



Submission to the inquiry into the Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020 by the Senate Finance and Public Administration Legislation Committee.

Introduction

The Accountability Round Table congratulates Senator Waters on introducing this legislation dealing with important aspects of the integrity of the Australian democratic system. Australia's federal electoral system currently has few constraints on donations, lacks limits on electoral expenditure and has a weak disclosure regime.

The Accountability Round Table Ltd (ART) is a non-partisan group of citizens with diverse backgrounds (journalists, lawyers, academics, former politicians and judges) and extensive experience in parliament, government and the courts. We are dedicated to improving standards of accountability, transparency, ethical behaviour and democratic practice in Commonwealth and State parliaments and governments across Australia.

The Bill's stated purpose is to strengthen the integrity and accountability framework underpinning Australia's electoral system. Sen. Waters describes the bill as "an important first step towards getting big money out of politics and restoring public confidence in our democracy". It seeks to implement recommendations from the *Senate Select Committee on the Political Influence of Donations*.^{1, 2}

Whilst supporting many of the Bill's provisions, ART believes that, for a federal donation regime to achieve its stated purpose, it must incorporate:

- caps of \$1,000 (or thereabouts, indexed) on donations from individuals and all organisations, disclosed in continuous real time (1-2 days),
- strengthening of foreign donations laws to include only those corporations which are registered in Australia, have their head offices in Australia and are controlled by Australians³
- broad definitions for in-kind donations,
- limits placed on election **expenditure** for candidates, political parties, associated entities and third party entities, (currently Australia, with expenditure of about \$29 per voter at the 2019 Federal election outspends Canada (Federal) , NZ and the UK by factors of 5-10), and
- significant **penalties for** breaches, including triple damages for donors and recipients alike as well as disqualification from public office and gaol terms for serious breaches.

¹ Select Committee into the Political Influence of Donations (2018) "Chapter 6 Safeguarding integrity" In *Political Influence of Donations*. Available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Report_1/section?id=committees%2freportsen%2f024147%2f25938

² Waters, Larissa 2020 Second Reading Speech, Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020, Hansard 17 June pp. 3477-79

³ Some might be attracted to the idea that they should be required to pay their taxes as a further condition.

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The Bill proposes amendments to the Commonwealth Electoral Act 1918 (“the Act”) that will prohibit political donations from certain industries and impose a cap of \$3000 per parliamentary term on all other donations. The amendments also extend the definition of ‘gift’ and include offence provisions and related penalties for making or receiving unlawful political donations. Whilst the Bill’s amendments are substantially supported by ART, we believe a more progressive reform agenda should be embraced by Parliament. The cap on donations should be lowered to \$1000 and must include a fundamental feature of accountable electoral systems, which is to limit campaign expenditure and to ensure a substantially level playing field for political contestation based on arguments about how political power is best used for the public benefit uninfluenced by the perceived interests and wishes of donors.

This submission has five main sections.

Firstly, it provides background to legislation, such as this Bill, which regulates political campaign finance.

Secondly, the objectives of this Bill are examined.

Thirdly, the provisions of the Bill are reviewed having regard to the stated objectives.

Fourthly, it makes recommendations for amendments that would facilitate the Bill in better meeting its objectives and for complementary recommendations.

Fifth and finally, it makes concluding comments.

Australians have shown themselves to be very interested in election integrity with calls for reform from across the political spectrum.^{4, 5} The most recent Australian Election Study has found levels of trust in Government and satisfaction with Government at the lowest levels in 40 years.⁶

1. Background

The *Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020* (“the Bill”) is one of the most recent of proposed legislative reforms in Australian jurisdictions intended to ensure greater integrity in electoral processes in Australia and internationally. The secret ballot was a world first when introduced in 1865, in Victoria! The commitment to democratic principles by the parties represented in the Australian Parliament is demonstrated by statements on their websites (see Appendix - page 21).

Australia, under both Coalition and Labor governments, has a distinguished record of international leadership in some important areas of electoral reform. These include: introduction of the secret ballot and the polling booth; removal of property-based franchise; early adoption of women's suffrage and candidature; comprehensive electoral rolls; preferential voting; introduction of independent electoral commissioners and boundary setting⁷ – followed by recent innovations to make voting easier and more convenient. Other democracies have followed our lead and could benefit from them. However, Australia can draw positive and negative lessons from other democracies – including political funding reforms.

⁴ Evershed, N (2019) Can a politician straight-up lie to you in their ads? Pretty much. Available from <https://www.abc.net.au/triplej/programs/hack/can-a-politician-straight-up-lie-to-you-in-their-ads/10990230>

⁵ Karp, P (2019) Vast majority of Australians support ban on misleading political advertising Available from <https://www.theguardian.com/media/2019/aug/18/vast-majority-of-australians-support-ban-on-misleading-political-advertising>

⁶ Cameron, Sarah & Ian McAllister (2019) The 2019 Australian Federal Election Results from the Australian Election Study Available from <https://australianelectionstudy.org/wp-content/uploads/The-2019-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf>

⁷ However, as Judith Brett notes “the nation was sadly retrograde on race.” *From Secret Ballot to Democracy Sausage: How Australia Got Compulsory Voting* by Judith Brett. Text Publishing House 2019

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The lack of progress in relation to political donations since the 1970s is charted in great detail by Adjunct Professor Colleen Lewis in her September 2019 submission to the Joint Standing Committee on Electoral Matters (JSCEM). Prof. Lewis alludes to numerous failed attempts to reform the federal political regime over many decades. These attempts have taken the form of parliamentary bills, Green Papers, earlier JSCM inquiries, as well as submissions to other parliamentary committees by leading experts in political donations reform. Despite these efforts Prof Lewis finds that reform has not been achieved.⁸ Meanwhile, a progressive reform agenda is well established in NSW, recently adopted for Queensland in its Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020 and was before the ACT Assembly when dissolved for the recent election (Electoral Amendment Bill 2018).

Australia and other democracies are guided by international standards adopted by global organisations with which Australia is affiliated, including the Commonwealth Parliamentary Association, UNDP, and World Bank.⁹ Comparable parliamentary democracies have addressed the corrupting potential of donations by legislated caps on campaign spending by candidates and political parties (see Section 3 below).

Within Australian jurisdictions there have been incremental reforms extending over recent decades and proposals for further reforms that have yet to be legislated. Reforms have generally built on prior reports and legislation. However, there have been some instances of repeals and reversions to earlier standards, usually following changes of government, such as the threshold for disclosure.

These can be thought of as addressing pressure points.

Pressure Points: “one vote one value” meets “one dollar one value.”

In modern liberal democracies, the majority of citizens value both democracy and the market, and there is popular commitment to the belief that politics should be dominated by democratic principles and the economy should be dominated by market principles. While both democracy and the market are built on the single principle of individual choice, they involve two fundamentally different principles for evaluating choices. The principle for democracy is “one vote one value;” the principle for the market is “one dollar one value.” The eternal temptation is for those who have accumulated dollars in the market to use those dollars to influence those decisions that are supposed to be governed by democratic principles – through funding political parties and campaigns to outright bribery. The reverse concern is that those who have accumulated votes may seek to convert it into dollars for themselves or their parties (corruption) or for their constituents (the traditional concern of the wealthy against government welfare provision). Accordingly, defining and policing the boundaries between the market and democracy is a perennial problem in modern liberal societies committed to both democratic and market principles. It gives rise to some of the most difficult and controversial issues in liberal democracies – several of which have been on display in recent times

- political funding
- lobbying
- subsequent employment of MPs

⁸ Joint Standing Committee on Electoral Matters (JSCEM 2019): Inquiry into and report on all aspects of the conduct of the 2019 Federal Election and matters related thereto. Available from https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019FederalElection/Submissions

⁹ E.g. *Recommended Benchmarks for Democratic Legislatures* (Commonwealth Parliamentary Association (CPA), World Bank Institute (World Bank Group), United Nations Development Programme (UNDP), European Parliament & National Democratic Institute for International Affairs (NDI). 2006; updated by Commonwealth Parliamentary Association (CPA) Headquarters Secretariat & Westminster Foundation for Democracy (WFD). 2018)

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- privatization¹⁰ and PPPs¹¹
- zoning decisions
- media¹

Recognizing these pressure points has two consequences:

1. Unless we want to abandon either the market or democracy¹², these pressure points will remain, and integrity systems must watch out for the interaction;
2. It will generally be better to structure the interaction in ways that reduce the pressure giving less work for the integrity system to do.

It should be emphasised that the interaction need not be toxic but can be highly beneficial (including informed policy making, efficiency and greater knowledge and debate about governmental decisions). Well-designed integrity systems help ensure that interactions between market and government institutions promote good governance rather than undermine it.

New South Wales has generally led the way, with recommendations enacted in 2010 (discussed in Section 3 below) and most recently with a review reported in 2013 that left the scheme basically intact.

Back to the Classics?

The word 'donation' is derived from the Latin word 'donum' ('dona' plural). It is embedded in one of the most famous fictional lines from antiquity. In Virgil's Aeneid, Aeneas warns: 'beware of Greeks bearing gifts'¹³ He was, of course, referring to the 'Trojan Horse'. The Australian polity might say 'beware of corporations, especially when bearing gifts' (*Timeo collegia et dona ferrentes*). Political donations from corporations and other large organisations, local or foreign, could be a Trojan horse for our democracy. Such gifts may pose the greatest danger to the recipients as the more beholden political parties are to donors, the less power they are contesting for and the less they can do for those who elect them.

2. Objectives of Bill.

Senator Waters Second Reading Speech describes the Bill as 'the first step towards getting dirty money out of politics'. Its purpose is to:

- a) 'minimise the opportunity for big money to buy outcomes.'
- b) 'level the playing field and avoid those with more money gaining greater access to government'
- c) 'complement reforms to strengthen the disclosure regime'.

The **Explanatory memorandum** outlines the legal effects of the Bill's amendments to the Commonwealth Electoral Act 1918:

- Impose a cumulative limit on donations from any source (individual, organisation or business) of \$3000 per election term

¹⁰ Where institutions move, sometimes partially, from one sphere to the other.

¹¹ Where there is an ongoing link and often the necessity of regulatory promises – e.g. not to build or upgrade competing roads

¹² Changes which virtually nobody suggests

¹³ or more accurately "I fear the Greeks even when they bear gifts"

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- Prohibit political donations specifically from property developers, the tobacco industry, the banking industry, liquor and gambling business, pharmaceuticals companies, the mining industry and representative organisations for these industries
- Extend the definition of ‘gift’ to include subscription and membership fees and attendance at fundraising events.

The Explanatory memorandum states that the amendments will strengthen the independence of parliament and increase public confidence that politicians are guided by the public interest when making decisions, and not by the interests of donors. They will remove undue influence by powerful industries on policy and funding decisions. Those taking part in public life will not have their decision making compromised by those influences.

These amendments are intended to prevent the industries identified above from using or having “a strong public perception” of using political donations to influence policy decisions.

The Explanatory memorandum states that the imposition of a cap on donations of \$3000 per election term recognises the potentially corrupting influence of large donations from any source (individual, organisation or business).

The extension of the definition of ‘gift’ is intended to close the loophole that has allowed large sources of campaign income to remain undisclosed and unaccounted for.

To meet Senator Waters’ objectives with the Bill, the driver of donations must be addressed. The provisions of the Bill are examined accordingly in Section 3.

In this section, the extent to which the objectives of the Bill can deliver the outcomes projected in Senator Waters’ Second Reading Speech is examined and support or suggested amendments indicated (reflected in Recommendations— see below.)

2.1. Capping Political Donations

The objective of this amendment (DIVISION 5C: 314AQ) is to limit the corrupting effect of large donations and to create a level playing field so that those with more money are prevented from gaining greater access to government.

Corrupting Behaviour

Both objectives invite examination of factors that increase the risk of corrupting behaviour.

Candidates and parties solicit donations to enable themselves to campaign for votes in elections. Caps on donations have limited effectiveness unless the root cause – i.e. the pressure to raise funds - is severely reduced by capping campaign expenditure. That is reflected in UK, Canada, NZ, NSW Qld & SA provisions. ART’s submission will return to this point.

Raising funds for campaigning has been identified as seeking, or accepting donations. The costs of contesting elections have become something of an arms race,¹⁴ with every party and candidate seeking to maximise votes cast which in turn requires maximum effort to attract votes. The efforts applied to achieve this are limited only by the resources available to be expended. Whilst the support of volunteers is important, it does not diminish the demand for funds to pay for

¹⁴ Faulkner, Senator J (2009) in *The Electoral Reform Green Paper – Donations, Funding and Expenditure*. Commonwealth of Australia . Available from http://library.bsl.org.au/jspui/bitstream/1/1397/1/strengthening_australias_democracy.pdf

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printing, advertising and other paid costs. It is these costs that drive almost all candidates and parties to seek and accept funds for campaign purposes.

It is rare, if ever, for parties to raise significantly more from donations than is expended in campaign costs. That is most unlikely unless there is a surge of donations immediately prior to an election, in circumstances where the excess funds cannot be spent in the short time remaining. Within Australia, the significance of the issue has been emphasised in a report by ICAC which stated:

A situation in which citizens believe elections can be bought or that there is some quid pro quo for helping a candidate win must be seen as seriously damaging to the proper functioning of a democratic government. A corrupt member of parliament can be voted out of office if elections are free and fair. But if there is a loss of trust in the election process, then the whole system of representative government is weakened.¹⁵

Tham and Young (2006) identified that “imposing limits on campaign spending, ... would dampen the parties' appetites for ever higher donations”.¹⁶

This argument that donations is driven by the “pressure for fund-raising”¹⁷ or “pressure to raise money” is now widely recognised across political parties as is the argument that such pressures collapse when spending is capped.¹⁸

As noted in the introduction to this submission, ART's position on political donations is to set a cap of \$1,000. Moreover, ART believes there should be co-existing limits on campaign expenditure for candidates, political parties, associated entities and third-party entities.

The Bill's omission of limits on campaign expenditure is a substantial weakness in its provisions.

Note that public funding of election campaigns appears to have had little if any effect to depress the pressure to raise money - this despite the relatively high levels of public funding in Australian jurisdictions. Those schemes provide per vote public funding that is greater than total campaign spending from all sources in other democracies like Canada.

Risk not proof sufficient for action

We often hear from Australian officials that there is little or no corruption in the Federal sphere. There are three responses to this:

1. Without a proper integrity commission, we will not necessarily know.
2. If we are complacent, we are an easier target
3. The responsibility of any government (as it is of any corporate board) is to identify risks, assess their probability and consequences and take appropriate measures to reduce the risk. Corruption is so fundamental a risk to any polity that we need to take active measures to reduce the risk of corruption through an effective, comprehensive and

¹⁵ NSW ICAC (2014) *NSW public officials and members of Parliament - allegations concerning soliciting, receiving and concealing payments (Operation Spicer)* Available from https://www.icac.nsw.gov.au/ArticleDocuments/351/Investigation-into-NSW-Liberal-Party-electoral-funding-for-the-2011-state-election-campaign-and-other-matters_Operation-Spicer.pdf.aspx

¹⁶ Sexton, E (2006) quoting Tham & Young *Political donor rules 'promote corruption'*. Sydney Morning Herald, February. Available from <https://www.smh.com.au/national/political-donor-rules-promote-corruption-20060225-gdn1hg.html>

¹⁷ Tham, J-C (2012) *Establishing A Sustainable Framework For Election Funding And Spending Laws In New South Wales. A Report Prepared for the New South Wales Electoral Commission*. p. 156

¹⁸ “The Liberal Party (NSW) argued that: protection of a system of representative government requires political equality of opportunity. There must be a 'level playing field' for the principal players. Elections should be a battle of ideas, policies and principles, not a battle of war-chests... The Liberal Party of Australia (NSW Division) supports expenditure limits for candidates, parties, Legislative Council Groups and third parties at appropriate levels.” NSW JSCCEM 2010 election funding Final Report, p. 125. The Labor Party National Platform (2018) states that Labor will “Seek to limit the level of federal campaign expenditure, through the introduction of spending caps.”

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mutually supportive set of reforms including an effective integrity commission, strong FOI, whistleblower protection, auditing and administrative law. Campaign finance reform should play its role in this integrity system and may have to be stronger to cope with the weaknesses in other integrity institutions.

More subtle influences

While the Bill emphasizes the importance of avoiding corruption, we should recognize that the influence of donors is generally more subtle. If a political party believes it needs donations from a wide range of organisations, it will consider what potential policy changes will be unwelcome news to their donors.

Open Government Partnership

Australia is a member of the Open Government Partnership¹⁹ and as such is committed to making reforms to improve the integrity of its system of government. The integrity of the electoral system clearly falls within that national commitment.

2.2. Prohibited Donations (Division 5B)

This provision complements and gives further expression to 2.1 above. It prohibits donations from (eight) specified industries. The High Court has upheld legislation banning political donations from specified industries.

2.3. Corporate donations and the Best Interests of the Company

Under the Corporations Act 2001, Directors must ‘exercise their powers and discharge their duties in good faith in the corporation’s best interests.’²⁰

If company directors think that giving money to a political party will result in benefits to the company, that would seem to bring such donations within most definitions of corruption.²¹ If directors think that giving money to a political party will not further the interests of the company, they are in breach of their statutory duties. This would appear to leave no room within the law for corporate donations²² – leaving such decisions to individual shareholders who can choose to donate their dividends to the party of their preference. That is the position in some jurisdictions and it is hard to argue against it.²³

We note that this section of the Corporations Act is often used to argue that corporations may not take into account the interests of employees, communities or even the future of the planet except to the extent that damage to them would damage the corporation. It would be an irony if some of those who argue this also sit on the boards of corporations who give donations to political parties or warrior think tanks!²⁴

¹⁹ Open Government Partnership – Australia (2020) *About*. Available from <https://ogpau.pmc.gov.au/about>

²⁰ Corporations Act 2001 (Cth), s 184(1)

²¹ To the extent that our narrow definitions of corruption do not encompass this, it is a problem of our anti-corruption laws.

²² Or, for that matter, to warrior think tanks.

²³ Sampford put this argument to the Queensland Premiers Accountability and Integrity Round Table in 2010 (of which he was a member). One of the Labor ministers present leapt on the idea, pointing out that unions were established with very specific political goals and its leaders would not be in breach. Sampford acknowledged the distinction but said that democratic politics needed a more or less level playing field. If corporations could not donate and other means were found for funding party political campaigns, then unions could devote all their revenue on collective bargaining and other benefits for their members.

²⁴ There are two responses: one is to argue that damage to suppliers, employees, customers and the communities in which they operate will be to the long term detriment of the corporation. The other is to clarify s.184. For more general discussion of these

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Note also that only a tiny and diminishing proportion of corporations are reported to make donations to political parties.

We also note that some ALP members have responded to these arguments by pointing out that they do not apply to unions who have written in support for political activity in their constitutions and their rationales. However, it is also important that there be a level playing field and that any changes not only reduce the need for political fund raising but do not give either side a significant advantage.

2.4. Gift re-defined

The Bill re-defines and extends the donations that are subject to disclosure (Cl.314AP). This is a long overdue advance, which is consistent with Australia's commitments as a member of OGP. We support it so far as it goes.

However, it leaves unresolved the confusing use of "donation" in the title and "gift" elsewhere, with the same apparent meaning. Furthermore, it is uncertain whether gift includes all of

- donation, or
- contribution, or
- loan, or
- loan guarantee, or
- goods or services (other than volunteer labour) provided in-kind i.e. for no consideration or for inadequate consideration.

This confusion would be resolved by including each of these items in a common definition of donation, which term is more commonly used in this context than gift.²⁵

The Bill would amend the definition of gift to specifically include the previously excluded annual subscriptions paid to a political party unless the subscription is for membership of the party and the amount paid is less than \$1000 per year. This provision is consistent with the Open Government Declaration, to which Australia is a signatory.

We would draw attention to in-kind donations. The cost of a front-page advertisement in a major tabloid would be very high. The cost of several of these plus unrelenting and unbalanced negative copy would, if made available for hire, would exceed the value of any cash donor. Regulation of these massive in-kind contributions is not an easy matter and needs to fully recognize the importance of professional journalism in the formation of public opinion. However, if cash contributions are to be more carefully regulated, the relative value of the above in-kind contributions will increase. There are a number of possible solutions, some of which were raised before the Finkelstein and Leveson enquiries which reported in 2012²⁶.

issues see "Shareholder Values Not Shareholder Value: How to Convert 'Ethical Investment' from an Oxymoron to a Tautology" (2004) *Griffith Law Review*, pp. 115-123

²⁵ E.g. in the Senate Select Committee Report *Political Influence of Donations*., the word 'donation' is used 63 times whereas the word 'gift' is used 19 times.

²⁶ See in particular Institute for Ethics, Governance and Law submission, Submission to the Independent Media Inquiry (Finkelstein), 2011

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Although this may seem to be too large an issue to be properly addressed here, note that caps on campaign expenditure, including the value of in-kind expenditure (see below), would have major effects. A number of further points can be made:

1. News corporations, like other corporations, do not have human rights
2. Citizens have rights to be informed and journalists have professional duties to inform them.
3. In 1988, Professor Baxt, then incoming chair of the Trade Practices Commission considered the approval of the News Corporation takeover of the Herald and Weekly Time Ltd by his predecessor to be one of the worst decisions in Australian corporate regulation. The level of acquired concentration would not be contemplated in any other industry. It is notable that News Corporations' print titles were almost exclusively secured through takeover rather than as start ups – with *The Australian* being a notable exception.
4. Requirements of domestic control of news organisations are common.
5. There is no reason why all boards of media corporations should not be required to sign up to a code of practice similar to that of the ABC Board to ensure, as far as they can, impartiality and diversity of perspectives.²⁷ This, along with respect for professional journalists who are subject to ethical codes, an independent complaints mechanism with the power to require retractions and associated integrity measures would go a long way to addressing these issues. The Institute for Ethics, Governance and Law (IEGL) outlined a comprehensive model which it argued would justify an extension of 'shield laws' and greater protection in defamation.²⁸

2.5. Capping donations

ART broadly supports the proposal to cap donations (Cl. 314AQ), which would mark a significant step forward in Commonwealth electoral reform. ART is keen to progress a uniform political donations regime across Australia. NSW, Queensland and Victoria have already legislated for caps on donations and are ahead of the Commonwealth in this respect.

However, on its own and without parallel measures to cap expenditure, capping donations can only partially address Senator Waters' concern about their corrupting influence on decision makers. As discussed under 2.1, the provision does not directly address the pressure to raise funds., Rather than the Bill's cap of \$3,000 ART supports a cap of \$1000 on donations from individuals and all organisation disclosed in continuous real time (1-2 days).

2.6. Prohibited Donations

ART supports bans on donations and associated provisions, including penalties (Division 5B Clauses 314AI-314AN).

In respect of aggregating political donations (Cl 314AR), disclosure when the sum of gifts by the same donor exceeds the threshold is consistent with Australia's commitments as a member of OGP. Analysis of the AEC 2018-2019 data shows that more than half of private funding of

²⁷ To be achieved by a

- balance that follows the weight of evidence;
- fair treatment;
- open-mindedness; and
- opportunities over time for principal relevant perspectives on matters of contention to be expressed.

²⁸ See IEGL submission in note 26 above

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elections is not disclosed. The high disclosure threshold and no requirement to disclose aggregate donations enables large donors to hide their identity.²⁹

3. Human rights considerations.

The Explanatory memorandum concludes that the Bill is compatible with human rights and freedoms because it advances equality in the protection of freedom of expression. Note in respect of human rights concerns, it can be said that:

- Human rights are the rights of humans;
- Corporations are not humans;
- Money is not speech;
- Money amplifies some speech and tends to drown out others.

Accordingly, corporations have no human right to spend money to advance their views. This does not mean that corporations might not be permitted to do so as part of a system for enabling political debate that provides information for citizens to choose their governors and assess their performance and policy preferences. However, such permissions are to further the human rights of citizens rather than any human rights of corporations.

Individual human beings do have human rights and these rights must take precedence.

We support the Explanatory memorandum's conclusion.

As mentioned above, comparable parliamentary democracies demonstrate the best practice that is sought with this Bill. The corrupting potential of donations is addressed by legislated caps on campaign spending (also referred to as expenditure) by candidates and political parties (see Table 1). They differ in detail, but each has taken effective action.

For example, at the recent UK elections, each political party's expenditure was limited to GBP30,000 for each electorate in which it fielded a candidate.³⁰ Canada provides a limit "based on the number of names appearing on the preliminary or revised electoral lists for each electoral district. The limit is then adjusted for inflation at the rate in effect on the day the election is called."³¹ At the 2019 Canadian elections, limits were in the range CAD 86,000 – 142,000 per electorate.³²

New Zealand has a more rigorous limit: NZD 26,800.^{33, 34}

²⁹ Grattan Institute (2020) Dark money: How to reform Australia's political donations system <https://grattan.edu.au/podcast/dark-money-how-to-reform-australias-political-donations-system/>

³⁰ BBC News (2019) *General election 2019: How much can parties spend?* 4 November. Available from <https://www.bbc.com/news/world-asia-52780289>

³¹ International IDEA (2020) *Database. 44. If There are Limits on the Amount a Candidate Can Spend What is the Limit for Spending?* Available from <https://www.idea.int/data-tools/question-view/563>

³² Elections Canada (2019) *Final Election Expenses Limits for Candidates 43rd General Election – October 21, 2019*. Available from <https://www.elections.ca/content.aspx?section=pol&document=index&dir=limits/limitcan&lang=e>

³³ International IDEA (2020) *Database. 44. If There are Limits on the Amount a Candidate Can Spend What is the Limit for Spending?* Available from <https://www.idea.int/data-tools/question-view/563>

³⁴ Muller, Damon 2018 Election funding and disclosure in Australian states and territories – Parliament of Australia.pdf

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Table 1. Provisions compared - International

Provision	Bill proposals	Cth of Australia	Canada (federal)	New Zealand	United Kingdom
Lower disclosure threshold to \$2500	Yes	\$13,800	\$500	\$1500 for candidates, \$15,000 for parties	£1,500 for candidates, £7,500 for parties
Gift to include fees re fundraisers, subscriptions, affiliations	Yes	No	Yes fundraisers Others prohibited	Yes fundraisers	Yes subscription, affiliations,
Reporting entities to include political entities, campaigners, associated entities, third parties	Yes	Partly	Yes	Yes	Yes
Half-yearly returns of donations	Yes	Annual	Quarterly	Annual	Quarterly and 35 days after election
Seven (7) day Gift disclosure	Yes	Up to 18 months	4 months	10 days if > \$30,000	7 days when election called
Disclosure when sum of gifts by the same donor exceeds threshold	Yes	Partly	Yes	Yes	Yes
Electoral expenditure accounts	Yes	No	Yes	Yes	Yes
Electoral expenditure caps	No	No	Yes	Yes	Yes
Disclosure Portal	Yes	No			
(Increased) monitoring and investigatory powers, incl providing more information	Yes				
Infringement notices and civil penalty provisions	Increase Max to \$63,000	Max penalties \$42,000 2 years		Max penalties \$100,000 2 years	
Average cost per election per candidate	–	\$29 (2018)	\$5 (2015)	\$2.83 (2014)	85p (2015)

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Within Australia, NSW, Qld, SA, NT and Tasmania's Legislative Council each have caps on campaign spending, as will the ACT upon passage of the ACT Bill. Australia has nine (9) different political donations and expenditure regulatory schemes, with the Commonwealth scheme being among the weakest, see summary of some key features in Table 2 below.

The NSW regulatory scheme is one of the best of the schemes operating to date in Australia at national and State/Territory levels. The NSW scheme has evolved through a series of investigations, reports, recommendations and legislative amendments which have enjoyed bi-partisan support.

The essential features of the NSW scheme were laid out in the *Election Funding and Disclosures Amendment Bill 2010* introduced by the then Premier of NSW, now Senator Keneally. The measures passed with bi-partisan support. A further review in 2013 (NSW JSCEM Report) recommended consolidation, restructuring and clarification of multiple regulatory instruments but retention of the essential features. These features are now incorporated in the *Electoral Act 2017 (NSW)*. The Objects of the Act include:

3 (b) to promote and maintain an electoral system characterised by accessibility, integrity and fairness that provides for the election of members of Parliament of New South Wales in accordance with the Constitution Act 1902 (NSW).

NSW State election campaign expenditure is regulated by complementary legislation, the *Electoral Funding Act 2018* Division 4, Sections 27-35 and administered by the NSW Electoral Commission. The Commission's website advises that:

Electoral expenditure incurred in connection with a State or local government election is capped during the capped expenditure period for the election. Caps on electoral expenditure apply to:

- political parties and their associated entities and elected members not contesting an election
- groups of candidates
- candidates
- third-party campaigners.

An amount up to double the electoral expenditure incurred in excess of an applicable expenditure cap may be recovered by the NSW Electoral Commission and paid back to the State. A person who incurs electoral expenditure in excess of an applicable cap may have committed an offence and may be prosecuted by the NSW Electoral Commission.

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Table 2. Campaign finance Provisions compared – Australian jurisdictions

Provision	Bill proposals ³⁵	Common-wealth ³⁶	ACT ³⁷ [ACT Bill ³⁸]	NSW ³⁹	NT ⁴⁰	Qld ⁴¹ Qld Act ^{42 43}	SA ⁴⁴	Tas ⁴⁵	Vic ⁴⁶	WA ⁴⁷
Lower disclosure threshold to \$2500	Yes	\$13,800	\$1,000	\$1,000	\$200- \$1500	\$1,000	\$5,000	\$13,800	\$1,020	\$2,500
Gift to include fees re fundraiser, subscriptions, affiliations	Yes	No	fundraiser >\$250 [all] subscriber >\$250	Yes	Yes	fundraiser >\$200 sponsors	fundraiser >\$500	No	fundraiser	Subscriber >\$200
Reporting entities to include political entities, campaigners, associated entities, third parties	Yes	Partly	Yes	Yes	Yes	Yes	Yes	Partly	Yes	Yes

³⁵ Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1244

³⁶ Commonwealth Electoral Act 1918 (Cth) <https://www.legislation.gov.au/Details/C2019C00103> AEC <https://www.aec.gov.au>

³⁷ Electoral Act 1992 (ACT) <https://www.legislation.act.gov.au/View/a/1992-71/current/PDF/1992-71.PDF>; ACTEC https://www.elections.act.gov.au/_data/assets/pdf_file/0003/839082/Election_funding_expenditure_and_financial_disclosure_-_2016_Election.pdf

³⁸ The Electoral Amendment Bill 2018 (ACT) (https://www.legislation.act.gov.au/b/db_59281)

³⁹ Electoral Funding Act 2018 (NSW) <https://www.legislation.nsw.gov.au/#/view/act/2018/20> NSW EC <https://www.elections.nsw.gov.au>

⁴⁰ Electoral Act 204 (NT) <https://legislation.nt.gov.au/Legislation/ELECTORAL-ACT-2004> NTEC <https://ntec.nt.gov.au>

⁴¹ Electoral Act 1992 (Qld) <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1992-028> ECQ <https://www.ecq.qld.gov.au/donations-and-gift-disclosure/disclosure-of-political-donations>

⁴² Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld) <https://www.dlgrma.qld.gov.au/local-government-reform/accountability-and-integrity-bill.html>

⁴³ Qld reforms take effect over next 2 years, Indicative reprint <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2019-052/lh>

⁴⁴ Electoral Act 1985 (SA) Division 6. <https://www.legislation.sa.gov.au/LZ/C/A/ELECTORAL%20ACT%201985/CURRENT/1985.77.AUTH.PDF> SAEC <https://www.ecsa.sa.gov.au>

⁴⁵ Electoral Act (Tas) <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2004-051>

⁴⁶ Electoral Act 2002 (Vic) <https://content.legislation.vic.gov.au/sites/default/files/2020-04/02-23aa062%20authorised.pdf>

⁴⁷ Electoral Act WA https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a242_currencies.html WAEC <https://www.elections.wa.gov.au/index.php/>

Submission from Accountability Round Table (2020).

Provision	Bill proposals ³⁵	Common-wealth ³⁶	ACT ³⁷ [ACT Bill ³⁸]	NSW ³⁹	NT ⁴⁰	Qld ⁴¹ Qld Act ^{42 43}	SA ⁴⁴	Tas ⁴⁵	Vic ⁴⁶	WA ⁴⁷
Half-yearly returns publication	Yes	Annual 18 months after election	Quarterly	Half yearly	Annual	Half yearly	Annual 3 months EOFY	Annual 18 months after election	Annual 6 months EOFY	Annual 6 months EOFY
7 day disclosure	Yes	6 months	7 days in EC period - quarterly	21 days in PE period - 6 months	6 dates in election year	7 days -15 weeks after polling day	7 days - in designated period	6 months	21 days	19 weeks after polling day
Disclosure when sum of gifts by the same donor exceeds threshold	Yes	Partly	Yes	Yes		Yes	Yes	Partly	Yes	Yes
Electoral expenditure accounts	Yes	No	—	Yes	Yes	Yes	Yes	No	Yes	No
Disclosure Portal	Yes	No	Yes	No	No	Yes	Yes	No	No	No
increased monitoring and investigatory powers	Yes									
Infringement notices and civil penalty provisions	Max \$63,000	Max \$42,000	Max \$8,000; [48,000]	Max \$44,000	Max \$46,500 - \$232,500	Max \$200,000	Max \$25,000	Max \$32,600	Max \$49,566	Max \$15,000
Misleading returns - circumventing scheme		2 years	6 Months	10 years	10 years	10 years		2 years	2-10 years	2 years

Submission from Accountability Round Table (2020).

Provision	Bill proposals ³⁵	Common-wealth ³⁶	ACT ³⁷ [ACT Bill ³⁸]	NSW ³⁹	NT ⁴⁰	Qld ⁴¹ Qld Act ^{42 43}	SA ⁴⁴	Tas ⁴⁵	Vic ⁴⁶	WA ⁴⁷
Electoral expenditure caps	–	No	Candidate	Candidate \$132,600 to \$198,700	Candidate \$40,000	Candidate \$58,000 to \$87,000	Candidate \$100,000	Candidate (Legislative Council) \$17,500	No	No
Donations cap	–	No	No	Yes \$6,400	No	Yes \$4,000 - \$6,000	No	No	Yes \$4000	No
Prohibited Donors	–	Foreign	[Property developer]	Property developer tobacco liquor gambling Foreign	–	Property developers	–	–	Foreign	–

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The current NSW election limits include:⁴⁸

Category	Cap
Party with more than 10 endorsed Legislative Assembly candidates at a general election	\$132,600 multiplied by the number of electoral districts in which a candidate is endorsed by the party
Endorsed Legislative Assembly candidate at a general election	\$132,600
Independent Legislative Assembly candidate at a general election	\$198,700

The ACT scheme provides an election funding, expenditure and financial disclosure scheme, as defined in the *Electoral Act 1992 (ACT)*, which consists of four components:

- public funding of election campaign expenditure;
- limits on the amount of electoral expenditure that may be incurred;
- limits on the value of anonymous gifts that may be received; and
- disclosure of the financial transactions of registered political party groupings, MLAs, associated entities, candidates, third party campaigners, and broadcasters and publishers.

The ACT Electoral Commission advises that:

The expenditure cap for a party grouping for the 2020 election is \$42,750 per candidate, multiplied by the number of party candidates contesting the election, to a maximum of 25 candidates (5 candidates for each of the 5 electorates). For a party standing the full five candidates in all five electorates, the maximum expenditure cap for the party grouping is \$1,068,750 (\$42,750 x 25 candidates).

The same limit applies to non-party (i.e. independent) candidates.⁴⁹

The Queensland Attorney General made clear the link between political finance and the public trust in the system of government in her second reading speech for the recent Queensland *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill*. She said:

The 2019 Edelman Global Trust Index, which assesses the trust communities have in NGOs, business, government and the media, places Australians' trust in their institutions below the global average. In a score out of 100, Australia sits at a 48 per cent trust score. All of us in this parliament are not only politicians but custodians of a precious democracy. We cannot take it for granted. Instead, we need to progress reforms that strengthen our democracy and nurture our ability to participate in it. Our electoral reforms will create a more level playing field, stop the electoral arms race and ensure that everyone has the ability to have their say.⁵⁰

The recent Queensland Act provides for allowable expenditure substantially lower than permitted in NSW:

Endorsed candidates will be allowed to spend up to \$58,000 at election time and independent candidates up to \$87,000. Political parties will only be able to spend up to \$92,000 per endorsed candidate for every electorate contested. No more than \$92,000

⁴⁸ NSW Electoral Commission (2020) *What are the expenditure caps for State elections?* Available from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>.

⁴⁹ Elections ACT (2020) Electoral expenditure and disclosure FAQ. Available from https://www.elections.act.gov.au/funding_and_disclosure/funding_expenditure_and_disclosure_faq/electoral_expenditure_and_disclosure_faq

⁵⁰ D'Ath (2019) Second Reading, *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld)* Hansard, 28 November.

Submission from Accountability Round Table (2020).

can be spent in any electorate, to ensure a party does not spend its entire cap in three or four seats.⁵¹

Federal Campaign Donations and Expenditure 2019

It must be noted that federal election campaigns cost Australians exceptionally high amounts. With 15.468 million eligible voters and \$450m estimated to have been spent on election campaigns in Australia, around **\$29** was estimated to have been spent on communicating to each voter on average; very much more in marginal seats.

Table 3. Campaign Receipts and Expenditure 2019

AEC data (2019 federal elections)	Labor	Liberal/National	Australian Greens	All parties
Public funding	\$27,569,610	\$31,725,958	\$8,064,000	\$68,635,246
Party Receipts	\$126,259,524	\$181,671,536	\$8,558,636	
Party Expenditure	\$121,758,837	\$171,972,386	\$8,606,850	

Canada, NZ and the UK have caps on election spending, and this results in expenditure for each eligible voter of:

- **\$5** in the 2015 Canadian election
- **\$2.83** in the 2014 NZ election
- **85 pence** in the 2015 UK election⁵²

There is no suggestion that UK, Canadian, NZ or Australian jurisdictions with caps on campaign expenditure are less democratic as a consequence. Indeed, the relatively low NZ limit greatly levels the electoral playing field, lessening the undemocratic advantage enjoyed by major parties due to their capacity to mobilise levels of resources far higher than that required for effective communication.

There is a significant distortion of the political power of the individual voter when his or her vote is devalued by the disproportionate influence wielded, or perceived to be wielded, by major donors to political parties and candidates. This is a substantial erosion of the democratic human rights of Australian voters "... to the free expression of the will of the electors".⁵³

Releasing the pressure to raise money

To effectively meet the objectives of the Bill, it should include a cap on spending, as was recommended in the 2018 Senate Select Committee Report. It recommended:

... that the Australian Government amend the Commonwealth Electoral

⁵¹ Bavas, J (2019) *Queensland electoral reforms will see public funding to candidates almost double after elections*. Available from <https://www.abc.net.au/news/2019-10-29/electoral-reforms-queensland-donations-and-public-funding/11649220>

⁵² Senate Select Committee into the Political Influence of Donations (2018) "Chapter 6 Safeguarding integrity" In *Political Influence of Donations*. Available from https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Report_1/section?id=committees%2freportsen%2f024147%2f25938

⁵³ Australia ratified the International Covenant on Civil and Political Rights in 1980. Article 25 (b) provides that every citizen has the right: "To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

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Act 1918 to introduce caps on campaign expenditure by political parties, candidates and associated entities.⁵⁴

The precise level of caps should be the subject of a separate inquiry. However, the level could be guided by: the levels of per voter spending by each candidate, political party, political campaigner, associated entity and third party at the -

- 2019 Federal elections
- 2019 NSW State elections
- 2019 UK elections
- 2019 Canadian elections
- 2020 NZ elections

NSW as a model

A scheme such as the NSW scheme could be applied to elections to the Commonwealth Parliament, subject to only minor technical adjustments such as definition of the election period – necessary because the House and Senate do not have fixed election dates as do some state and territory parliaments.

The NSW scheme offers a number of advantages.

Firstly, it has been developed and applied in a jurisdiction that is large and diverse in population and geographic area and accordingly includes voters representative of almost every House of Representatives electorate (NSW Legislative Assembly average enrolment 56,685; House of Representatives approximately 110,000 [NSW electorates]).

Secondly, it has been in operation over an extended period, confirming that the model is stable. Legislative amendments have left the essential features intact not-with-standing consolidation, re-structuring and clarification.

Thirdly, the model is familiar to almost one third of MHRs (47 of 151 represent NSW seats) and bi-partisan support is on public record.

The Bill must be amended if it is to meet the objectives spelled out in Senator Water's speech. It must include provisions that remove the features of the current regulatory regime that generate the incentives and indeed pressures on candidates and parties to raise money.

⁵⁴ Select Committee into the Political Influence of Donations (2018) "Chapter 6 Safeguarding integrity" In *Political Influence of Donations*. Paragraph 6.75. Available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Report_1/section?id=committees%2freportsen%2f024147%2f25938

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4. Recommendations

Recommendation 1 Provision be made to lower the cumulative limit on donations from any source (individual, organisation or business) from \$3000 to \$1000 per year.

Recommendation 2 Provision be made for caps on campaign expenditure by political parties, candidates and associated entities, based on NSW provisions for State elections (by default) or as otherwise determined by Parliament.

Recommendation 3 Provision be made prohibiting donations by donors in specified industries including (a) a property developer; or (b) a financial institution; or (c) a tobacco industry business entity; or (d) a liquor or gambling industry business entity; or (e) a mineral resources or fossil fuel extraction industry business entity; or (f) a defence industry entity; or (g) a pharmaceutical entity; or (h) an industry representative organisation, if the majority of the organisation's members are prohibited donors referred to in any of (a) to (g).

Recommendation 4 Provision be made to extend the definition of 'gift' to include donation, subscription, membership fee, attendance at fundraising event, contribution, loan, loan guarantee, or goods or services (other than volunteer labour) provided in-kind i.e. for no consideration or for inadequate consideration.

Recommendation 5 Provision be made for the disclosure of gifts when the sum of gifts by the same donor exceeds the threshold.⁵⁵

Recommendation 6 Provision be made in the proposed Commonwealth Integrity Commission (CIC) legislation for the CIC to have adequate, complementary powers and resources to investigate alleged breaches of the Commonwealth Electoral Act, including own motion powers.

Recommendation 7. That following enactment of the above recommendations and their operation for one term of the House of Representatives, an inquiry be conducted by JSCEM to review the operations of the provisions including of the types of expenditure falling within caps (i.e. expenditure limits); the amounts of the expenditure caps and donation caps; and the expenditure period.

Recommendation 8 That except as recommended above, the Bill be supported.

5. Conclusion

The Bill provides for reforms that are necessary but not sufficient to curb distortions of the freely expressed will of voters in Federal elections. The Accountability Round Table welcomes Senator Waters' initiative in promoting the cause of greater accountability and integrity in Australia's electoral system.

⁵⁵ Dark money: How to reform Australia's political donations system <https://grattan.edu.au/podcast/dark-money-how-to-reform-australias-political-donations-system/>

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The submission supports many of the Bill's provisions with some amendments. It demonstrates through examination of other electoral systems both within Australia and globally, that the Bill's reform measures do not match the comprehensive reform agenda achieved in the many jurisdictions cited. While the title of the Bill focuses on 'Donations', the measures designed to achieve that objective, though needed and overdue, make only incremental advances towards the cause of the necessary democratic reforms.

The Bill nevertheless provides a platform for further necessary reforms including caps on campaign expenditure and campaign donations. Significant reforms in this direction have been achieved in NSW and Queensland Acts and proposed in the pending ACT Bill.

The Accountability Round Table argues that a comprehensive, transparent, and accountable campaign donations and expenditure regime is the best way to protect the Commonwealth electoral system and our democracy.

The Bill must be amended to remove the pressure to raise funds which is at the heart of the corrupting potential of donations to candidates and parties that this Bill seeks to address.

Accordingly, ART recommends that the amendments proposed above be made to Bill and that so amended, the Bill be passed.

On behalf of The Accountability Round Table

Lyn Allison

Wendy Bradly

Charles Sampford

Ann Birrell

Ken Coghill

Peter Wilkins

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Appendix. Political party statements on integrity of Australian democracy.

1. Liberal Party of Australia

Constitution

The objectives of the Party are to have an Australian nation:-

(a) dedicated to political liberty and the freedom and dignity of man;

...; ...;

(d) in which an intelligent, free and liberal Australian democracy is maintained by:-

i) a Parliament controlling the Executive and the Law controlling all; ...

(Details at

<https://cdn.liberal.org.au/pdf/2019%20Liberal%20Party%20of%20Australia%20Federal%20Constitution.pdf>)

Federal Platform

We believe ...

- In parliamentary democracy as the best system for the expression and fulfilment of the aspirations of a free people. ...
- In the rule of law and justice, giving all citizens equal rights under the law, responsibilities to maintain it, and the freedom to change it (Details at <https://cdn.liberal.org.au/pdf/FederalPlatform.pdf>).

2. Australian Labor Party

Extract from *A Fair Go For Australia* Labor's 48th ALP National Platform

Reforming electoral law

70. Labor supports the fair, open and transparent operation of our electoral system and to the essential democratic principle that every person should have the right to full participation in it.

71. ...

72. Labor will improve the integrity of the electoral system and, most urgently, restore transparency, openness and accountability to the funding and disclosure regime creating greater transparency and restoring faith in the democratic system.

73. Labor will implement best practice electoral and political regulation reforms, ...

(Details at https://www.alp.org.au/media/1539/2018_alp_national_platform_constitution.pdf)

3. Nationals

Constitution

OBJECTS ...to promote within Australia –...

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(iii) the maintenance of democracy, liberty, incentive, individual enterprise and the pursuit of excellence ...

(vi) the maintenance of a democratic system of Government

(Details at <https://nationals.org.au/wp-content/uploads/2020/05/Constitution-06.05.2020.pdf>)

(Policies at <https://nationals.org.au/policies/protecting-our-local-way-of-life-for-future-generations/>)

4. Greens

Greens Charter – Democracy

To increase opportunities for public participation in political, social and economic decision making. ... To break down inequalities of wealth and power which inhibit participatory democracy (Details at (<https://greens.org.au/about/charter>)).

Policies - Plan to clean up politics

... ban political donations from the mining, property development, tobacco, alcohol, and gambling ... cap all other donations ... every donation over \$1000 is disclosed publicly, in close to real time ..." (Details at <https://greens.org.au/platform/democracy#clean-up>)

5. Centre Alliance

Government Accountability & Transparency

Politicians must be open and up front with the Australian people. Government's primary role is to protect their citizens, provide public infrastructure and services and to drive both national economic growth and personal growth. ... (Details at <https://centrealliance.org.au/policies/> .)