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Committee Secretary  
Joint Standing Committee on Electoral Matters  
Department of the Senate  
PO Box 6100  
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CANBERRA ACT 2600  
AUSTRALIA

**Re: Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto**

I wish to thank the committee for the opportunity to contribute to this inquiry. My submission focuses on the following terms of reference:

2. Donations from foreign sources
3. Current political donation regime
4. Fundraising and expenditure by third parties
5. Any matters related to the terms outlined above

**2. Donations from foreign sources**

From time to time, individuals and groups have sought to argue that political donations should be banned outright. Such positions overlook the fact that at a basic level political donations constitute a fair and legitimate means of political participation, akin to contributions “in-kind”, volunteer labour, or online support. All of us should be permitted to engage in political activity, especially where such activity is transparent and open, and conducted according to the law. Whilst some people may personally assist in a campaign, others may choose to contribute financially.

Consistent with this, it is fair and reasonable for Australians to seek involvement in the election of their own representatives. It is natural for us to take interest in the election of those who seek to represent us.

What is less desirable is the influx of foreign money within election campaigns. There are naturally concerns about the national interest when such donations occur. There are also

significant issues around transparency; whilst we have the ability to investigate political donors who are based in Australia it can be much more difficult to understand and analyse those who are based overseas. The fact that practically every other liberal democracy like ours has managed to ban them should give us pause for thought. Whilst there is a challenge in framing legislation to avoid loopholes, it is clearly possible given that it has been implemented elsewhere. As a principle we should proceed on the basis that foreign donations have the potential to undermine our democratic process and should be banned. I would leave the precise framing of this to those who have a more detailed knowledge of company law. JSCEM has a role in investigating what the best means of implementing this ban is.

### **3. Current political donation regime**

There are many problems with our political donations regime, some of which are quite challenging to address. The 2013 high court case *Unions NSW v New South Wales* demonstrated the challenges in legislating in this area. In particular there are potential problems around taking actions against third party donations.

There are however two obvious steps which must be taken, in order to provide a decent level of transparency around political donations. The first is the lowering of the threshold declaration to a much more appropriate level. The basic yardstick for a disclosure level should be one where a donation has (on its own) an ability to make a difference to a candidate or party's ability to campaign and get his/her message across. The current threshold for disclosure is \$13,200 and keeps rising. Clearly even a donation of \$5000 makes a big difference to a campaign and should be disclosed. A much more sensible threshold for disclosure is \$1000.

The most obvious flaw in our process around political donations is the timing of disclosure. It is extraordinary that in 2016 we have to wait until the February following the end of the previous financial year, to learn who has donated what. In other words, donations above \$13,200 in the first half of 2016 are not made public until February 2017. Even more egregious is the reality that donations made in July, August and September 2016 (which would have been right in the midst of the Federal election campaign but for the double dissolution) are not made public until February 2018. This is simply not acceptable in a modern democracy where it is possible to publish material with ease in a matter of hours. Clearly "ongoing" or "real time" disclosure must be introduced if we are to have real transparency in our political process.

### **4. Fundraising and expenditure by third parties**

In principle there is merit in banning or limiting political donations made by third parties, but as the aforementioned *Unions NSW v New South Wales* case shows, there are constitutional issues in doing so. Framing such legislative changes would likely be problematic, especially in terms of defining what a third party supporter is. Even the

measure of limiting political donations to individuals on the electoral roll, whilst noble in sentiment, would be open to abuse. As ICAC found when investigating the ban on developers donating in NSW, groups might channel money through individual electors or circuitous arrangements. Such reforms can only be supported if they achieve the desired impact without being abused, and without infringing on the democratic right of organisations to participate in the political process. My preference is to provide better transparency and disclosure rather than banning or capping donations. A second consideration is better oversight of the political donation process through a Federal anti-corruption body. Problems surrounding political donations at state level have been regularly investigated by anti-corruption bodies. An anti-corruption body at a national level would be a welcome development.

## 5. Any matters related to the terms outlined above

I would like to make a comment about the new voting system in the senate.

The new voting system in the senate should be considered a success for the following reasons:

1. **Preferences were returned to the electors.** The chief critique of the previous system (which I shared) was that the vast majority of preferences were allocated in line with preference deals unseen to the average voter. Much higher percentages of Australians chose their own preferences in 2016. This results in more democratic outcomes as the individual voter makes their own determination where their vote ultimately ends up. In most cases the last available seats went to candidates with the stronger primary vote.
2. **Fears that a large number of ballots would be informal proved incorrect.** Less than 4% of ballots were informal. The number of informal ballots (3.9%) was close to the mean average of 3.5% in elections from 1984-2013 under the previous system.
3. **The rate of voting below the line rose from 3.5% to 6.5% nationally.** This should be seen as a positive outcome, as a greater percentage of electors were prepared to choose their own candidates, rather than simply following the party ticket. If this trend were to continue we would see a greater accountability of senators to their electorates, as those perceived as poor performers could suffer electoral loss. The election of Lisa Singh in Tasmania shows that there is a greater possibility for voters to make their own decisions about candidates, at least in states where they are used to doing so (the highest rates of below the line voting were unsurprisingly in Tasmania and the ACT).

Yours sincerely

Dr Martin Drum