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Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Select Committee into the Political Influence of Donations Inquiry

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The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission to the Select Committee into the Political Influence of Donations Inquiry.

Political donations pose a serious threat to the proper functioning of democracy, as they risk granting some businesses, organisations and individuals greater access to politicians and influence over government policies on the basis of the size of the payment.

The OECD has pointed out that:¹

the increasing concentration of economic resources in the hands of fewer people presents a significant threat to political and economic systems. If the financing of political parties and election campaigns is not adequately regulated, money may also be a means for powerful special interests to exercise undue influence, and “capture” the policy process.

Further, they point out the negative consequence for the wider community:²

Over the past three decades, income inequality has risen in most OECD countries, reaching in some cases historical highs. The increasing concentration of economic resources in the hands of fewer people presents a significant increase in the risks of policy capture. When government policy making is captured by a handful of powerful special interests, the rules may be bent in favour of the rich. The consequences of a widespread feeling that governments are not working in the wider public interest are grave, leading to the erosion of democratic governance, the pulling apart of social cohesion, and the undermining of crucial concepts that underlie democracy such as equal opportunities for all...

The relationship between inequality and undue influence in politics through political financing is often overlooked. Socio-economic inequality is only the tip of an iceberg of inequalities of different dimensions, including differences in influence, power and voice. Consequently, governments are expected to proactively address high-risk areas at the intersection of the public and private sectors, including lobbying, conflict of interest in public decision making, and the influence of vested interests exercised through political

¹ OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 15.

² OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 24-25.

financing. In-depth analysis of facts and comparative evidence on political finance and its associated risks to fairness to policy making is needed to understand the risks and opportunities in different institutional settings and to move away from an ideological discussion.

The OECD points out:³

Policy capture involves varieties of actors and means, but one of the most effective remedies to avert policy capture in policy making is to adequately regulate the funding of political parties and election campaigns.

The High Court itself has expressed concerns in the joint judgement in *McCloy* where it acknowledged that political contributions can be inappropriately used to secure specific favours from the recipient. The High Court also acknowledged the problem of ‘clientelism’ which “arises from an office-holder’s dependence on the financial support of a wealthy patron to a degree that is apt to compromise the expectation, fundamental to representative democracy, that public power be exercised in the public interest.”

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

For many political donors the aim is to get governments elected that grant them policy outcomes they seek from government. There is a pattern between large industry and organisation donations to political parties and associated organisations and a linear progression from donation, access to Ministers and government officials and policy changes that meet the vested interests of the donating industries and organisations.

The Australian Institute released an analysis of donations from mining companies to the Liberal Party of Australia and Queensland Liberal National Party (Qld LNP) between 2010 – 2015. The political parties accepted over \$2 million in political donations from mining companies that at the time were seeking or had pending approvals for six controversial mining projects⁴.

All mining companies investigated for the report “...gained extraordinary access to government ministers and extraordinary outcomes including legislative changes to remove environmental protections, federal and state government approval of projects despite serious environmental concerns and retrospective approval of illegal mining activities.”⁵

For example, the Electoral Commission of Queensland disclosed that Sibelco Australia and New Zealand (Sibelco), invested \$93,840 in electoral expenditure as a third party campaigner over 2011-2014. However comments from Minister Anthony Lynham made in 2016 alleged that the LNP received \$90,000 in donations and over \$1 million for political campaign support.⁶ Sibelco, through lobbying contracts, had 14 recorded meetings with key government departments and ministerial advisors over 2012 - 2013.

³ OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 24.

⁴ Aulby H & Ogge M, ‘Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study’, The Australian Institute, Canberra, 2016.

⁵ Aulby H & Ogge M, Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study, The Australian Institute, Canberra, 2016, 1.

⁶ Aulby H & Ogge M, Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study, The Australian Institute, Canberra, 2016, 13.

Sibelco operates a large sand mine on North Stradbroke Island. The Labor Government's approved *North Stradbroke Island Sustainability and Protection Act 2011* posed a threat as it effectively set the phase out of sand mining on Stradbroke Island by 2019.

During the lead up to the 2012 election, Sibelco engaged Rowland Pty Ltd lobbying company to run "a public affairs strategy to influence opinion and political decision-making around the continuation of its sand mining operations...the strategy was extremely successful and the overall goal exceeded."⁷ The publicity campaign, in addition to the high level of access to the Queensland LNP Government, as claimed by Rowland Pty Ltd, appears to have secured LNP commitment to extending Sibelco's activities. In 2013 the LNP Newman Government amended the *North Stradbroke Island Sustainability and Protection Act 2011* to allow sand mining to continue to 2035 and increased the area available for mining by 300%.⁸

Individual donations make up the largest portion of political donations, approximately \$6.6 million. Amongst these individuals are those that make large donations and own, or have ties to, corporations that can benefit from government decision making. The ABC's industry donations dataset maps gives the following examples:⁹

Mining entrepreneur Paul Marks was the largest individual donor, giving \$1.3 million to the Liberal Party. Mr Marks is the chairman of Nimrod Resources and the Abbott government facilitated a lucrative deal he signed with a Chinese government-owned company in 2015.

Entrepreneur Graeme Wood gave the second-largest donation in Australian history to the Greens and last year pitched in \$630,000 to their campaign coffers. Mr Wood is an environmental campaigner who openly seeks to influence Australia's climate change policies.

Industrialist Michael Crouch donated \$161,350 to the Liberal and National parties. He has substantial long-term investments in manufacturing, meat processing and beef production companies that are exposed to the Government's trade, export and land ownership policies.

b) the motivations and reasons why entities give donations to political parties and political candidates

Political donations buy access and influence. As far back as 2006 former Victorian Premier John Cain, wrote in an opinion piece:¹⁰

So why do institutions and individuals donate?"

All of them want access and, some would say, favours. We seem to have accepted this situation provided that the donation, the giver and receiver are known; that is, that disclosure is the key. But the driver is hunger for money by the parties. Despite public funding in the Commonwealth and some states, this hunger explains the drive only in part. Donors want the parties (and so, governments) to be beholden to them and to be

⁷ Aulby H & Ogge M, 'Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study', The Australian Institute, Canberra, 2016, 16.

⁸ Aulby H & Ogge M, 'Greasing the wheels: the systemic weakness that allow undue influence by mining companies on government: a QLD case study', The Australian Institute, Canberra, 2016, 17

⁹ Hanrahan, C, Elvery S, McGhee A and Liddy M, 'Political donations: New data maps industries' web of influence', 9 Feb 2017, ABC News, accessed 2.10.2017 <http://www.abc.net.au/news/2017-02-09/political-donations-industry-dataset/8229192>

¹⁰ John Cain, 'The politics of greed', *The Age*, 18 October 2006, accessed 9.10.2017, <http://www.theage.com.au/news/opinion/the-politics-of-greed/2006/10/17/1160850927192.html?page=fullpage#contentSwap1>

preferred over their business competitors. It is a neat, cosy arrangement. It grows more blatant.

The parties in Australia now openly call for donations that provide access at rates of \$10,000 to the Prime Minister or premier. It costs less to get to see a minister.

As an example of buying political influence over public policy former Clubs NSW chief executive, Mark Fitzgibbon, told the media Clubs NSW was able to use political donations to buy government access, which it used to influence policy. He stated “We did support political party fundraising, which was a legitimate activity, and it certainly assisted us in gaining access. I have no doubt it had some influence”.¹¹

The managing director of Transfield Holdings, Luca Belgiorno-Nettis stated that his company had made political donations because:¹²

I think it was fairly plain that [donations] bought access in terms of the ability to simply be able to knock on the door and make the phone call and have the meeting with the political masters to voice whatever concerns that we might have, or indeed just to explore further relationships and further potential opportunities.

He also stated it would be “difficult to deny” that the company’s political donations did not help the company gain an unsolicited contract worth \$750 million to build the harbour tunnel in Sydney.¹³

In November 2009, an “indiscreet businessman’ who had paid a premium admission of \$10,000 to a function, told the media that he had “...spent the evening bending the ear of the premier about a coal industry deal he had an interest in.”¹⁴

Another example of the alleged attempted promotion of vested interests through the political donations system is Clive Palmer’s political donation patterns. Clive Palmer, who holds considerable iron ore, nickel and coal holdings, gave large sums over several decades to the Liberal National Party Government in Queensland, including \$3 million between 2005 and 2012.¹⁵ Mr Palmer’s cessation of political donations to the Liberal National Party coincided with the rejection of one of his company’s bids to build a rail line from Galilee Basin to Bowen, by the Liberal National Party.¹⁶

Shortly after stopping donations to the Liberal National Party, Mr Palmer established his own, United Palmer Party. Two companies associated with Mr Palmer, Queensland Nickel and

¹¹ Anthony Klan, ‘Pokie group ‘used political donations to buy influence’’, *The Australian*, 23 November 2009.

¹² Katherine Murphy, ‘Transfield Holdings boss says political donations ‘bought access’ to MPs’, *The Guardian*, 23 May 2016.

¹³ Katherine Murphy, ‘Transfield Holdings boss says political donations ‘bought access’ to MPs’, *The Guardian*, 23 May 2016.

¹⁴ Costar B, ‘Political donations: now for some real disclosure’, *The Sydney Morning Herald*, 12 August 2013, accessed 2.10.2017, <http://www.smh.com.au/comment/political-donations-now-for-some-real-disclosure-20130811-2rq10.html>

¹⁵ Secombe M, ‘The influence of political donations’, *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017
<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

¹⁶ Secombe M, ‘The influence of political donations’, *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017
<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

Mineralogy, gave more than \$33 million to the United Palmer Party and Mr Palmer himself donated \$104,000.¹⁷

The buying of access and influence over government policy is a key reason so many countries restrict political donations.

A political donor is offering material resources to a candidate or political party to get elected and therefore is often likely to have more influence than an advocate or lobbyist. However, this can become grey when the advocate or lobbyist is part of an organisation or business that then can publicly advocate for the policy outcome and make known that a certain political party supports their policy position.

c) the use of shell companies, trusts and other vehicles to obscure the original source of political donations

The OECD advocates tight regulations on party donations but warns that the rules can be avoided by the use of 'third party' funding and other legislative loopholes. Some of these third party mechanisms include shell companies, trusts, lobbyists and associated political entities which are used to disguise the source and intention of money going to political parties.

In terms of transparency, the Synod is concerned at the findings of Dr Belinda Edwards about growing opacity of political donations. She found in the 2013 federal election the two major parties declared less than 25% of their privately raised income as donations to the Australian Electoral Commission. Approximately half of those donations came from party fundraising bodies like the Free Enterprise Foundation or Labor Holdings. As a result, only 12-15% of the parties' incomes can be clearly and easily attributed to specific political donors. In the 2013 election year 63% of Liberal Party private income and 50% of Labor's private income was not attributed to any source.¹⁸ Over the last decade declared donations have made up a declining proportion of the Liberal Party's income, dropping from 30% in the 2007-08 election to 28% in the 2010-11 year, to 25% in the 2013-14 election year.¹⁹ For Labor declared donations have decreased from 30% in 2007-08 to 25% in the 2013-14 election.²⁰

Transparency is frustrated by the use of intermediary fund-raising organisation which are the ones that then declare the donations to the AEC. For the Liberal Party the key organisations include McCormack Pty Ltd, the Free Enterprise Foundation, Parkeelia, Vapoid, the Platinum forum, the Kooyong Club, the various 200 and 500 Clubs, the Enterprise Club and the Civic group. These groups combined accounted for \$6.01 million of the party's \$10.3 million in declared donations in 2014-2015.²¹ For the Labor Party the key organizations include Labor Holdings, the Progressive Business Associations, the 1973 Foundation, John Curtin House and the Chifley Research Centre. Payments from these organizations made up \$4.2 million of the party's \$7.3 million in declared donations in 2014-15.²² The fundraising bodies for the Nationals include Doogary Pty Ltd, the Free Enterprise Foundation and John McEwen House.²³ Many of these arm's length organisations do not disclose the payments that are made to them, effectively concealing the origins of the money coming into the parties.

¹⁷ Seccombe M, 'The influence of political donations', *The Saturday Paper*, edition no.172, 28 September 2017, accessed 2.10.2017

<https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/the-influence-political-donations/15042744005153>

¹⁸ Belinda Edwards, 'Dark Money', 2016, 1, http://cdn.getup.org.au/1969-Dark_Money.pdf

¹⁹ Belinda Edwards, 'Dark Money', 2016, 7, http://cdn.getup.org.au/1969-Dark_Money.pdf

²⁰ Belinda Edwards, 'Dark Money', 2016, 8, http://cdn.getup.org.au/1969-Dark_Money.pdf

²¹ Belinda Edwards, 'Dark Money', 2016, 3, http://cdn.getup.org.au/1969-Dark_Money.pdf

²² Belinda Edwards, 'Dark Money', 2016, 3, http://cdn.getup.org.au/1969-Dark_Money.pdf

²³ Belinda Edwards, 'Dark Money', 2016, 10, http://cdn.getup.org.au/1969-Dark_Money.pdf

In 2014 the Independent Commission Against Corruption (ICAC) provided verbal and documentary evidence that showed the NSW Liberal Party sending donations from property developers to the Free Enterprise Foundation (FEF) and arranging to have them funnelled back, despite the fact that state law had banned donations from property developers from January 2010.²⁴

In 2014 the Australian television producer Reg Grundy made a \$200,000 donation to the Free Enterprise Foundation before the 2013 federal election. Mr Grundy has claimed that he and his wife were directed to donate through the FEF by Liberal Party federal director Brian Loughnane to "maintain their privacy".²⁵ The donation was made through Akira Investments Ltd. Akira Investments failed to lodge a donation disclosure form for the \$200,000 donation as required by law.²⁶

The Electoral Commission exposed the FEF as essentially a shell company for Liberal Party donations. The FEF was set up in 1981 as a charitable trust, in which its "prescribed purposes" are "promoting the principle of free enterprise". The FEF has donated \$3.8 million to the Liberal Party in five years but only made one charitable donation of \$10,000 in 1999.²⁷ In a landmark ruling, the Commission found the FEF was not a charitable discretionary trust which could receive "gifts" not classified as political donations. As a result, the names of companies who donated through the FEF to the NSW Liberals must be declared as political donors by the party.

The case against Labor candidate Simon Zhou involved a shell company being set up to donate \$45,000 to the Labor party.²⁸ Zhou, who resigned after investigations revealed his alleged role in a gold trading tax scandal, is allegedly linked to Xin Shu, a Chinese student organiser and gold trader with a number of businesses under his name and who volunteered for a Labor member's campaign. Xin Shu created a company called NE Management Group, which is registered under his personal address and for which he is the sole director, officeholder and shareholder. NE Management Group made a \$45,000 donation to the federal Labor party a week before the 2016 election. Shu used another of his companies, BFJ Funds, to make a \$25,000 donation to the NSW Labor party on the same day.²⁹

The Synod urges the Committee to recommend the creation of an accurate, accessible registry of ultimate beneficial ownership for all companies and trusts in Australia, to avoid the use of shell companies and trusts with concealed beneficial ownership being used to avoid disclosure requirements for political donations. Of course such a register has wider benefits in curbing money laundering, fraud, tax evasion and other criminal activity facilitated by secrecy. The

²⁴ Taylor L, 'A tale of two charitable foundations, and a flood of donations to the Liberals', *The Guardian*, 2 April 2016, accessed 4.10.2017 <https://www.theguardian.com/australia-news/2016/apr/02/a-tale-of-two-charitable-foundations-and-a-flood-of-donations-to-the-liberals>

²⁵ Sean Nicholls and Kate McClymont, 'Reg Grundy revealed as man behind \$200,000 Liberal-National donation', *The Sydney Morning Herald*, 2 June 2014, <http://www.smh.com.au/federal-politics/reg-grundy-revealed-as-man-behind-200000-liberalnational-donation-20140602-39evf.html>

²⁶ Sean Nicholls and Kate McClymont, 'Reg Grundy revealed as man behind \$200,000 Liberal-National donation', *The Sydney Morning Herald*, 2 June 2014, <http://www.smh.com.au/federal-politics/reg-grundy-revealed-as-man-behind-200000-liberalnational-donation-20140602-39evf.html>

²⁷ Taylor L, 'A tale of two charitable foundations, and a flood of donations to the Liberals', *The Guardian*, 2 April 2016, accessed 4.10.2017 <https://www.theguardian.com/australia-news/2016/apr/02/a-tale-of-two-charitable-foundations-and-a-flood-of-donations-to-the-liberals>

²⁸ Knaus C, ALP staffer linked to Simon Zhou used shell company to donate \$45,000 to Labor, *The Guardian*, Wednesday 21 June 2017, accessed 2.10.2017, <https://www.theguardian.com/australia-news/2017/jun/21/simon-zhou-linked-alp-staffer-used-shell-company-donate-45000-to-labor>

²⁹ Knaus C, 'ALP staffer linked to Simon Zhou used shell company to donate \$45,000 to Labor', *The Guardian*, 21 June 2017, accessed 2.10.2017, <https://www.theguardian.com/australia-news/2017/jun/21/simon-zhou-linked-alp-staffer-used-shell-company-donate-45000-to-labor>

World Bank and UN Office on Drugs and Crime have stated on the usefulness of public registries of beneficial ownership:³⁰

.... finds that registries can usefully compliment anti-money laundering objectives by implementing minimum standards for the information maintained in the registry and by providing financial institutions and law enforcement authorities with access to adequate, accurate, and timely information on relevant persons connected to corporate vehicles – corporations, trusts, partnerships and limited liability characteristics, foundations and the like.

The Synod notes that such a register is under consideration by Treasury at the current time and is one of the commitments of the Government's Open Government Partnership National Action Plan.³¹ However, at this stage the possible register is intended to be private and only accessible to law enforcement agencies, which would deny the public access to know who is behind shell companies and trusts used to conceal political donations.

In addition to the use of shell companies to channel political donations, Associate Professor Joo-Cheong Tham has pointed out the problem of existing donation disclosure thresholds applying separately to each registered political party. Where the national, state and territory branches of the major political parties are each treated as a registered political party, this means that a major party constituted by nine branches has the cumulative benefit of nine thresholds. For example, a company could donate \$10,000 to each state and territory branch of the ALP as well as to its national branch – a total of \$100,000 – without the ALP having to reveal the identity of the donor unless they voluntarily choose to do so.³²

Donation splitting appears to be more than simply theoretical. The 2011 political funding disclosures showed 13 companies and interest groups had made small donations adding up to more than \$100,000 in 2009-10.³³ *The Age* found another 21 businesses, lobbying and professional service firms used small donations to avoid disclosure and donate more than \$50,000 to each major party in the same period. The largest split donations came from "ethanol producer Manildra, gambling interests such as Crown, Tabcorp and Clubs New South Wales, tobacco companies Philip Morris and British American Tobacco and companies such as Leighton Holdings and the Macquarie group."³⁴ Payments were made for 'purchases' ranging from \$50 raffle tickets, \$2,500 tickets to 'intimate lunches' with then Labor factional leader Mark Arbib, \$1,500 breakfast with then federal Opposition Leader Tony Abbott, \$100 to \$5,000 for forums, briefings and other hosted events and subscriptions and memberships.³⁵

The lack of transparency at the Commonwealth level appears to have been intended by some. Then minister, Senator Eric Abetz, said as the sponsoring Minister for the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* that he hoped for

³⁰ Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, 34.

³¹ <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency>

³² Joo-Cheong Tham, 'Money and Politics. The democracy we can't afford', UNSW Press, Sydney NSW, 2010, 43.

³³ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

³⁴ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

³⁵ Davis M, 'Big business goes small to dodge party cash scrutiny', *The Age*, 5 February 2011, <http://www.smh.com.au/national/big-business-goes-small-to-dodge-party-cash-scrutiny-20110204-1agxu.html>

“a return to the good old days when people used to donate to the Liberal Party via lawyers’ trust accounts.”³⁶

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

The Synod at its recent meeting of 275 church representatives from across Victoria and Tasmania adopted the following resolution:

The Synod resolve:

- (i) *To express concern that comparisons between governments by the OECD show that the Australian political system is a long way behind other OECD countries when it comes to transparency of political donations and restricting their influence in the political system.*
- (ii) *To express concern that political donations can allow policy making to be captured by a handful of powerful interests, meaning that rules may be bent to favour only the few in society. The consequences are likely to be the adoption of policies that are counter to the public interest.*
- (iii) *To call on the Australian Parliament to:*
 - a. *Place caps on how much can be provided in political donations and how much candidates and third parties can spend in elections.*
 - b. *Amend the Commonwealth Electoral Act 1918 to ban political parties, independent candidates and associated entities from receiving ‘gifts of foreign property’.*
 - c. *Pass reforms around the transparency of political donations including:*
 - o *That they be disclosed in as close to real time as is possible, rather than once a year;*
 - o *That donations of \$1,000 and above must be publicly disclosed; and*
 - o *That a ban be imposed on anonymous donations above \$50 to political parties, associated entities, independent candidates and Senate groups.*
- (iv) *To call on the Commonwealth Government to ensure that the Australian Electoral Commission be properly resourced to enforce the laws governing political donations.*
- (v) *To write to the Prime Minister, Leader of the Opposition, Leader of the Greens, Leader of the National Party and Leader of the Nick Xenophon Team to inform them of this resolution.*

BAN

The Unit urges the Committee to recommend that Australia join the 74% of OECD countries that ban donations to political parties from corporations and organisations with government contracts or partial government ownership.³⁷ For example, in the US it is prohibited for a contractor that provides goods and/or services to the federal government or any affiliated department or agency to make any contribution to any political action committee or candidate in connection with a federal election. There is variation in limits set by different countries. For example, Austria prohibits donations from corporations if the state holds a share of at least 25%. In Chile, a ban applies to cases where the amount of the contract represents more than 40% of the annual revenue of the corporation.

The Committee should also consider strengthening measures to govern political lobbyists. According to the OECD 2013 Survey on Lobbying, as many as 84% of surveyed legislators and

³⁶ Joo-Cheong Tham, ‘Money and Politics. The democracy we can’t afford’, UNSW Press, Sydney NSW, 2010, 44.

³⁷ OECD, ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 61.

64% of lobbyists are of the opinion that information on lobbyist contributions to political campaigns should be made publicly available through, for example, a register.³⁸

CAPS

The Synod is of the view that transparency is an insufficient safeguard against political donations resulting in public policy capture, and that limits should be placed on the size of donations and the amount of campaign expenditure. The available anecdotal evidence strongly suggests that the size of political donations does make a difference to the level of access an organisation will have to a political party or candidate, with the larger the donation the greater the access and influence.

The Committee should recommend a cap on political donations that can be made to both parties and individuals from both natural and legal persons. The OECD notes:³⁹

Such a ceiling plays an important role in understanding the room to manoeuvre for potential policy capture, but is very difficult to strike the right balance. If the limit is very high, it will have little impact. If the limit is very low, donors, political parties and candidates will find ways to circumvent the limit, most likely through splitting and channelling donations through multiple donors.

Thus the Unit does not make a recommendation on what limit should apply in Australia, but believes the Committee should identify the appropriate limit for the Australian context. The High Court ruling in *McCloy versus New South Wales* found that capping political donations is compatible with the Constitution.⁴⁰ NSW currently caps donations to political parties at \$5,800 and to candidates at \$2,500.

The Synod notes the submission by Associate Professor Joo-Cheong Tham to this Committee pointing out that the High Court has ruled that it is possible to control and regulate political donations. It has ruled that caps on political donations under Division 2A, Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*; the ban on indirect campaign contributions exceeding \$1,000 under section 96E of the same Act; and the ban on donations from property developers under Division 4A, Part 6 of the Act did not infringe the implied freedom of political communication. As Associate Professor Tham has pointed out, the upholding of the ban on property developers makes clear that provisions of selective scope are not necessarily in breach of the implied freedom; they can be compatible with the freedom if there is a demonstrated justification for such selectivity.

DISCLOSURE REFORMS

Transparency in the funding of parties and candidates is desirable because it helps ensure that everyone is playing by the rules, which in turn strengthens the integrity of, and trust in, politics, both in the eyes of the general public and among political parties themselves.

Australia should join the 65% of OECD countries where political parties are required to report on their finances in relation to election campaigns.⁴¹

In terms of donation transparency, the US *Federal Election Campaign Act (FECA) 1971* requires that the accounts of political committees contain the name and address of any person making a contribution in excess of US\$50 along with the date and the amount of the contribution. In respect to donations exceeding US\$200 a year, the required details are even

³⁸ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 87.

³⁹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 47.

⁴⁰ <https://blogs.unimelb.edu.au/opinionsonhigh/2015/10/07/mccloy-case-page/>

⁴¹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 66.

stricter in that the contributor's identity (that is name, address, occupation and employer) has to be noted in the accounts. The FECA also prescribes that any disbursement over US\$50 is to be accounted for together with the name and address of the receiver. The accounts are to be held by the committee for at least three years.⁴²

The FECA obliges political committees to submit financial reports to the Federal Election Commission, which in turn makes them publicly available in person at the FEC in Washington D.C. or on line. The FEC has developed detailed standard forms to be used, requiring, inter alia, precise information concerning the contributions, donors, disbursements and receivers. All contributions to federal candidates are aggregated on the basis of an election cycle, which begins on the first day following the date of the previous general election and ends on the date of the election day, while contributions to political parties and other political committees are based on a calendar year.⁴³

It is highly desirable that there be continuous 'real-time' disclosure of all donations above \$1,000 accepted by candidates, political parties and third parties.⁴⁴ This is important so voters know as they are deciding between political parties and candidates who those parties and candidates are taking money from as this may be relevant to their decision making on who to vote for.

As the OECD points out, civil society and the media play an important role in ensuring integrity around political donations:⁴⁵

No oversight mechanism is complete without the participation of civil society and media. In this regard, civil society organisations (CSOs) can be effective watchdogs and have proved instrumental in advancing transparency and anti-corruption efforts in the field of political finance....

Public disclosure of any donations of \$1000 and above and denial of anonymous donations over \$50 would tackle the issues of undue influence and policy capture that swirl around the current donations regime. To ignore the need for a modest cap places personal and party interests before the public interest.

The OECD has pointed out that political donation reform on its own is not enough to ensure that public policy is not captured by the cashed-up businesses, organisations and individuals, arguing:⁴⁶

They need to be part of an overall integrity framework that includes the management of conflict of interest lobbying. On their own, political finance regulations are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying and other activities. Therefore, integrity measures such as increasing transparency in lobbying, better management of conflict of interest strengthen the political finance regulations.

⁴² OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 74.

⁴³ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 74.

⁴⁴ This is consistent with the position of Transparency International Australia, 'Political Finance and Donations', Position Paper #7, January 2016, 2.

⁴⁵ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 28.

⁴⁶ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 16.

PUBLIC FUNDING

These recommendations should be supported by a balanced private and public funding scheme. Public funding will help complement private funding, providing support for the institutionalisation and daily activities of political parties while negating the dependence on private capital.⁴⁷ Public funding can ensure that all political forces are on a level playing field in terms of access to resources to reach electorates, which encourages pluralism and choice for the community.⁴⁸ Paired with donation limits, public funding can also limit the advantage and close the gap between competitors with vastly different funding amounts. A third potential advantage as highlighted by International IDEA, is that public funding can be used as a safeguard to ensure that political parties follow other limit and reporting regulations.

It is our understanding that on a per voter basis Australia has very high spending on elections compared to many other OECD countries. In the 2013 Federal election public funding to the parties was \$58 million, not including tax revenue forgone for tax deductions on donations up to \$1,500 to political parties and candidates. Private funding in donations for the two major parties in that election is estimated to have been \$367 million. This works out to roughly \$29 being spent per voter on the election. By comparison in the 2015 Canadian election the spending was \$5 per voter, for the 2014 New Zealand election the spending was \$2.83 per voter and in the UK 2015 election the spending by political parties was \$1.36 per voter.⁴⁹

Further, as the table below shows, compared to the figures above for the 2013 Federal election, Australia has a very high proportion of election funding from private sources increasing the case for expenditure and donation caps. Australia would be at the bottom of the table based on the figures above for the 2013 Federal election where 86% of the funds spent on the election appear to have come from private sources. In Germany, corporate donations are only 7% of the annual income of all parties in Germany.⁵⁰

Table of split between public and private funding to political parties in selected OECD countries, 2007 to 2015.⁵¹

| Jurisdiction | % Funding of political party income | |
|-----------------|-------------------------------------|-----------|
| | Public % | Private % |
| Greece | 90 | 10 |
| Turkey | 90 | 10 |
| Poland | 54-90 | 10-46 |
| Slovak Republic | 87.5 | 12.5 |
| Spain | 87.5 | 12.5 |
| Belgium | 85 | 15 |
| Italy | 82 | 18 |
| Portugal | 80 | 20 |
| Denmark | 75 | 25 |
| Finland | 75 | 25 |
| Iceland | 75 | 25 |
| Sweden | 75 | 25 |
| Norway | 67.4 | 32.6 |
| Hungary | 60 | 40 |

⁴⁷ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, 38.

⁴⁸ Edts Falguera E, Jones S & Ohman, 'Funding of Political Parties and Election Campaigns: A handbook on political finance', International IDEA, Sweden, 2014, 22.

⁴⁹ Paper by Ken Coghill, Monash University, 2016.

⁵⁰ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 46.

⁵¹ OECD, 'Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture', OECD Public Governance Reviews, OECD Publishing, Paris, 2016, p. 38.

| | | |
|----------------|----|----|
| Netherlands | 35 | 65 |
| United Kingdom | 35 | 65 |

A cap on political funding, along with disclosure and regulation and careful consideration of public funding eligibility and allocation criteria will ease government resources spent on elections as well as create a more just and trustworthy system.

e) any other related matters

The Synod would make a distinction between organisations and businesses campaigning for particular policy outcomes and when organisations and businesses campaign for certain parties or candidates to be elected. It is desirable for the AEC to regulate and oversee campaign activities that are explicitly aimed at getting particular parties or candidates elected, or against particular parties or candidates getting elected.

For example, the Synod would argue it is legitimate for business groups to campaign publicly for corporate tax cuts (a policy position we do not support ourselves) and try to persuade the community this is a good idea, or for unions to campaign for secure work or funding for education and health services. These are policy outcomes and any political party can adopt these policy positions and voters can decide if they support these causes and then vote accordingly. The Synod would not support this type of public campaign being restricted. This is different to political donations being paid to a political party with the tacit aim of getting a policy position adopted, which becomes behind the scenes private capture of public policy, even if the political party then makes the policy public.

In all cases, political donations directed towards getting a particular party elected (or not elected) should be regulated. This should not extend to donations to organisations who are publicly campaigning to a policy outcome and are neutral in which party delivers the policy outcome.

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