

Submission to the Senate's donations reform inquiry



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Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020

Danielle Wood and Kate Griffiths

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Summary

We welcome the opportunity to present our views to the Senate's donations reform inquiry.

Australians should be able to see who funds election campaigns and who political parties rely on most for funding support. Political donations can introduce a conflict between the financial interests of political parties, and their assessment of the national interest in policy making. Publishing information about larger donors creates a public check on this behaviour.

But federal donations disclosure laws fall far short of this ideal. In theory, large donations need to be disclosed. But in practice, the laws have several major loopholes that allow major donors to hide if they wish and leave the Australian public in the dark.

The *Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020* should be commended for seeking to close many of the loopholes in the current system.

Parliament should improve the transparency of political donations by:

- Lowering the donations disclosure threshold to \$5,000 per year. This would protect the privacy of small donors, and keep administration costs manageable, while ensuring that all donations big enough to matter are on the public record.
- Preventing 'donations splitting' by requiring political parties to aggregate multiple donations from the same donor. This would mean major donors can't hide by splitting a large donation into smaller contributions below the threshold.

- Making funding disclosures more meaningful by classifying contributions made via fundraising events as donations. These contributions are currently classified as 'other receipts', which makes them impossible to distinguish from other income sources such as loans and investment income.
- Publishing donations information more quickly, ideally within a week during election campaigns. The current lag of 8-to-19 months means the information is stale by the time it is released.

Fixing these loopholes would strengthen both federal and state donations laws. Most states have much stronger donations laws than the Commonwealth, but illegal donations can be filtered to the states via federal branches because of the above loopholes in the federal laws.

A stronger system of political donations disclosure should be supported by broader reforms – including a cap on expenditure during election campaigns to reduce the influence of money in politics.

Further detail about the need for and nature of these broader reforms is provided in the **attached** Grattan Institute report, *Who's in the room? Access and influence in Australian politics*.

1 Why the Parliament should reform political donations laws

Money in Australian politics needs to be better regulated to reduce the risk of interest groups 'buying' influence (and elections). Explicit quid pro quo is probably rare; the risk is in more subtle influence: that donors get more access to policymakers, or their views are given more weight.

Australians should be able to see who funds election campaigns and which major donors political parties rely on, but our political donations disclosure laws fall far short of this ideal.

1.1 What is the purpose of disclosing donations?

Political donations are part of a healthy democracy. But without adequate checks and balances, there's a risk that money mixed with politics can translate into undue influence and poor policy.

Political donations cause problems if they encourage policy makers to put the interests of donors ahead of others. When money can buy political access and influence, there is a greater risk of crony capitalism and government run for the few and not the many. These risks are exacerbated by a lack of transparency in dealings between policymakers and special interests.

Corruption and bribery are illegal and are likely to be rare in Australia's political system. But a focus on outright corruption is a distraction from other ways political donations can serve well-resourced groups at the expense of the national interest.

Donations can directly or indirectly buy access to politicians. And access matters: it's human nature for people to be persuaded by

arguments put to them by people they know. If one side of a policy debate gets disproportionate access, their views will often be given disproportionate weight.

Donations are highly concentrated among a small number of powerful individuals, businesses and unions.¹ Major donors get significant access to ministers, and money can buy relationships and political connections too.²

Ultimately the risk is that donations introduce a conflict between the financial interests of political parties, and their assessment of the national interest.

Publishing information about larger donors creates a public check on this behaviour. Voters are able to see who political parties rely on for funding, and MPs are more accountable for their subsequent decisions.

In theory, large donations need to be disclosed. But in practice, federal laws have several major loopholes that allow major donors to hide if they wish and leave the Australian public in the dark about who funds political parties and elections.

The *Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020* should be commended for attempting to close many of the loopholes. These are significant vulnerabilities in Australia's democracy. Reforms are needed to

¹ Griffiths et al. (2020) and Wood et al (2018a).

² Wood et al (2018a).

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prevent well-resourced interests from exercising too much influence in Australian politics.

1.2 There's a lot of money we know nothing about

There's a lot of money involved in Australian federal elections, much of which we know nothing about.

Political parties collectively received \$435 million in the lead-up to the 2019 federal election, just over \$300 million of which went to the major parties.³ About a third of this was public funding, a third was disclosed private funding, and a third was undisclosed private funding.

Figure 1.1 shows private funding sources for the major parties. More than three-quarters of their private funding is **undisclosed** or **other receipts** and these categories are ambiguous.

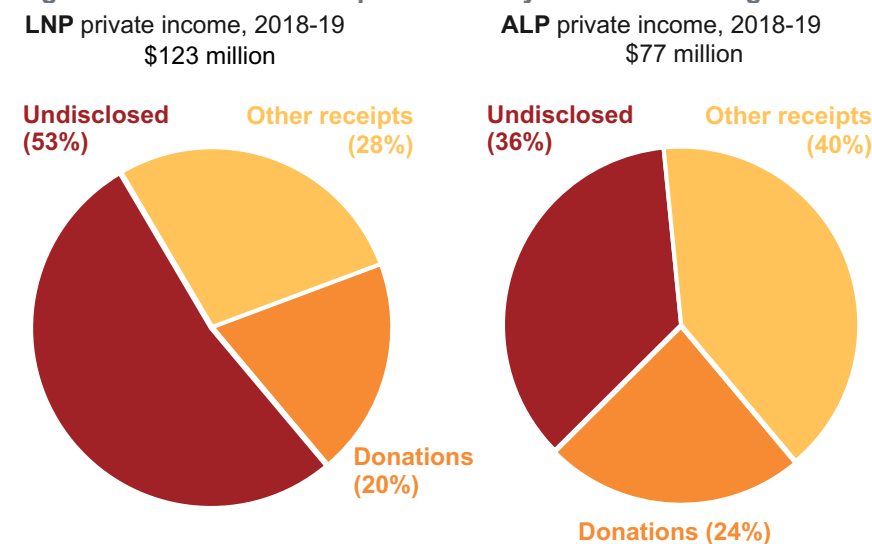
If the federal disclosure laws were well-designed, then a large chunk of undisclosed funding would signal a large number of small donors collectively contributing significant sums. This would be a good sign of democracy in action and an engaged electorate.

But unfortunately, the federal disclosure laws have significant loopholes that make it impossible to distinguish between undisclosed funds from sausage sizzles and undisclosed 'donations splitting'. While some of the undisclosed funds no doubt came from 'mum and dad' donors contributing \$100 to their preferred party, some is probably the result of 'donations splitting', where people or organisations make multiple donations below the threshold (potentially deliberately to avoid being identified).

³ The 2018-19 financial year. 'Major parties' refers to the Coalition (LNP) and Labor (ALP). Grattan analysis of AEC disclosures: AEC (2020).

The 'other receipts' bucket is also likely to contain significant income from fundraising dinners and business forums – where attendees pay thousands for an opportunity to 'bend the ear' of elected representatives. But again, disclosure laws make this sort of income impossible to distinguish from other less influential income sources (such as investment income).

Figure 1.1: There's a lot of private money we know nothing about



Source: Grattan analysis of AEC data, 2018-19.

There is so much we don't know about where political parties get their money. But the little we do know raises red flags about the risk of policy capture. A small group of big donors contribute most declared donations. Regular donors build relationships with

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parties and candidates. And most donations come from organisations and individuals who stand to gain a lot if policy shifted in their favour.⁴

1.3 Major donors can hide under the current system because of four main loopholes

The main loopholes in the federal political donations disclosure laws are:

1. **A high threshold for disclosure:** only donations of more than \$14,000 need to be on the public record. This is a lot more money than the average Australian voter could afford to contribute to a political cause.
2. **'Donations splitting':** it is possible for a single donor to make multiple donations under the threshold, that collectively exceed the threshold, and still not be identified. This is because the onus is on the donor to declare themselves, with no requirement for political parties to aggregate donations from the same donor.
3. **Poor classification:** contributions made to a political party (or associated entity) via attendance at a fundraising dinner or 'business forum' are not considered to be political donations (despite the often-explicit fundraising purpose of such events). These contributions are instead classified as 'other receipts', which makes them impossible to distinguish from all sorts of other income, including dividends from investments.
4. **Disclosures are stale by the time they are released:** donations data is released annually, in February, for the

previous financial year. That means donations made in July 2018 were not disclosed to the public until February 2020.

1.4 Weak federal laws undermine state laws

Weak federal laws also enable donors to bypass stronger state laws. Most states have much stronger donations laws than the Commonwealth, but illegal donations can be filtered to the states via federal branches because of the above loopholes in the federal laws.

Transparency of political donations is better in most states and territories than at the federal level.⁵ NSW, Victoria, Queensland and the ACT require donations of \$1,000 or more to be publicly declared. Only Tasmania has the same disclosure threshold as the Commonwealth.

Most states and territories prevent donations splitting by requiring political parties to aggregate small donations from the same donor and declare them once the sum is more than the disclosure threshold.

Many states make their donations data public very quickly. During election campaigns, donations must be declared within 7 days in Queensland, SA and the ACT, and within 21 days in NSW and Victoria.

Some states also cap the amount donors can give to parties and/or limit the amount that parties can spend. In NSW, donations from individual entities are capped at \$6,600 per party per year, and party expenditure is capped too. In Victoria donations are capped at \$4,000 for the term of government. NSW has also

⁴ Wood et al (2018a).

⁵ Daley et al (2018, Chapter 11).

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banned donations from property developers, and the tobacco, liquor and gambling industries.

But state reforms are limited by state boundaries. Until the Commonwealth catches up, it is not possible to 'follow the money' across all jurisdictions.⁶

⁶ Wood et al (2018b).

2 How to close the loopholes in Australia's political donations disclosure laws

The federal donations disclosure laws leave the public in the dark about a sizeable share of party funding. But some simple changes would make large donations much more visible. *The Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020* attempts to address many of these concerns.

2.1 The disclosure threshold should be lowered

The current disclosure threshold of \$14,000 is well above the amount that an ordinary Australian voter could afford to contribute to support a political cause. The high threshold also means that income from fundraising events is often not disclosed. Associated entities that are known to run these events declare remarkably little about the sources of their funding.

All donations big enough to matter should be on the public record. A more reasonable threshold would be \$5,000 (or \$2,500 per half-year as the Bill proposes). Donations below this level are unlikely to lead to influence. And such a threshold would still protect the privacy of small donors and minimise the red tape associated with handling smaller donations.

For bigger donations, the public's right to know about political funding should trump privacy considerations.

All states except Tasmania disclose political donations of \$5,000 or more.⁷

⁷ Daley et al (2018, Chapter 11).

2.2 Prevent 'donations splitting' by aggregating multiple donations from the same donor

If a donor makes several donations of say \$10,000, the party does not need to disclose this. Technically, the donor is supposed to declare themselves to the Australian Electoral Commission, but there are no checks to ensure they do, and many donors may not even be aware of this obligation. This loophole makes it very easy for major donors to hide their identity by simply splitting their donations.

To prevent 'donations splitting', donations from the same donor to the same party, over say \$100,⁸ should be aggregated and disclosed by the party once the combined total exceeds the disclosure threshold.

2.3 Donations information should be meaningful

Contributions above the disclosure threshold should also be itemised into meaningful categories. Income from fundraising events should be categorised separately from 'other receipts' – ideally as a 'donation' given that fundraising is often the explicit purpose of these functions. Loans should also be separated from 'other receipts', and the terms and conditions of the loan should be reported.

To be useful, donations information must be readily accessible. There are thousands of lines of data in the AEC disclosures, and the information is hard to sort and categorise. To address this, the

⁸ It would be burdensome to include very small donations (such as the purchase of raffle tickets) in aggregation requirements.

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AEC should release summary documents at the end of a disclosure period, as occurs in some states and overseas.

2.4 Donations information should be timely

Party funding disclosures should be available much sooner. Nine months after the 2019 federal election, voters finally got a look at who funded the political parties' campaigns.⁹ Donations data should be timely so that voters have information on who funds elections *during* the campaign.

In NSW and Victoria, reportable donations are made public within 21 days during an election. Queensland, South Australia and the ACT release donations information within 7 days during elections.

It beggars belief that donations could not be disclosed in a similarly timely manner at the federal level. The Commonwealth can clearly do better than the current 8-to-19-month turn-around.

2.5 Supporting reforms

A stronger system of political donations disclosure should be supported by broader integrity reforms to improve transparency and accountability in policy making and reduce undue influence over public policy. The Commonwealth Government lags state governments in addressing these concerns.¹⁰

Greater transparency is particularly important as an additional check on donor influence. Ministerial diaries should be published, so voters know who our most senior policy makers are meeting.¹¹ And the lobbyist register should be broader so that it includes in-

house lobbyists, not just commercial lobbyists. This would make it possible to identify which major donors are also active lobbyists and what they are lobbying for.

But ultimately, transparency alone is not enough to protect Australia's democracy from the influence of a handful of wealthy individuals.¹² To reduce the influence of money in politics, parliament should introduce an expenditure cap during election campaigns. Capping political expenditure would limit the influence of individual donors and reduce the 'arms race' for more donations between the major parties.

Further detail about the need for and nature of these broader reforms is provided in the attached Grattan Institute report, *Who's in the room? Access and influence in Australian politics*.

Together with stronger federal donations disclosure laws, these reforms would strengthen the integrity of Australian politics.

⁹ Griffiths et al. (2020).

¹⁰ Wood et al (2018a); Daley et al (2018, Chapter 11); Daley et al (2019, Chapter 12).

¹¹ Wood et al (2018a, pp.57-58).

¹² Griffiths et al. (2020).

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