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6 October 2017

Select Committee into the Political Influence of Donations
Department of the Senate
PO Box 6100, Parliament House
Canberra ACT 2600

Submitted via email: seniorclerk.committees.sen@aph.gov.au with cc to
politicaldonations.sen@aph.gov.au

Dear Committee

ACF Submission to Select Committee into the Political Influence of Donations

The Australian Conservation Foundation would like to thank the Committee for the opportunity to make a submission into the Political Influence of Donations. Following is our detailed submission.

Political donations and the influence of industry on Australian democracy

There is little doubt that the private sector exerts substantial influence over Australia's political process by making donations to political parties. Research by the Australia Institute supported by the ACF and WWF Australia found that the mining industry has donated \$16.6 million to major political parties over the last ten years, with peaks in funding correlating with policy changes advantageous to the sector.

"...[the] mining industry spends millions of dollars on political donations, and can scale up their donations at important times as they did in 2010-11. The timing, scale and political leanings of these donations can be linked with election campaigns, leadership changes and important debates on policies such as the mining tax and carbon price"¹.

Political donations are also an indicator of a broader industry strategy of political influence.

With the majority of political donations and political expenditure hidden, and industry influence likely extending into the realm of personal and financial relationships, the public currently has little knowledge of how this industry is influencing our policy decisions. The implications of this influence was demonstrated in NSW by anti-

¹ <http://www.tai.org.au/sites/default/files/P3339%20Tip%20of%20the%20iceberg.pdf>



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corruption investigations called Operation Jasper and Operation Acacia. The NSW anti-corruption commission (NSW ICAC) found that a complex web of personal relationships, favours, and mutual financial interests resulted in the issuing of mining licenses without any proper process".²

ACF is concerned that industries and their peak bodies are running a two-track strategy of resisting reform of the national political donations regimes and calls for a national independent commission against corruption on one hand and, on the other, attacking the *Tax-Deductible Gift Recipient (DGR)* status of environment and other charities.

The political motivation behind DGR attacks is obvious. Public statements made over the past three years by the Federal Council of the Liberal Party³, Coalition MPs⁴ and representatives from the Minerals Council of Australia (MCA) and the Institute of Public Affairs (IPA),⁵ have all targeted the advocacy role of Australia's environmental organisations. There have been calls for the removal of tax deductible status for these organisations, and for changes to the Competition and Consumer Act⁶ and the Corporations Act⁷ to restrict their advocacy. This culminated in 2015 in the Australian Government launching a parliamentary committee inquiry – the House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations 2015/16 (HoR DGR inquiry) - that threatened to strip environmental advocacy organisations of their DGR status.⁸

The commencement of the inquiry followed a motion that was unanimously endorsed by the Federal Liberal Party to strip environmental organisations of their DGR status. During one inquiry hearing, Queensland Liberal MP George Christensen tweeted about cancelling DGR

² ibid

³ ABC News (30 June 2014) http://www.abc.net.au/news/2014-06-29/andrew-nickolic-moves-to-strip-charity-status-from-some-environ/5557936?WT.ac=statenews_tas

⁴ Daily Mercury <http://www.dailymercury.com.au/videos/christensen-sets-his-sights-green-political-activi/22865/>

⁵ Sinclair Davidson for Minerals Council of Australia 'A Critique of the Coal Divestment Campaign' (2014) http://www.minerals.org.au/file_upload/files/reports/A_critique_of_the_coal_divestment_campaign_Sinclair_Davidson_Jun_2014.pdf

⁶ A review of competition law has the parliamentary secretary for agriculture, Richard Colbeck, talking about repeal of Section 45DD of the Competition and Consumer Act. <http://www.theaustralian.com.au/national-affairs/companies-to-get-protection-from-activists-boycotts/story-fn59niiX-1226724817535>

⁷ Sinclair Davidson for Minerals Council of Australia 'A Critique of the Coal Divestment Campaign' (2014) http://www.minerals.org.au/file_upload/files/reports/A_critique_of_the_coal_divestment_campaign_Sinclair_Davidson_Jun_2014.pdf

⁸ See terms of reference at http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO/Terms_of_Reference (accessed 5 July 2017)



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status: "Time to get the donations in. I can't see it continuing longer once we report".⁹ After extensive public hearings, a majority of that Committee recommended in May 2016 that the advocacy activities of these groups be limited¹⁰ and the efforts of these groups be focused on 'on ground' environmental remediation work.

In the absence of any evidence before the Committee supporting such a recommendation and due to comments made publicly by Committee members prior to the public hearings, it is clear to ACF that this recommendation was a foregone conclusion, motivated by a desire by government members of the Committee to reduce and silence scrutiny of the government's poor environmental performance and appease industry lobby groups such as the MCA and the IPA. Opposition members issued a dissenting report and one government member opposed this recommendation.

Further, a majority of Committee members recommended that the Australian Tax Office impose administrative sanctions on environmental organisations that support, promote, or endorse illegal or unlawful acts such as blocking access, trespass, destruction of property and acts of civil disobedience.¹¹ Again, there was no evidence before the Committee that supported the making of such a recommendation and, again, this recommendation was rejected by opposition members and one government member. The right of community organisations to engage in peaceful protest is fundamental to our democracy and is a major feature that distinguishes countries like Australia from authoritarian regimes.

Political Donations

When in Government, political parties are able to grant access to and over publicly owned environmental and natural resources that are a major source of private wealth and power in Australia. The benefits of commonly owned nature must be secured for the common, public benefit. The distribution of these common goods for public benefit is a hallmark of a just and democratic society. Opaque and secretive political donation regimes create the opportunity and motivation for corruption and undermine citizens' confidence and participation in the institutions of democracy and government.

⁹ Paul Carter, "Former Greens leader Bob Brown says Liberals out to get green groups," The Mercury, 21 July 2015, available at <http://m.themercury.com.au/news/tasmania/formergreens-leader-bob-brown-says-liberals-out-toget-green-groups/story-fnj4f7k1-1227450553713> (accessed 5 July 2017)

¹⁰ Environment Committee, Report into the Register of Environmental Organisations, May 2016, Recommendation 5

¹¹ Environment Committee, Report into the Register of Environmental Organisations, May 2016, [5.95]-[5.102].



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Associated Entities

Beyond directly donating to parties, substantial sums are funneled through Associated Entities (AEs). An associated entity under the Commonwealth Electoral Act 1918 (s287) means an entity: *that is controlled by one or more registered political parties; or that operates wholly or to a significant extent for the benefit of one or more registered political parties; or that is a financial member of a registered political party; or on whose behalf another person is a financial member of a registered political party; or that has voting rights in a registered political party; or on whose behalf another person has voting rights in a registered political party.*¹²

Associated Entities (AEs) like Cormack Pty Ltd (Lib) and Labor Holdings Pty Ltd (Lab) receive income from industry that is then cycled through to national and state party branches. For example, in the 2015-16 reporting cycle:

- BHP Billiton was named as a source of income for Cormack (\$218,297) and for Labor Holdings (\$31,876)¹³.
- Wesfarmers was named as a source of income for Cormack (\$552,075) and for Labor Holdings (\$18,626).¹⁴
- Woodside Energy was named as a source of income for Labor Holdings (\$16,462).¹⁵
- Rio Tinto was named as a source of income for Cormack (\$244,414).¹⁶

The discrepancy between the amounts made as donations to political parties and funds directed to AEs is illustrated by disclosures relating to Wesfarmers. In the 2015-16 cycle Wesfarmers declared \$43,000 of political donations¹⁷. In the same period it was listed as a source of an additional \$5m worth of income by political parties and associated entities.¹⁸

As of the 2015-16 reporting cycle there are 187 Associated Entities registered with the Australian Electoral Commission (AEC). This is a diverse range of organisations, including

¹² http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/associated-entities/

¹³ <http://periodicdisclosures.aec.gov.au/NamedOnOtherList.aspx?SubmissionId=60&ClientId=18056>

¹⁴ <http://periodicdisclosures.aec.gov.au/NamedOnOtherList.aspx?SubmissionId=60&ClientId=20230>

¹⁵ <http://periodicdisclosures.aec.gov.au/NamedOnOtherList.aspx?SubmissionId=60&ClientId=16026>

¹⁶ <http://periodicdisclosures.aec.gov.au/NamedOnOtherList.aspx?SubmissionId=60&ClientId=18134>

¹⁷ <http://periodicdisclosures.aec.gov.au/Donor.aspx?SubmissionId=60&ClientId=20230>

¹⁸ It is important to note that in these cases, the income has been marked as "Other Receipt" meaning that it may not be a political donation per se, but a payment for a legitimate service. The limitations of the AEC's regime for categorising donations from other sources of income is discussed below. <http://periodicdisclosures.aec.gov.au/NamedOnOtherList.aspx?SubmissionId=60&ClientId=20230>



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trade unions (more than 100 AEs are trade unions), party investment vehicles (such as Cormack and Labor Holdings), associated think tanks (such as the Liberal Party's Menzies Research Centre and Labor's Chifley Research Centre) and state and local fundraising forums (such as the Liberal's WA 500 Club or the Kooyong 200 Club).

The gross turnover of all 187 AEs is remarkably high. Figures disclosed to the AEC in the 2015-16 reporting period show a total income of a little over \$900m, with a total spend of \$860m. This figure, however, is distorted massively by the inclusion of unions, who are required to report their entire turnover to the AEC, even those components which are not related to their support of political parties. When unions are removed from the data the gross income of AEs is closer to \$29m and their total spend is almost \$35m. While this methodology isn't ideal, it gives a more accurate idea of the size of the AE sector in 2015-16.

AEs that primarily raise funds through investments and property, are incredibly opaque. For example, Bunori Pty Ltd, a Liberal Party investment vehicle, turned over more than \$16m between 2011 and 2016, with virtually no public information as to how this money has been disbursed¹⁹. Bunori's sole shareholder is the NSW division of the Liberal Party. Directors have included high profile coalition figures, such as Minister for Industry, Innovation and Science, Senator Arthur Sinodinos, former NSW Premier Barry O'Farrell, Treasurer Scott Morrison and former Nationals senator Peter McGauran.²⁰ There is no requirement for party investment vehicles to disclose exactly how they invest their funds, making it impossible to identify conflicts of interest. While the paucity of data precludes an accurate analysis, a rough categorisation of investment vehicles suggest that they raised more than \$22m and spent almost \$27m in the 2015-16 reporting period.

At a more local level, some MPs use '200 Clubs' to raise funds, particularly in the Victorian Liberal Party who have high profile clubs in the electorates of Higgins, Kooyong, Deakin and Chisholm. While the existence of local fundraising forums offers some insight into the fundraising practices of individual politicians, there remain substantial obstacles to transparency.

Firstly, in the case of the Victorian Liberal Party, at least two high profile fundraising forums are not registered AEs (Deakin and Chisholm) and as such make no disclosure to the AEC.

¹⁹ In this period Bunori disclosed \$16.5m in income, largely received for the NSW Liberal Party. In the same period, it disclosed \$16.6m in attributable spending. <http://periodicdisclosures.aec.gov.au/AssociatedEntity.aspx?SubmissionId=60&ClientId=1062>

²⁰ <http://www.smh.com.au/nsw/liberal-fundraising-bodies-in-the-firing-line-20140429-zr1bw.html>



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Secondly, while the Higgins and Kooyong clubs do report to the AEC, the discrepancy between total income and disclosed income is substantial, obscuring the source of donations. In the period analysed (2011-2016) the Kooyong 200 Club disclosed the source of just 16% of its donations, while for Higgins the figure is 13%. It is worth noting however, that where there is disclosure, property companies dominate donations to local AEs.

Beyond Associated Entities there are several unregistered branded entities that are operated as extensions of their respective state parties. Despite conducting AE-like fundraising activities, operations like the Deakin 200 Club (Liberal)²¹, the Platinum Circle (LNP)²², and Enterprise Victoria (Liberal)²³ are not registered as AEs and appear to have no formal legal existence. Funds raised by these entities are subsumed into wider party reporting, making it difficult to trace the sources of funds and how they are then distributed through the ecosystem of AEs, parties and candidates. Some of these organisations, however, do appear in the AEC data, suggesting that they present themselves as quasi-independent entities. For example, Minerals Council Australia reports donating \$12,000 to Enterprise Victoria and \$2,700 to the Platinum Club in its 2015-16 returns²⁴.

Limitations of AEC regulations

The overwhelming challenge in locating the links between corporate political spending and individual MPs is the way in which the regulatory system encourages opacity. The limitations of the disclosure regime are discussed in detail in the Dark Money report prepared by Get Up!²⁵ and Joo-Cheong Tham²⁶, and have been a subject in the Joint Standing Committee on Electoral Matters' current inquiry into the conduct of the 2016²⁷ election and its 2010 inquiry into the funding of political parties and election campaigns²⁸.

²¹ See below for more information on the Deakin 200 Club

²² The Platinum Circle is a secretive fundraising forum run by Gold Coast LNP MPs Stuart Robert and Steve Ciobo. It is reportedly the biggest fundraising operation for the QLD LNP, apparently raising more than \$250,000 a year. Investigators report that "it is impossible for the entire money trail to be traced through party disclosure returns to the Australian and State electoral commissions." See <http://www.goldcoastbulletin.com.au/news/gold-coast-fundraising-mps-stuart-robert-and-steve-ciobo-our-million-dollar-men/news-story/5818b842a47960f218e12d20530b8937>

²³ Enterprise Victoria is the Liberal Party's leading business networking forum that connects "business and industry leaders with current and future leaders in State and Federal Parliament." Sponsorship packages to attend its networking and fundraising events are not publicly advertised. It co-hosts the Higgins 200 Club major annual fundraiser, the Annual Post-Budget Breakfast. See <http://enterprisevictoria.com.au>. It's worth noting that its website is owned outright by the Liberal Party of Australia (Victorian Division). See <https://www.whois.com/whois/enterprisevictoria.com.au>.

²⁴ <http://periodicdisclosures.aec.gov.au/Donor.aspx?SubmissionId=60&ClientId=27919>

²⁵ http://cdn.getup.org.au/1969-Dark_Money.pdf

²⁶ <https://theconversation.com/profiles/joo-cheong-tham-157/articles>

²⁷ http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election

²⁸ http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/political%20funding/report.htm



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High disclosure thresholds

Sources of political donations to political parties and their associated entities are made opaque by a relatively high disclosure threshold (currently \$13,200 indexed to inflation). Furthermore, there is no requirement to disclose aggregated donations from a single entity in a single reporting period. A donor can effectively hide their political influence through 'splitting' donations; giving multiple amounts under the threshold, to multiple party-affiliated AEs and party branches, at different times in the reporting cycle. Neither the donor nor the recipient are required to disclose the aggregate amount of these donations. This means that even where local fundraising efforts are conducted under the auspices of a registered AE, there are substantial gaps in the data. For example, the Kooyong 200 Club, an AE that fundraises on behalf of Josh Frydenberg only disclosed the source of 16% of its income from 2011-2016²⁹.

Inaccurate and inadequate categorisation of income sources

The categorisation of income within the AEC system is an obstacle to analysing the relationships between the private sector, AEs and political parties. Within the AEC framework all income is marked either as 'donation' or 'other receipt'. All 'donations' are technically defined as gifts to the political parties. 'Other receipts' do not meet the legislative definition of a gift and include things like interest on investments, rent, union subscriptions or payment for services. In practice the distinctions between the two are blurred and there is a lack of consistency as to how the two categories are applied. One analysis found 80 cases in the 2014-15 financial year where donors had declared payments as a 'donation' and the parties had recorded the payments as 'other receipts'.³⁰ Furthermore the lack of nuance in the 'other receipts' category makes it difficult to trace accountability. The \$218,297 received by Cormack from BHP Billiton in 2015-16 is categorised as 'other receipts', which, while indicating that it is not a political donation per se, does not clarify what possibly legitimate service the company is purchasing from a Liberal Party fundraising vehicle and to what extent this particular transfer of funds differs from an explicit political donation.

²⁹ [http://www.abc.net.au/news/2016-02-19/\\$1.7m-of-political-donations-missing-from-party-disclosures/7178228](http://www.abc.net.au/news/2016-02-19/$1.7m-of-political-donations-missing-from-party-disclosures/7178228)

³⁰ [http://www.abc.net.au/news/2016-02-19/\\$1.7m-of-political-donations-missing-from-party-disclosures/7178228](http://www.abc.net.au/news/2016-02-19/$1.7m-of-political-donations-missing-from-party-disclosures/7178228)



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Limited data on expenditure and cash flows

Donations are effectively laundered as money flows between different entities in each party's fundraising ecosystem, making tracing donations from source to ultimate beneficiary effectively impossible.

While political parties, donors and AEs disclose headline spending figures to the AEC, political expenditure by AEs and state party branches is not broken down geographically or by activity, making it unclear how much a party or an AE may be spending on specific campaign activities or in an individual electorate. Unlike comparable jurisdictions, such as the UK, there are no requirements for political parties to disclose campaign expenditure on a constituency or activity basis. Specific spending only appears in the AEC data where one entity donates an amount above the threshold to another entity, for example when a political party reports a disclosable donation from an associated entity. Even where this disclosure does occur, the public data can be incomplete and irreconcilable. For example, in the 2015-16 reporting cycle the Higgins 200 Club (a local AE established to support the Liberal member for the seat of Higgins) reported a total spend of \$133,229. In the same reporting cycle the Liberal Party of Australia (Victorian Division) reported receiving \$230,000 from the Club.

The deliberate complexity and opacity of the system is clearly a barrier to political accountability, especially when trying to map the direct influence of specific industries to specific policy makers. Despite these limitations though, a thorough examination of the available data does begin to sketch problematic behaviour by specific parliamentarians, that may be utilised in campaigning and advocacy activities aimed at defending the DGR status of environmental organisations and to draw attention to the influences exercised by industry on politics.

Safeguards against corruption

While donations are one way in which our political system may be distorted, soft corruption can take a variety of forms. The consideration of how to best regulate political donations takes place in the context of a broader question of how to establish legislative frameworks which safeguard against corruption more broadly. While it is beyond the scope of this submission to detail these issues, we believe that a broader consideration of 'soft' corruption, its impact on decision making, and the safeguards which can minimise it, is urgently required, and that the principles of independence, control of discretion, transparency and



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accountability should be built into all decision-making frameworks. For more detail, please see Attachment 1, *"Corruption in Environmental Decision-making"* by Environmental Justice Australia.

In conclusion, ACF therefore makes the following recommendations to the Committee:

1. The Australian Government should lead the search for national best practice in the regulation and transparency requirements governing political campaign and political party and candidate finance, in place of present piecemeal legislation and practice at Commonwealth and State levels.
2. 'Associated entities' (eg. entities that are controlled by a political party or that operate solely for the benefit of a political party) and third party donors should be subject to the same disclosure provisions as political parties.
3. On-line, real-time continuous disclosure of donations to political parties, political candidates and associated entities should be introduced in all jurisdictions.
4. All donations to political parties, political candidates and associated entities should be capped at \$1000 per financial year and the threshold for mandatory disclosure of donations be reduced to \$500.
5. Prohibit any offshore corporation or individual that doesn't hold Australian citizenship from making any donation to an Australian political candidate or political party.
6. Limit the amount political parties, candidates and independent advocacy organisations can spend on elections to remove the incentive for politicians to amass big money war chests, and ensure a level democratic playing field for everyone.
7. Ministers and MPs should be prevented from becoming registered lobbyists for three years after they leave office.
8. The Australian Government should establish an independent corruption watchdog such as a Federal Independent Commission Against Corruption to strengthen public confidence in the Australian Parliament.

Yours sincerely,

Kelly O'Shanassy
Chief Executive Officer