry into the conduct of the 2016 federal election: political donations

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Summary

The Joint Standing Committee on Electoral Matters (JSCEM) is responsible for reviewing the conduct of the 2016 federal election and making recommendations to the Parliament on how to improve processes and legislation.

This is the fourth JSCEM inquiry into the 2016 election and has arisen as a result of recommendations from the [second inquiry report into foreign donations](#) that noted a more wide ranging inquiry on donations was needed. An additional consideration for the Committee is that successive JSCEM reports have made bipartisan recommendations on donations reform that have not been legislated. The Committee is united in a desire to recommend meaningful and implementable reforms.

In the first three inquiry reports, the Committee found that political campaigns have evolved beyond those in 1983 when the donation provisions were included in the *Commonwealth Electoral Act 1918* (the Act). Consequently, the Committee is also seeking comment from submitters on the context in which campaigns are fought and political donations received.

Donations, disclosure, election expenditure and public funding neither exist in isolation of each other nor of the political and campaign environment. The purpose of this discussion paper is to provide additional guidance for those preparing a submission or seeking to give evidence at the public hearings on questions the Committee seeks to answer.

JSCEM deliberations and recommendations are always informed by the democratic principles of freedom of speech and freedom of political communication. While the Australian Constitution says little directly about political funding and disclosure, a number of High Court cases have defined the scope of the system, the most recent being [McCloy v New South Wales](#).

Interested parties are also welcome to make submissions to all other electoral matters within the inquiry's [terms of reference](#).

The Committee understands that a healthy democracy requires active and robust public political debate, which is neither free nor cheap. There are three broad options for donations that the inquiry will examine and report on:

- Personal funding from candidates financially supporting their own campaigns.
- Private funding from small and large donors of cash and in-kind support.

- Public funding from taxpayer-funded payments to political parties and candidates.

The Committee is deliberating this inquiry in three parts.

1. Identify flaws in the current electoral donation system;
2. Identify the characteristics of a future electoral donation system; and
3. Develop reforms recommendations to deliver this new system.

Background on political donations

The Parliamentary Library has published an invaluable [research paper](#) on election funding and disclosure in Australia. The paper provides history, context and a summary of issues in this complex area of public policy.

Why review political donations?

The health of any democratic electoral system can never be taken for granted, including our own. A basic foundation principle of all Democracies is that citizens must have confidence in both the electoral system and the manner in which it is conducted. This is important so that even if voters do not agree with the result, they have confidence that it was conducted fairly and the result accurately reflects the decision of the majority of voters, free of the perception of corrupting or foreign influences.

Submissions to JSCEM and public commentary suggest that many Australians do not have sufficient faith in the integrity of Australia's electoral processes, particularly in relation to donations and disclosure. Of concern to the Committee is the more general disregard many Australians, have for democracy itself, as reflected in successive Lowy Institute surveys on the state of democracy. With the most recent [Lowy Poll](#) finding that 48% of Australians are dissatisfied with our current democratic system.

Problems in the current system

The Committee has identified the following major problems with the current system:

- Rules are too complex and burdensome.
- Timeliness in disclosure has causing a perception of a lack of transparency; and

- Many electoral campaigners fall outside of the Act and are unregulated by the Australian Electoral Commission (AEC).

The Committee has identified a number of questions to be answered in the course of this inquiry. A sample of these questions is provided below and submitters are encouraged to tackle any or all of them and identify additional problems and solutions for Committee consideration.

Questions relating to campaigning, influence and regulation

The Committee has identified a number of characteristics to underpin the development of a new donations regulatory framework. They include:

- Simple and streamlined;
- Transparent and timely;
- Clear and understandable; and
- Level playing field.
- What other characteristics are important in the new framework?
- How do Australians campaign today?
 - In 1983 when the current provisions were written, an election campaign was a distinct 6 week period – campaigning is now continuous throughout the electoral cycle. What are the implications of this?
 - When the current regulations were written, political campaigning meant stump speeches, bumper stickers, radio, newspapers and perhaps television. What are the implications of this?
 - Political information seeking to influence election outcomes is increasingly being disseminated by a wide range of actors both subject to and exempt from AEC oversight. Does this matter?
- What is the motivation of political donors?
 - To influence election outcomes?
 - To influence government and party policies?
 - What is political influence and what buys influence?
 - What is different today compared to previous elections and does it matter?

- What difference does it make to be a donor rather than simply an advocate or lobbyist?
- What difference does the size of the donation make?

- What is the best way to determine whom to regulate?
 - Do we continue to categorise and regulate organisations, do we regulate their activities instead, or do we do both?

- How are donations used and to what effect?
 - What is more important – the donations spent, the donations raised, where donations are sourced from?
 - Should there be limits on the amount of campaign expenditure, no limits as long as it is transparent, or is campaign expenditure of no interest from a regulatory perspective?
 - Is the size of individual donations or the total amount spent that is important?
 - If expenditure is limited, how could this be controlled and regulated?
 - What are the expectations of voters and how can they be met?