

# **Submission to the Senate Select Committee into the Political Influence of Donations**

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## **Introduction**

Gambling in Australia is a prime cause of avoidable harm, with the harms of gambling estimated to be of the same order of magnitude as alcohol, and far higher than that associated with illicit drug consumption. (Browne et al, 2016; 2017). The gambling industry is a major donor to Australian political parties and politicians and appears to hold considerable cachet with many political actors, at both federal and state level. In this, it appears to be similar to other industries that produce harmful products, such as alcohol and tobacco. Its purpose in donating to political parties and politicians is similar; it seeks to deny the harmful effects of its products, delay or wind back reform, avoid effective regulation, and continue to extract profits for as long as possible.

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

The Australian gambling industry has utilised political donations as a mechanism to exert considerable influence over relevant public policy. This has been facilitated by the current donations regime, which has numerous flaws from the perspective of transparency and support for policy that acts in the genuine interest of the public. The industry is both significantly resourced and politically organised, and has actively sought opportunities for political engagement via donations to politicians and political parties. For obvious reasons it is difficult to provide an objective 'measure' of the level of influence. However, it is possible to review some patterns of industry donations and relevant policymaking, in order to demonstrate the likely extent of influence (Rowbottom, 2016). Below, we summarise some findings from an analysis of temporal associations between industry donations from two major industry peak bodies, ClubsNSW and branches of the Australian Hotels Association (AHA), and some recent significant gambling policy decisions, positions or events.

### **Analysis of gambling industry donations and policy events**

During the period after 2010, the Prime Minister Julia Gillard agreed, as part of an arrangement in relation to Parliamentary support from Andrew Wilkie MP, to introduce federal legislation requiring universal pre-commitment technology for Electronic Gambling Machines (EGMs)(Panichi, 2013). As a direct response to the Gillard-Wilkie proposal, ClubsNSW undertook a political campaign advocating the rejection of the

proposed legislation. The reforms were later abandoned, in favour of much more modest legislation (Panichi, 2013), and in the process the Gillard-Wilkie arrangement was terminated. To ensure a parliamentary majority despite abandoning the agreement with Wilkie, Peter Slipper MP resigned from the Liberal Party and was appointed to the Speaker's role in the House of Representatives (Mark, 2011).

Evidence of at least some of the expenses of this campaign (and the cooperative funding of it by key gambling industry actors) are outlined in the Australian Electoral Commission (AEC) donations data. During the years 2010-11 and 2011-12 ClubsNSW filed returns citing direct political expenditure totalling \$948,701 and \$3,478,581 respectively (AEC). Several gambling industry actors are noted on the ClubsNSW return document as having contributed to this expenditure. The NSW branch of the Australian Hotels Association donated \$216,197 in 2010-11 and \$644,280 in 2011-12. In the year 2011-12 the Australian Casino Association donated \$912,826 and the Gaming Technologies Association (the peak body for EGM manufacturers) donated \$877, 717. This demonstrates the ability and willingness of the industry to act co-operatively against policy they view as detrimental to their business.

Between 2010-15, donations from ClubsNSW heavily favoured the Coalition (declaring a total of \$1,151,230 to the Coalition during this period, compared to the ALP's \$350,588).

ClubsNSW AEC records further indicate that in multiple instances individual politicians or their campaigns (both Coalition and ALP) were earmarked to receive significant donations (refer to Table 1 below). This suggests that ClubsNSW tactically targeted certain individuals or campaigns in their efforts to influence policy during this time. In particular, specific ALP caucus members received gambling industry donations during the period of instability at this time, in particular around attempts by former PM Rudd to recapture the leadership (see Grattan 2012). It's arguable that the already restive caucus was deeply concerned by the damage perceived to their brand from ClubsNSW, particularly in NSW and Qld. The 'carrot and stick' approach demonstrated by ClubsNSW and their allies was arguably highly effective in bringing about the demise of the Wilkie-Gillard agreement, and the installation of Mr Slipper as Speaker. It involved rewarding those MPs seen as allies or friends of the industry, and punishing those (like Peter Garrett MP) who supported the legislation (Panichi 2013).

This principle was extended to the coalition. Prior to the 2013 federal election Victorian MP Kevin Andrews led the formulation of the Coalition gambling policy which emphasised the industry friendly ‘responsible gambling’ approach. The policy was introduced via a video available on the ClubsNSW website showing Mr. Andrews being introduced by ClubsNSW chief executive Anthony Ball (Nicholls & Millar, 2015). After the 2013 election of the Abbott government Andrews acted almost immediately to repeal even the more modest reforms implemented by Gillard (Biggs, 2013).

During this period AEC data indicate that both ClubsNSW and branches of the AHA provided large donations to the Victorian-based ‘associated entity’ the Menzies 200 Club, which is linked to Kevin Andrews (AEC). During August 2013 (the same month as the introduction of the Coalition’s policy) ClubsNSW declared \$20,000 to the “Victorian Liberal Party”, but cited the Doncaster address for Menzies 200 on the return document (AEC) rather than the Melbourne CBD address of the state division of the party. ClubsNSW declared another contribution of \$10,000 in June 2014 with the same description (AEC). Further, in the 2015-16 data, ClubsNSW notes a \$2,000 donation described as “Menzies 200 for a Club Athenaeum Dinner 30 May 2016” (AEC). In 2012-13 the Menzies 200 Club declared a \$45,000 donation from the national branch of the AHA, and during 2013-14 an additional \$5,000 donation was declared by the AHA NSW, earmarked for “Kevin Andrews” (AEC).

Also of interest in this context is a \$50,000 donation designated by ClubsNSW in 2011-12 for Brian Loughnane (at a Brisbane address), Mr Loughnane was then Federal Director of the Liberal Party, and in that capacity appears to have authorised the printing of the party’s gambling policy. (ClubsNSW, 2014).

During the same period there is also evidence that ClubsNSW was remarkably successful in its advocacy of EGM policy in NSW. Donations appear to have played a role in this.

Prior to the March 2011 NSW state election, then Liberal opposition leader Barry O’Farrell, gaming minister George Souris and Nationals MP Andrew Stoner signed a “memorandum of understanding” with ClubsNSW, promising a number of benefits to the clubs if elected. These included a tax break worth as much as \$300 million.

**Table 2: Donations and other receipts earmarked to individuals, campaigns or events related to ClubsNSW MoUs (AEC)**

<b>Time period</b>	<b>Donor</b>	<b>Political party</b>	<b>Candidate/ campaign</b>	<b>Donation /other receipts amount</b>	<b>Donor return description</b>
<b>2009- 2010</b>	ClubsNS W	Liberal Party NSW	Barry O'Farrell	\$2,000	Barry O'Farrell Lunch 29/7/09
<b>2009- 2010</b>	ClubsNS W	Liberal Party NSW	Barry O'Farrell	\$10,000	2009 Ku-ring-gai Business Breakfast 3/9/2009
<b>2009- 2010</b>	AHA NSW branch	Liberal Party NSW	Barry O'Farrell	\$1,000	Barry O'Farrell function
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	Barry O'Farrell	\$50,000	Donation to Barry O'Farrell
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	Barry O'Farrell	\$38,500	Let's Go Greek Dinner with Barry O'Farrell
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	Barry O'Farrell	\$125,000	Dinner with Barry O'Farrell
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	Barry O'Farrell	\$20,000	Dinner with Barry O'Farrell
<b>2009- 2010</b>	ClubsNS W	Liberal Party NSW	Mike Baird	\$500	Mike Baird Lunch 20/8/09
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	Mike Baird	\$45,000	Manly SEC - Donation to election campaign
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	George Souris	\$1,499	Lunch with George Souris
<b>2010- 2011</b>	AHA NSW branch	Liberal Party NSW	George Souris	\$1,499	Lunch with George Souris
<b>2010- 2011</b>	AHA NSW branch	Nationals NSW	George Souris	\$10,000	Donation to George Souris campaign
<b>2010- 2011</b>	AHA NSW branch	Nationals NSW	Andrew Stoner	\$60,000	Donation to Andrew Stoner

An additional memorandum was agreed to in 2014, with then Premier Mike Baird outlining further benefits to the club including 'red-tape reduction' in planning and licensing systems, and a removal of limitations on installing electronic casino games such as roulette or blackjack (referred to as multi-terminal gambling machines or MTGMs) in clubs (ClubsNSW, 2010). After the first memorandum was signed ClubsNSW declared donations of more than \$250,000 to the NSW division of the Liberal Party. As outlined below in Table 2 there are multiple instances where the politicians who entered into these agreements are noted as being the beneficiary of donations, or headlining industry sponsored events or functions.

**b) The motivations and reasons why entities give donations to political parties and political candidates;**

After reviewing the patterns of industry donations it is evident that the industry cannot claim support for 'political expression' as a motivation. In several instances significant amounts have been donated to both major parties by the same donor (see for example donations made by the South Australian branch of the AHA)(AEC), a pattern that has been noted as suggesting that the donor seeks to influence whoever is successful at winning the election (Twomey, 2012). We can refer to literature focused on other harmful product industries like tobacco and alcohol, which describe that such industries undertake political engagement activities (including donations) as opportunities for relationship building and enhancing access to politicians (Fooks & Gilmore, 2013). This is also true of the gambling industry (Adams 2016).

There are also examples of comments from executives within the Australian gambling industry that provide some evidence of their motivation. For example, former President of the NSW branch of the Australian Hotels Association John Thorpe made the point that "democracy is not cheap", and explained that attendance at political and national conferences allows for interviews with ministers and staffers which "does help us in our policies and regulations" (Walker, 2009, p. 96). In 2009, former ClubsNSW chief executive Mark Fitzgibbon asserted that "there was absolutely the view that supporting fundraising helped our ability to influence people" and "we did support political

fundraising, which was a legitimate activity, and it certainly assisted us in gaining access” (Safi, 2013).

The annual disclosures submitted by various industry actors sometimes include descriptions of donations related to support or attendance at a particular political event or function. This further demonstrates the level of access gambling industry representatives actively maintain via donations. It is unsurprising that policy decisions tend to reflect this level of access.

It is evident that political parties and politicians are aware that accepting donations from the gambling industry is likely to be viewed negatively. For this reason, it is worthwhile pointing to examples of ‘distancing’ activity related to industry donations.

For example, during the recent Tasmanian Parliamentary inquiry into future state gambling regulations, Tasmanian Premier Will Hodgman was reported as asserting that the Liberal Party had not received a donation in the preceding two years from monopoly EGM and casino operator Federal Group (Humphries, 2016). The ALP’s 1973 Foundation, as associated entity, is described as having been established to “put distance between the party and the club group (Canberra Labor Club)” (McIlroy, 2015). This entity is a major donor to the ALP, and derives its funds from EGM operations.

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

##### **Suggestions for donations reform**

There are several approaches that should be considered if the political donations regime in Australia is to be effectively reformed. In our opinion, such reforms could/should largely be guided by these principles:

- Introduce a national approach which addresses the inconsistencies between the state and federal regimes
- Prohibit donations from certain classes of persons or entities with clear commercial vested interests in government regulatory decisions. 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 (Twomey, 2012).

- In NSW, donations from property developers, commercial liquor and gambling, and tobacco entities are prohibited for the purposes of state election campaigns. However, these industries readily circumvent these prohibitions by earmarking donations for specific branches and divisions of political parties, rather than for specific campaigns. Further, ‘non-commercial’ gambling operators (clubs are exempt from this provision), and as they control 70% of the EGM business and its revenue in NSW, their influence is unchecked by this prohibition. In reference to a \$180,000 payment received from the federal Liberal Party, a spokesperson argued that “transfers between divisions of political parties occurred from time to time” (Westcott, 2014).
- Aim to improve transparency by implementing ‘real time’ disclosure and significantly lowering the disclosure threshold, to not more than \$1,000 (Schott report) and arguably less.
- Transparency can be one “antidote” to corruption (Rowbottom, p. 407). The current regime is notable for its lack of transparency. Voters can be unaware of campaign funding up to nineteen months after an election.
- In the United States and Canada, donations are disclosed quarterly. The United States further requires donations reporting to be submitted 12 days prior to an election, as well as 30 days after. The disclosure threshold in both countries is \$200.
- Queensland has recently introduced the first (almost) ‘real time’ donation disclosure scheme in Australia with donations being available for online access within 7 business days (O’Brien, 2017).
- Further, attendance at functions or events should be categorised as ‘donations’, not ‘other receipts’, and must be disclosed. Substantial amounts are not reported by donors, making it difficult to accurately discern how much money has been put towards a particular party or candidate. (For example Echo Entertainment 2014-15 - \$100,000)
- The ‘annual dumping’ of donations that is our current system has also been heavily criticized as a method that enables donations to be effectively hidden (Schott, p. 99).
- A 2015 High Court decision in *McCloy v New South Wales* prioritised ‘equality of opportunity’, recognising the risk of allowing a few highly resourced donors to



provide large political contributions. This, it can be argued, effectively reduces the relative opportunity of other citizens to contribute to political discourse (Orr, 2015).

- Despite its imperfections, donations regimes applying in the United States and Canada have capped donations. Canada has implemented an overall cap of \$1,200. The United States is admittedly more 'complex' post the *Citizens United* decision (Jacobs & Smith 2016) but donations to candidates are still capped at \$2,700.
  - Donations made by overseas entities or non-resident individuals should be prohibited. The potential for corruption arising from these is significant, especially given the difficulty of enforcing regulations or imposing sanctions against overseas entities or non-resident individuals. The gambling industry is rapidly globalising and significant entities in Australia have overseas ownership, and very significant resources available.
  - Disclosures by donors and recipients need to be reconciled by the AEC so that they match. At present, many such disclosures do not.
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**Table 1: ClubsNSW donations to individuals, specific campaigns, and associated entities 2010-2015 (Source: AEC)**

<b>Donation description</b>	<b>Candidate</b>	<b>2009- 2010</b>	<b>2010- 2011</b>	<b>2011- 2012</b>	<b>2012- 2013</b>	<b>2013- 2014</b>	<b>2014- 2015</b>	<b>Total</b>
ALP Bankstown	Anthony Stewart	\$2,750						\$2,750
ALP Kingsgrove/Kogarah	Cherie Burton	\$800	\$1,000					\$1,800
ALP Revesby	Alan Ashton	\$800						\$800
ALP Werriwa - Chris Hayes	Chris Hayes	\$2,000						\$2,000
ALP Granville	David Borger	\$500						\$500
ALP Waterford West QLD	Evan Moorhead	\$1,100						\$1,100
ALP East Hills Campaign Account	Alan Ashton		\$250					\$250
ALP- NSW - Hunter Federal Campaign	Joel Fitzgibbon				\$2,000	\$6,500		\$8,500
ALP NSW Branch Blaxland Fed - ALP- NSW/Jason Clare	Jason Clare		\$5,000		\$3,000	\$1,250		\$9,250
ALP NSW Page Fed - ALP-NSW	Janelle Saffin vs Kevin Hogan (NP)					\$3,600		\$3,600
ALP-NSW - ALP McMahon Fed - Chris Bowen MP	Chris Bowen			\$400	\$3,300			\$3,700
ALP-NSW - Eden-Monaro Fed Re-Election Campaign	Mike Kelly				\$3,000			\$3,000
ALP-NSW - Fowler Fed	Chris Hayes				\$2,000	\$2,500		\$4,500
ALP-NSW - Lindsay FEC	David Bradbury				\$1,700			\$1,700
Australian Labor NSW Branch Barton Fed - ALP-NSW	Steve McMahon vs. Nick Varvaris (LP)					\$3,000		\$3,000

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Lib Cromer NSW Wakehurst SEC	Brad Hazzard	\$2,000			\$2,000	
Lib Turrumurra NSW/Roseville NSW	Barry O'Farrell	\$10,000	\$1,000		\$11,000	
Lib Kellyville NSW/Baulkham Hills NSW	David Elliott	\$995	\$1,000		\$1,995	
Lib Bowral NSW	Philip Costa	\$360			\$360	
Lib Gordon NSW	Jon O'Dea	\$250			\$250	
Lib Newport NSW	Robert Stokes		\$240		\$240	
Lib Balgowlah NSW	Mike Baird		\$760		\$760	
Lib NSW Reid Federal Campaign - LIB-NSW	Craig Laundry LP vs. John Murphy			\$20,000	\$20,000	
Lib - Brian Loughnane PO Box 4922 Gold Coast Qld	Brian Loughnane		\$50,000		\$50,000	
Lib - Senator Mathias Cormann via Endeavour C'ing	Mathias Cormann		\$1,100		\$1,100	
Lib VIC Division (Menzies 200 Club)	Kevin Andrews			\$30,000	\$10,000	\$40,000
LIB-NSW - Hughes FEC Fed	Craig Kelly		\$6,500		\$6,500	
LIB-NSW - Lib NSW Bradfield FEC	Paul Fletcher		\$1,000		\$1,000	
LIB-NSW - Lib Paterson FEC	Bob Baldwin		\$4,000		\$4,000	
NAT-NSW - Nat Cowper Electorate Council	Luke Hartsuyker		\$3,000		\$3,000	
The Nationals (Gippsland Nat Federal Campaign)	Darren Chester			\$10,000	\$10,000	
Millennium Forum of NSW			\$29,600		\$29,600	

Federal Forum						\$29,600	\$29,600
Endeavour Consulting Group		\$1,100					\$1,100
Greek Aust Conservative Coalition Nat-linked	\$1,000	\$2,000					\$1,000
<b>Total</b>	<b>\$22,555</b>	<b>\$12,350</b>	<b>\$51,500</b>	<b>\$59,100</b>	<b>\$66,850</b>	<b>\$49,600</b>	<b>\$259,955</b>

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