

Private funding

Sources of private funding

- 3.1 A substantial amount of funding to political parties is obtained from private sources. Many advocates for reform argue that this, combined with the escalating costs of campaigning, could give rise to a situation in which political parties and candidates are increasingly dependent on private sources for their continued operation. This could render them potentially vulnerable to the perception of influence from major private donors. However, a balance must be struck between addressing these concerns and preserving the right of political expression of individuals and groups through making donations.
- 3.2 In this chapter the committee examined the regulation of private funding with these concerns in mind. It considered the effectiveness of the current arrangements and discussed options for improvement by revisiting disclosure threshold levels and its application, and the current reporting requirements. More substantial reform options for private donations are considered in Chapter 4.
- 3.3 All political parties, associated entities and third parties are able to receive privately sourced donations from individuals, corporations and other organisations. Candidates and Senate groups in a federal election may also receive donations.
- 3.4 The *Commonwealth Electoral Act 1918* (Electoral Act) does not impose any limits or restrictions on privately sourced donations to political parties or associated entities. The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) stated that the rationale for this was

that the making of political donations was seen to be a legitimate exercise of the freedom of political association and the freedom of expression.¹

- 3.5 The first Green Paper, published in 2008, cited figures indicating that 80 per cent of the major political parties' funds come from private sources. It also stated that around three-quarters of the major political parties' funds from private sources come from fundraising activities, investments and debt.² This means that donations form one-quarter of the incoming finances from private sources of major political parties. In the first Green Paper it was noted that in the 2004-05 financial year, over 80 per cent of funds raised from donations included donations of \$10 000 or more.³
- 3.6 This suggests that large donations are an important component of private funding for the major parties. Instances of large donations to smaller political parties, such as the Australian Greens immediately prior to the 2010 federal election, indicate that large donations can also be important to the minor political parties.
- 3.7 While there are currently no limitations or restrictions on the amount and sources of donations to political parties, associated entities and candidates at the federal level, Part XX of the Electoral Act requires that the following must be disclosed by political parties to the AEC 16 weeks following the end of the financial year:
- total amount received by or on behalf of the party
 - ⇒ where amount from a person or organisation is more than the disclosure threshold for the financial year, the name and address of the person or organisation;
 - total amount paid by or on behalf of the party during the financial year; and
 - total outstanding amount as at the end of the financial year, of all debts incurred by or on behalf of the party
 - ⇒ where an amount from a person or organisation is more than the disclosure threshold for that financial year, the name and address of the person or organisation.⁴
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1 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 17.

2 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 41.

3 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 42.

4 Additional requirements exist if an amount is received or a debt is incurred from a trust fund, foundation or unincorporated association above the disclosure threshold. Details of loans

- 3.8 Associated entities must disclose the same information as political parties, but are required to disclose details of capital contributions that were used to generate funds to be provided to a political party.
- 3.9 The disclosure threshold for returns pertaining to the 2010-2011 financial year was \$11 500.
- 3.10 The first Green Paper highlighted the fact that only one quarter of major political parties' funds from private sources or only 20 per cent of total funds of major political parties from both public and private sources were covered by the Electoral Act. The effect is that 'major contributions' to a political party or candidate could remain undisclosed under the current disclosure requirements.
- 3.11 For example, money paid to attend or paid at political party or candidate fundraising events may remain undisclosed, as may the details of money paid to attend fundraisers held by associated entities. The higher disclosure thresholds also mean that a number of donations, some of which may arguably be in the public interest to be known, will not be disclosed.
- 3.12 When determining the appropriate degree of regulation in this area, a balance must be struck between making information of public significance available and allowing political parties and third parties to communicate with voters. Individuals and groups must also be able to freely participate in the political process through making donations without having an undue administrative burden imposed upon them. In this chapter, the committee considered options for achieving these goals through the refinement of the current system.

Is change to the current scheme necessary?

- 3.13 Chapters 1 and 2 made reference to the different approaches to regulating political financing. The approach in Australia to date has been to focus on disclosure of financial transactions as the key mechanism for transparency and accountability of political actors, with little direct limitation on the amounts and sources of funds.
- 3.14 Despite the existence of a scheme for the disclosure of sources of funding of political parties in the Electoral Act, a number of submitters to this inquiry – and to previous processes – argued that the perception of undue

influence by political donors on the political parties to which they donate exists within the community.

- 3.15 There is general agreement between committee members that most parliamentarians work to serve their constituents and country. However, a number of submitters argued that the activities of all parliamentarians and candidates can still be coloured by a perception of the possibility of undue influence. This perception was identified in the first Green Paper as being ‘as damaging to democracy as undue influence itself’.⁵

- 3.16 A number of submitters argued that donations to political parties and their associated entities tend to be strategic business decisions rather than being motivated by benevolence or ideology. For example, the Public Health Association Australia commented that:

In modern politics party donations have the capacity to buy influence. Otherwise donations would be made to the one party that most closely aligned with the goals and aspirations of the donor...The overwhelmingly dominant reason for donors taking this approach is to purchase access and influence.⁶

- 3.17 The Public Health Association Australia also argued that the perception of undue influence can be as damaging as undue influence itself, as it colours people’s view of the legitimacy of the democratic process even if there are no inappropriate activities actually occurring. It commented that:

As the community becomes more aware of the influence of political donations on elected members and their parties, the situation is becoming more untenable for those members who, when making a decision based on the evidence as they see it, are accused of acting in one way or another because of financial influence.⁷

- 3.18 A number of submitters to the inquiry identified a potential link between the election spending ‘arms race’ and the ‘need’ by political parties and their associated entities to seek additional funding through private donations to ‘keep up with the other side’, and the effect that this was having on perceptions of undue influence and the perceived legitimacy of the democratic process. The Australian Labor Party (ALP), for example, stated:

5 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, 2008, p. 2.

6 Public Health Association Australia, *Submission 7*, p. 4.

7 Public Health Association Australia, *Submission 7*, p. 4.

In recent years...the size of political campaigns have grown at an alarming rate, with some in the community concerned that election spending has risen to unsustainable levels. An 'arms race' has emerged between political parties, with media buying reaching saturation point during the election campaign period. This has placed increased pressure on political parties to seek out further donations, with a concomitant impact on public credibility for political parties.⁸

- 3.19 To address the potentially damaging effect of the perception of undue influence, changes to the regulation of donations could involve:
- the inclusion of 'stronger' measures under the current system, such as a lower disclosure threshold; or
 - more substantial changes, such as the development of a scheme involving caps and bans, which is discussed in Chapter 4.
- 3.20 The Australian Electoral Commission (AEC) emphasised the importance of designing a scheme to minimise the perception of undue influence through political donations. While conceding that it had not done any specific research on the issue, the AEC commented:
- Whether it is a ban on donations from particular industries, whether it is tobacco, the hotel industry or whatever, the notion that large donations can actually buy influence is a common perception in the community. Whether that is the reality or not, that is the perception....If there is a general view in the community that this is happening, then you design a scheme to try and avoid that perception.⁹
- 3.21 However, in discussions during the inquiry, it was suggested that this link between the perception of undue influence and political donations may be overstated and that the existence of money in the political process was not necessarily a corrupting influence.
- 3.22 Some members of the committee queried the meaning of the concept of undue influence in the context of political funding, and argued that the votes and actions of Members, Senators and other political actors are not manipulated according to sources of funding for their political party. These members noted that politicians themselves do not actually see or handle the money donated to the party, and challenged whether there is

8 Australian Labor Party, *Submission 21*, p. 2.

9 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, pp. 2-3.

any direct or discernible link between money received by the party and the individual decisions of Members of Parliament and Senators.¹⁰

Conclusion

- 3.23 When political donation and disclosure issues were examined in 1983 and subsequently, the major political parties in Australia have taken a different ideological stance on the risks that money poses to the political process and the degree of regulation required.
- 3.24 The committee believes that the current climate of high election spending and the need by political parties to seek additional funds through donations justifies a higher degree of regulation of Australia's funding and disclosure arrangements to help minimise the perception of, and potential for, corruption.
- 3.25 The 'principles informing the regulation of electoral funding and disclosure', as outlined in the first Green Paper, should be taken into account when designing a regulatory framework for funding and disclosure. The principles include:
- integrity;
 - fairness;
 - transparency;
 - privacy;
 - viability, that is, ensuring political parties and candidate are financially able to provide the electorate with a suitable choice of representatives;
 - participation;
 - freedom of political association and expression;
 - accountability and enforceability;
 - ensuring public costs in democratic processes are not unreasonable; and
 - ensuring regulation balances these principles against the costs of compliance and administration.¹¹

10 *Committee Hansard*, 8 August 2011, p. 20.

11 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, 2008, p. 17.

Setting the disclosure threshold

- 3.26 Australia's funding and disclosure system is primarily based on disclosure, which has been described as the 'cornerstone of political transparency'. The ALP argued that:
- Disclosure serves to inform the public, through the media, about the nature of each party or candidate and the type of support they receive. It also informs shareholders or stakeholders about the support that a company or institution offers to the political process. Further, disclosure effectively deters any tacit or secret attempt to influence decision making.¹²
- 3.27 Political parties and associated entities are subject to annual disclosure requirements under the Electoral Act. Similarly, candidates and Senate groups are subject to certain disclosure requirements in relation to a particular election or by-election they are contesting.
- 3.28 Sections 305A and 305B of the Electoral Act provide that persons making gifts totalling above the disclosure threshold applicable for that financial year to the same registered political party or the same state branch of a political party must furnish a financial disclosure return to the AEC. The return must be lodged within 20 weeks of the end of the financial year, showing all gifts the person made to the political party or branch during the financial year, where the total of those gifts exceeds the disclosure threshold.
- 3.29 In 2006, the Electoral Act was amended to increase the disclosure threshold from \$1 500 to \$10 000, indexed annually in line with the Consumer Price Index (CPI) figure. The disclosure threshold for returns relating to the 2007-2008 financial year was \$10 500 and it rose to \$11 200 for 2009-2010, and \$11 500 for the 2010-2011 financial year. A higher disclosure threshold results in the exclusion of a greater number of receipts by political parties from public disclosure.
- 3.30 A summary of the current annual disclosure requirements for political parties, associated entities, donors and third parties, as well as the obligations for each election for candidates, election donors and Senate Groups is included at Appendix C. The disclosure requirements for New Zealand, Canada, the United Kingdom and the United States of America are outlined in Appendix E.

12 Australian Labor Party, *Supplementary submission 21.1*, pp. 2-3.

- 3.31 A number of submissions advocated for reducing the disclosure threshold above which receipts must be disclosed by political parties and associated entities, as well as by donors and third parties.
- 3.32 The most common rationale underpinning support for a lower disclosure threshold was to increase transparency. Supporters of this measure argued that a lower threshold would give electors a clearer idea of who was funding political parties and the potential to which a political party might be influenced by those funding it.
- 3.33 The level of the disclosure threshold was also suggested to play a role in the practice of ‘donation splitting’ and the scope for some associated entities to raise significant amounts of money for parties, while only disclosing a small sum of that money.¹³ ‘Donation splitting’ is a practice in which donors to political parties are alleged to ‘split’ large sums between their registered branches so that they individually come under the disclosure threshold to avoid disclosing the amounts received.
- 3.34 Action on Smoking and Health (ASH) expressed concerns about the scope for circumvention of disclosure obligations through ‘donation splitting’ when a higher threshold is in place. It also argued that Australia is ‘lagging behind’ other countries in terms of electoral funding reform. The ASH commented that:
- Rather than improving the transparency and accountability of the funding regime, political donations and their associated conflicts of interest have been made more secret with a tenfold increase in the disclosure limit for donations...and such limits can be bypassed when donations are dispersed across state branches.¹⁴
- 3.35 Similarly to ASH, the Australian Greens also noted in its submission the potential facilitative role that a higher disclosure threshold could play in the practice of ‘donation splitting’. The Australian Greens argued that a lower threshold would help prevent donation splitting between different branches of political parties for the purpose of avoiding disclosure.¹⁵
- 3.36 The main options advocated by submitters as the appropriate level for the disclosure threshold include:
- no disclosure threshold – disclosure of all donations by political parties;
 - \$200;

13 The Australian Greens, *Submission 12*, p. 4.

14 Action on Smoking and Health Australia, *Submission 8*, p. 2

15 The Australian Greens, *Submission 12*, p. 4.

- \$1000; and
 - a threshold based on previous years returns.
- 3.37 The McCusker Centre for Action on Alcohol and Youth and the Cancer Council of Western Australia argued that all political donations should be disclosed, regardless of the amount, in furtherance of the principle of transparency.¹⁶
- 3.38 The NSW Greens Political Donation Research Project supports a disclosure threshold of \$200, in line with that which currently operates in Canada.¹⁷ The Accountability Round Table also expressed support for a \$200 disclosure threshold. On the issue of selecting a disclosure amount, Associate Professor Ken Coghill of the Accountability Round Table stated:
- Any figure that is going to be chosen is going to be a subjectively set figure. There is not any objective case where you can say there is a magic about \$200 which does not apply at \$199 or any other figure. But we think that for the ordinary person – again using the 'ordinary person' test – a gift of a couple of hundred dollars is a significant amount of money. Certainly in my experience as a member of the Australian Labor Party there would not be a lot of members of my branch or any other branch I know who would hand over \$200 as a gift with any frequency at all.¹⁸
- 3.39 The Australian Greens supported a disclosure threshold of \$1 000.¹⁹ Dr Joo-Cheong Tham also supported a \$1 000 disclosure threshold and cited the decline in detailed receipts being disclosed on financial disclosure returns with the high indexed figure as the major motivator for this.²⁰

16 McCusker Centre for Action on Alcohol and Youth and Cancer Council of Western Australia, *Submission 15*, p. 2.

17 NSW Greens Political Donation Research Project, *Submission 17*, p. 3.

18 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 2.

19 The Australian Greens, *Submission 12*, p. 3.

20 Dr Joo-Cheong Tham, *Submission 90*, JSCem inquiry into the 2010 federal election and matters related thereto, p. 52.

- 3.40 A paper prepared by the Parliamentary Library on the change of disclosure level indicated that under the \$1 500 (not CPI indexed) threshold, the major parties were disclosing three quarters – almost 75 per cent – of their total receipts in 2004-2005 and previous financial years.²¹ Subsequently, in its advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, the previous committee noted that under the \$10 300 disclosure threshold of 2006-2007, 52.6 per cent of the declared total receipts of the Australian Labor Party, the Liberal Party of Australia and The Nationals were itemised for that year.²²
- 3.41 The Australian Labor Party supported a \$1 000 disclosure threshold. The ALP indicated that it has continued to voluntarily disclose donations it receives above \$1 000.²³ The AEC website includes disclosure by the ALP federal, ACT and Queensland branches for the 2009-2010 financial year of amounts under the \$11 500 threshold.²⁴
- 3.42 FamilyVoice Australia conveyed an alternative perspective, placing a stronger emphasis on privacy and the notion of ‘protecting the donor’ when setting the disclosure threshold. The group suggested that the three criteria for determining an appropriate disclosure threshold were: preserving donor privacy, limiting compliance costs and safeguarding the public interest in knowing who the major financial supporters of political parties are. It recommended:
- The annual threshold for disclosure of political donations should be based on the previous year’s returns so as to ensure that a fixed percentage, between 90 and 95% of total donations are disclosed.²⁵
- 3.43 Dr Norman Thompson from the NSW Greens Political Donation Research Project raised the concern that the higher disclosure threshold was one of the features of the current disclosure scheme that allowed some associated entities to raise significant amounts of money through fundraising

21 S Miskin and G Baker, ‘Political finance disclosure under current and proposed thresholds’, *Research Note* no. 27, 2005-06, 24 March 2006, Parliamentary Library, pp. 2, 4.

22 Joint Standing Committee on Electoral Matters, *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, p. 33.

23 Australian Labor Party, *Supplementary submission* 21.1, p. 1-2.

24 See AEC website <<http://periodicdisclosures.aec.gov.au/>>

25 FamilyVoice Australia, *Submission* 6, p. 6.

activities for political parties and for only a small portion of the money raised to be disclosed to the AEC.²⁶

3.44 Dr Thompson drew on the example of the Wentworth Forum, an associated entity of the Liberal Party. He noted that the reason that some information regarding funds raised were available through the NSW Election Funding Authority but not the AEC, was because of the lower disclosure threshold in NSW, coupled with its requirement that all money, whether federal or state, be reported.²⁷

3.45 When questioned on the issue of the level of the disclosure threshold, the AEC did not propose a particular disclosure level, but observed that:

...the lower the level, the more that is disclosed. That is a question of fact and I think the evidence in the past bears that out.²⁸

3.46 Mr Brett Constable of the Australian Greens was questioned about a \$1.6 million donation the party had received from Wotif founder Graeme Wood for their 2010 federal election campaign. He acknowledged the benefit this donation had provided the party, but stressed the Australian Greens' support for bans on certain donations and a lower disclosure threshold. He stated that:

The fact that you are making these claims about Mr Wood having influence on the Greens is a case in point as to why we think such donations should not be allowed...²⁹

3.47 The Australian Greens expressed support in the context of a \$1 000 disclosure threshold for the disclosure of 'full contact details', as well as the nature of the donor's activities through the disclosure laws. For example, the type of company or industry in which a corporation operates. In the case of individuals, the Australian Greens stated that they should list their occupation.

3.48 The rationale behind proposals for lower disclosure thresholds such as \$1 000 is that it is most likely to allow for the industries that are seeking access and influence to be made public. The rationale in relation to individuals is likely to be to make evident cases where, for example, a director of a prominent company makes a political donation in their own

26 Dr Norman Thompson, NSW Greens Political Donation Research Project, *Committee Hansard*, 9 August 2011, pp. 8-9.

27 Dr Norman Thompson, NSW Greens Political Donation Research Project, *Committee Hansard*, 9 August 2011, pp. 8-9.

28 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 5.

29 Mr Brett Constable, The Australian Greens, *Committee Hansard*, 8 August 2011, p. 40.

name with the aim of exercising some influence. However, it is likely that some individuals not connected to any company or industry and who are simply seeking to participate in the democratic process will be covered by such provisions if enacted.

- 3.49 A lower threshold would result in more donor and third party names and addresses being disclosed on the AEC website in accordance with Part XX of the Electoral Act, unless the individual informs the AEC when meeting their disclosure obligation that they are enrolled as a silent elector. Consequently, the name and addresses of many donors, who are arguably not garnering any influence with donations only just above \$1 000 would then be readily available on the AEC website.
- 3.50 The key argument against increased regulation through stricter disclosure rules in this context is the privacy rights of individuals that may be affected. However, in a discussion paper prepared for the Democratic Audit of Australia addressing campaign finance topics, it was argued that:
- ...in most other contexts privacy gives way to the public interest. Privacy rights, in general, have much less protection here than in the U.S...Whether or not a contribution is, or is not, potentially corrupting is something for voters to decide.³⁰
- 3.51 Supporters of a higher threshold argue that it provides donors with the flexibility to make significant donations without their details needing to be disclosed through the AEC's website and without imposing an undue administrative burden on them for making what some would argue is a small donation. A higher disclosure threshold is argued to serve as an effective mechanism to shield donors from 'retribution' for the expression of political views through donations to parties, which are then made public on the AEC website.³¹
- 3.52 In its submission to the first Green Paper, the Office of the Privacy Commissioner highlighted privacy as a consideration in devising an effective scheme for the regulation of political financing.³² While acknowledging that the right to privacy was not 'absolute', it stated that

30 K Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Discussion Paper 31/06 (October 2006), Democratic Audit of Australia, p. 4, <<http://democraticaudit.anu.edu.au/papers/20061026mayerfin.pdf>> viewed 15 September 2011.

31 See *Committee Hansard*, 9 August 2011, p. 18.

32 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 4.

‘personal information’ as defined in the *Privacy Act 1988* (including address details) needed to be appropriately protected.³³

- 3.53 The Office of the Privacy Commissioner suggested that where disclosure of donations by individuals are being disclosed, sufficient transparency may be gained by only including an individual donor’s name, suburb, postcode, state and the amount donated.³⁴

Conclusion

- 3.54 An effective financial disclosure scheme is an important measure for transparency and accountability in the political financing process. In particular, the level of the disclosure threshold is central to the effectiveness and accountability obtained by the financial disclosure scheme.
- 3.55 However, determining the appropriate level of the disclosure threshold for Australia’s financial disclosure system has been a point of contention between the major parties.
- 3.56 The issues to be considered when setting the appropriate disclosure threshold are:
- The interests of the individual donor, including the freedom to participate in the Australian political system by making political donations and feeling safe in doing so;
 - The notions of transparency and accountability of political party (including associated entity) financing and the democratic system; and
 - The need for consistency in requirements.
- 3.57 To be effective, the disclosure threshold must strike a balance between placing a realistic administrative obligation on political parties, associated entities and donors and the need to maintain the integrity of the system. A threshold amount of \$1 000 as proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 will obtain the desired balance.

33 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 4.

34 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 5.

- 3.58 The committee maintains its view as stated in the *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* that the indexation of the disclosure threshold should be removed.

Recommendation 1

- 3.59 **The committee recommends that the disclosure threshold be lowered to \$1 000, and CPI indexation be removed.**
- 3.60 In conjunction with the issues relating to an appropriate disclosure threshold, the need to safeguard the privacy and freedom of political expression of donors and third parties must be considered. A disclosure system should not discourage political participation through making donations by imposing unnecessary or onerous burdens in relation to financial disclosure. One immediate way in which privacy arrangements can be enhanced is to reduce the amount of personal details of individual donors made publically available on the AEC website.

Recommendation 2

- 3.61 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require that only the name, suburb, postcode, state and the amount donated by individual donors be released on the public website by the Australian Electoral Commission.**

Application of the disclosure threshold

- 3.62 Section 305B of the Electoral Act provides that a person that makes gifts totalling more than \$10 000 (indexed, \$11 500 for the 2010-2011 financial year) to the same registered political party or the same state branch of a registered political party must submit a disclosure return to the AEC within 20 weeks of the end of the financial year. Section 314AB provides that each state branch of each registered political party must, within 16 weeks after the end of each financial year submit a disclosure return to the AEC. The effect of these sections is that the disclosure threshold applies separately to each branch of a political party.

3.63 The practice of ‘donation splitting’ was raised earlier in this chapter and mention was made that a high disclosure threshold may contribute to allowing larger donations marginally below the threshold to be made to different branches of political parties without having to be disclosed under the current laws. This results in a reduced level of transparency in relation to party finances and means that donations by which significant influence could potentially be obtained remain undisclosed. The Democratic Audit of Australia recommended that:

The current loophole whereby the federal, state and territory divisions of political parties are treated as separate legal identities for donation purposes should be closed.³⁵

3.64 One method for addressing this practice is by applying the threshold collectively to ‘related parties’. Section 123(2) in Part XI of the Electoral Act defines ‘related parties’ as parties that are part of each other, or that are both part of the same political party. Subsections 129(1)(c) and (d) provide that ‘related parties’ may be registered even if the names are the same or similar to a political party that has already been registered.

3.65 The Queensland *Electoral Act 1992* applies this concept of ‘related parties’ to disclosure. This means that the donations cap in that jurisdiction applies to related parties as though they are one entity, and so can serve to restrain the practice of donation splitting.³⁶

3.66 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 utilises this definition outside the realm of political party registration by proposing that it be included in the general definitions section in section 4 of the Electoral Act, and provides that the \$1 000 disclosure threshold in the Bill applies to a registered political party and its branches as though they are a single entity.³⁷ Donors to political parties must aggregate donations made to the various branches of a political party, but the branches of the political party itself would still disclose to the AEC as though they are separate entities.³⁸

3.67 While this measure goes some way towards alleviating concerns regarding ‘donation splitting’ practices, the AEC stated in a supplementary submission that there were a range of other measures that

35 Democratic Audit of Australia, *Submission 2*, p. 5.

36 *Electoral Act 1992* (QLD), s. 265(3).

37 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, item 48.

38 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

would need to be utilised to ensure there were no loopholes for this practice to continue.³⁹

- 3.68 The AEC cited the Canadian situation, where the national body of the relevant political party is responsible for all reporting of all branches, with a requirement to maintain separate electoral expenditure accounts. It is an offence to incur electoral expenditure from outside these accounts.⁴⁰ Thus the change in disclosure requirements for donors is simply one – albeit important – step in curtailing the potential for circumventing disclosure requirements.

Conclusion

- 3.69 The way in which the Commonwealth Electoral Act currently applies the disclosure threshold separately to each branch of a political party may result in larger donations being ‘split’ among party branches and not being disclosed.
- 3.70 While a range of measures are necessary to effectively curtail donation splitting, the measures contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 are a step in the right direction. In addressing this issue, the committee supports the measure which would require donors to political parties to aggregate all donations made to various branches of the same political party.
- 3.71 However, it is important to ensure that when applying this requirement the determination of which parties are ‘related political parties’ is consistent and does not unfairly disadvantage certain political parties. One case for which it is possible to anticipate complications in the Liberal National Party in Queensland, in determining whether it is ‘related’ to the Liberal Party, The Nationals, both or neither. Issues such as these will need to be clarified to ensure that the application of this requirement is clear and for special provisions to be made, where applicable, to obtain the desired disclosure, but do not unduly disadvantage parties like the Liberal National Party whose arrangements may be more complicated.

39 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

40 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

Recommendation 3

- 3.72 **The committee recommends that donations to ‘related political parties’ be treated as donations to the same political party for the purposes of the disclosure threshold. Once the combined donations to related political parties from a single donor reaches the \$1 000 threshold, disclosure is required.**

Fundraising events

- 3.73 The way in which fundraising events are treated under the current funding and disclosure system is unclear. A fee is usually paid to attend these political fundraisers and other contributions can be made at the event. Whether these payments can be regarded as a ‘fee for access to Ministers or Members’, a donation, or a ‘gift’ requires closer consideration.
- 3.74 A number of submitters to the inquiry argued that the attendance and non-disclosure of fundraising activities by political parties, associated entities and those providing finances or gaining access to politicians through these events contributes to the overall perception of undue influence.
- 3.75 The Electoral Act defines a ‘gift’ for its purposes as:
- ...any disposition of property made by a person to another person otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration...⁴¹
- 3.76 The provision also states that a payment of election funding or the payment of a subscription does not constitute a ‘gift’ for the purposes of the Electoral Act.
- 3.77 The lack of clarity surrounding fundraising events where attendees can pay a fee to gain access to ministers and shadow ministers is due largely to the references to consideration in ‘money or money’s worth’ in the legislative definition of ‘gift’.

41 *Commonwealth Electoral Act 1918*, s. 287(1).

3.78 The advice given by the AEC to clients regarding the disclosure of fundraising events is that if the amount paid for a ticket or meal is more than the value of what was received, the amount counts as a donation and should be classified as such on a political party or associated entity return. It should also be disclosed as such to the AEC by the donor. The AEC's *Funding and Disclosure Guide for Donors to Political Parties* stated:

- If a payment for attendance at a party function or conference is considered a donation, that is, the person making the payment did not receive services or adequate services equal to the value of the payment, the payment should be disclosed on the donor disclosure return.
- Payment for attendance at a party function, conference or luncheon for commercial reasons may not be considered a donation if the commercial value or benefit of attending is equal to or exceeds the amount paid.
- Payment for attendance at a function with the intention of contributing to the party, (that is, where the function is primarily a fundraiser), or where the amount paid is in excess of the value of the function, is a donation and must be disclosed.⁴²

3.79 The way in which fundraisers should be treated in light of the definition of 'gift' in the Electoral Act is an issue that is seemingly central to the success of the disclosure scheme. The first Green Paper stated:

Although the Electoral Act requires disclosure by both the recipient of private funding and the provider of donations, there remains the scope for major contributions to a political party or candidate to remain undisclosed if contributions do not come within the scope of matters requiring disclosure under the legislation. If the public has no way of being aware of major contributions by way of, for example, purchases at fundraising events, there is an argument that one of the major purposes of the disclosure system established in 1984 has not been met.⁴³

3.80 The main options proposed by submitters to address concerns around the lack of clarity of fundraising income were:

- To ban fundraisers and/or offers of access to Ministers; or
- To improve the disclosure scheme in relation to fundraisers by:

42 Australian Electoral Commission, *Funding and Disclosure Guide 2010-2011: Donors to Political Parties*, Commonwealth of Australia, p. 5.

43 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 43.

- ⇒ Including all fundraisers in the definition of 'gift' in section 287 of the Electoral Act, thus ensuring they would be disclosed as donations; or
- ⇒ Including fundraisers above 'reasonable costs' in the definition of 'gift' in the Electoral Act.

3.81 The Accountability Round Table was one of the submitters that expressed concern about fundraising events that involve access to ministers or other parliamentarians. Associate Professor Ken Coghill commented that:

It comes to what it is that a person is getting in return for actually paying a large sum of money to attend a function at which they expect to have access to a minister or a parliamentary secretary, or an ordinary member of parliament for that matter, so it might be an opposition member, for example. The argument goes that, because the amount of money which is being paid is far in excess of the actual costs of the function, the adequate consideration the person is receiving for this payment can only relate to the access which is being provided at the function.⁴⁴

3.82 The Accountability Round Table also took their concerns a step further, arguing that:

...the current practice of raising funds by offering access to members of parliament, particularly ministers and shadow ministers, should be made illegal. It provides opportunities for corruption, damages the reputation of all politicians, and confidence in our democratic system. It gives unequal access to politicians based on the ability to pay for it. If, however, the committee decides not to make this practice illegal it is critical that it ensures that there be complete and prompt disclosure of each transaction.⁴⁵

3.83 However, before any action can be taken to restrict engagement in the political process in this way, it is crucial to consider, and seek to strike a balance between protecting the right to political expression in this way and acknowledging that the ability to engage in this form of political expression is limited to those with sufficient funds.

44 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 1.

45 Accountability Round Table, *Submission 22*, p. 4.

- 3.84 Professor Anne Twomey, in her appearance before the committee, highlighted the importance that Australian courts were likely to place on maintaining individual freedom to make political donations, attend political fundraisers and similar forms of political participation.⁴⁶
- 3.85 One way in which to minimise the potential for attendance by certain individuals and organisations at fundraising events of creating a perception of undue influence is to improve the quality of disclosure in relation to attendance at these events. The Democratic Audit of Australia recommended that:
- Income generated at party/candidate/associated entity
'fundraisers' should be treated as gifts above reasonable costs for venue hire, food and beverages etc.⁴⁷
- 3.86 In its third supplementary submission to the inquiry, the AEC argued that the best way in which to negate some of the confusion regarding the disclosure of payments made to attend and while at political fundraisers was to ensure that disclosure regarding these events should be included 'irrespective of whether a profit was realised'. The AEC stated that:
- ...issues relating to disclosure and the attendance at fundraisers could be simplified by including gross amount of both payments to attend and all other payments made during the fundraiser events. This could include amounts such as winning auction bids, purchasing raffle tickets, and the like. Sponsorship arrangements should also be included in the definition. The AEC notes that some care would be needed in defining the scope of what is a 'fundraiser' to ensure that all events at which money is collected... are included.⁴⁸
- 3.87 The AEC also raised the possibility of altering all references to 'gifts' in Part XX of the Electoral Act to 'contributions' or some similar term, to reflect the fact that a profit or benefit to the recipient in excess of market value is not necessary for the transaction to fall within disclosure laws.⁴⁹
- 3.88 The NSW *Election Funding, Expenditure and Disclosures Act 1981* provides that 'an amount paid by a person as a contribution, entry fee or other payment to entitle that person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function)' is taken to be a gift.
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46 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

47 Democratic Audit of Australia, *Submission 2*, p. 4.

48 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

49 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

- 3.89 This definition means that political parties, associated entities, Senate groups and candidates must disclose details of each fundraising activity or function. The definition also requires donors attending fundraising functions to disclose details of the purchases of entry tickets, raffle tickets, auction items or other memorabilia. The AEC advised that it was not aware of 'any issues or difficulties' that had arisen under the NSW legislation.⁵⁰
- 3.90 Relevant discussion in the first Green Paper put an alternative view to arguments proposing that fundraising events be explicitly included in disclosure Commonwealth disclosure requirements. It was noted that fundraising events attract considerable publicity in many cases and so are not completely hidden from public awareness and scrutiny.⁵¹

Conclusion

- 3.91 The freedom to participate in the political process by making political donations and attending political events is fundamental to our democratic system. The principle of participatory democracy should never be compromised beyond the extent which is essential to ensure the integrity of the system.
- 3.92 Access to politicians through attendance at fundraising events by those who can afford it do not necessarily garner any particular effect in terms of the way in which their votes were cast, or overall policy on any given issue. It is generally the case that rather than being inappropriate or dishonest, fundraisers are just another part of the political process that allows for the financial support of political parties.
- 3.93 However, the committee believes that the large sums of money that are sometimes exchanged at such events warrants increased measures to improve transparency and accountability in relation to these events through the disclosure system.
- 3.94 In light of the competing considerations involved in addressing the issue of access to parliamentarians through fundraising events, the most effective way to deal with concerns regarding the practice would be to improve the disclosure rules to cover such functions, rather than to ban the practice completely.

50 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

51 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 43.

- 3.95 By expanding the definition of ‘gift’ in section 287 of the Electoral Act to explicitly include fundraisers, as in the *NSW Election Funding, Expenditure and Disclosures Act 1981*, an appropriate degree of transparency of fundraising events can be achieved to maintain the integrity of Australia’s democratic system. The definition should be sufficient to ensure that all relevant fundraising events are covered.

Recommendation 4

- 3.96 **The Committee recommends that the definition of ‘gift’ in the *Commonwealth Electoral Act 1918* be amended to include fundraising events.**

Classification of receipts

- 3.97 At the federal level in Australia, political parties and associated entities are able to, and do, receive income from sources including membership fees, fundraising events and donations. Part XX of the Electoral Act provides that where amounts exceeding the disclosure threshold have been received by political parties and associated entities, certain particulars must be disclosed.
- 3.98 In addition to these legislative requirements regarding disclosure of receipts above the applicable disclosure threshold, the AEC requests that political parties and associated entities classify each of the sums exceeding the threshold as ‘donations’ or ‘other receipts’. Any receipt that meets the definition of ‘gift’ in the Electoral Act, including gifts-in-kind, should be classified as a donation. Some examples of receipts that are general classified as ‘other receipts’ on party returns include membership fees and levies on members of Parliament.
- 3.99 These two additional column headings on the AEC’s disclosure return form were added to the annual return form to assist members of the public to identify key elements contained in an annual return. They also assist the AEC to identify donors that may have a donor disclosure obligation under section 305B of the Electoral Act and to target any donors that may have failed to meet their disclosure obligation.
- 3.100 However, as the classification is not a legislative requirement, it cannot be enforced. The NSW Greens Political Donation Research Project representative observed that:

The political parties are encouraged to list gifts of cash as 'Donations' and money spent at fundraisers as 'Other Receipts'. However, even this categorisation isn't required, so some years one sees all the money reported by a division of a political party as 'Unspecified'.⁵²

- 3.101 The classification request made by the AEC is particularly valuable in an environment in which a high disclosure threshold is in place, allowing the public to easily identify the donations. Likewise, where there is a lower threshold, the classification may assist electors to understand and interpret the larger amounts of information disbursed through the disclosure system.
- 3.102 The Australian Greens made the related recommendation that reporting classifications such as 'other receipt' 'public funding' and 'donation' should be more clearly defined. It also stated that the AEC should ensure that political parties and candidates use the terms consistently in meeting their disclosure obligations. This is also important for associated entities.
- 3.103 Notably, Australia is the only country that requests that political parties and associated entities classify their receipts. However, many nations have other measures in place to differentiate between donations and other receipts. For example, the United Kingdom requires weekly 'donation reports' during elections, which include details of only donations received during that week. These are immediately made public.
- 3.104 Thus there are a range of mechanisms by which information regarding specific donations or other forms of receipts by political parties can be obtained. Regardless of the method used, it seems that there is value in having some dichotomy between donations and other forms of political party and associated entity income.

Conclusion

- 3.105 The classification of receipts on political party returns as 'donations' or 'other receipts' is important to the disclosure scheme. The committee believes that legislating to make this a requirement of disclosure should improve the quality of information received through Australia's federal disclosure scheme.
- 3.106 The possible incorrect classification of receipts on disclosure returns, in particular, as subscriptions when the receipt is 'more likely' to have been a donation, is cause for concern. One way to address this is to legislate to

52 NSW Greens Political Donation Research Project, *Submission 17*, p. 4.

allow the AEC to pursue the possible incorrect classification of receipts above the threshold as ‘false and misleading’ information on a disclosure return.

Recommendation 5

3.107 The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to include the following:

- to require political parties and associated entities to classify their receipts exceeding the disclosure threshold as ‘donations’ or ‘other receipts’;
- to include an adequate definition of ‘donation’ and ‘other receipt’; and
- to make the requisite changes to the enforcement and investigation provisions to allow the Australian Electoral Commission to investigate and enforce these classifications.

Frequency of reporting

3.108 The issue of the frequency of disclosure featured prominently in the submissions to the inquiry and subsequent discussion by the committee. There were four key themes that emerged from the submissions in relation to reporting obligations:

- The issue of contemporaneous or continuous disclosure, whereby parties disclose their receipts of donations as they are received;
- The possibility of requiring political parties to submit weekly ‘donation reports’ during election periods, disclosing all donations received that week;
- The possibility of requiring political parties to disclose on a six-monthly instead of annual basis; and
- Special reporting arrangements for large donations.

3.109 The Commonwealth disclosure scheme as it currently stands in Part XX of the Electoral Act, requires annual disclosure by political parties, associated entities, donors and third parties. Separate returns for candidates, Senate

groups and donors to these are also required for each federal election and by-election.

- 3.110 The current disclosure scheme is based on *ex post facto* reporting and electors do not know the sources of party finances until well after an election. For example, details of donations to political parties made during the period leading up to the 2010 federal election may not be publicly available until February 2012.

Contemporaneous or continuous disclosure

- 3.111 The concept of contemporaneous disclosure involves compelling political parties to publicly disclose aspects of their finances continuously, including disclosing donations as they are received. The rationale underpinning such proposals is that it allows electors to be aware of sources of party funding immediately, and, importantly, before they must cast their vote. The AEC noted in its submission that a shift from *ex post facto* reporting to contemporaneous disclosure would require a 'fundamental shift in the philosophy underpinning the legislative approach to political funding'.⁵³
- 3.112 Associate Professor Ken Coghill from the Accountability Round Table observed that in NSW, political parties were already required to keep most of the information required for an effective system of contemporaneous disclosure. He advised the committee that at a workshop in July 2011 on the Challenges of Electoral Democracy, the deputy director of the Liberal Party New South Wales branch indicated that their branch was required to do exactly that sort of record keeping for their own internal purposes for compliance with the provisions of the New South Wales legislation on disclosure of donations and expenditure of funds.⁵⁴ Associate Professor Coghill concluded that:

...we have now got the evidence that that is technically possible. It is not an administrative difficulty, at least not for the New South Wales branch of the Liberal Party, and presumably not for any other political party.⁵⁵

53 Australian Electoral Commission, *Submission 19*, p. 4.

54 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 1.

55 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 2.

- 3.113 The Democratic Audit of Australia raised the example of the online system used by the New York City Campaign Finance Board as an example of a contemporaneous disclosure system that could be used as a guide at the Commonwealth level.⁵⁶ That system allows the user to search for donations by election cycle, candidate name and contributor first name or last name. The Democratic Audit also identified the desirability of contemporaneous disclosure systems operating alongside fixed election dates.⁵⁷
- 3.114 The Australian Greens expressed support for the temporary maintenance of the current annual disclosure period, but stated that this should act as a measure to provide the AEC with time to develop software that would facilitate contemporaneous disclosure of donations of \$1 000 or more on the internet by political parties, donors, candidates, associated entities and third parties. The Australian Greens also recommended that all disclosure by political parties should be required to be made online.
- 3.115 When questioned about the time it would take to implement an electronic system to facilitate a shift to contemporaneous disclosure, the AEC advised that its existing e-returns portal had been designed to account for the potential for contemporaneous reporting. It stated that it may take approximately 12 months for the required work to be done to allow the current system to facilitate a legislative shift to contemporaneous disclosure.⁵⁸
- 3.116 In relation to the costs to the AEC in building the system to facilitate the administration of a contemporaneous disclosure scheme and the cost to those with disclosure obligations, the AEC explained that:

There are the investment costs in building the system and then, assuming that system lasts for many years, ultimately the investment is defrayed over many years. That applies both to the AEC as well as to parties and other organisations that would have to adjust their systems to enable that online disclosure to occur.⁵⁹

56 Democratic Audit of Australia, *Submission 2*, p. 7.

57 Democratic Audit of Australia, *Submission 2*, p. 7.

58 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 21 September 2011, p. 10.

59 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 8.

- 3.117 The AEC further stated in relation to the issue of the costs associated with such a system:

There will be a certain level of ongoing business costs and also ongoing staff costs. But certainly the significant costs would be the initial establishment of the system.⁶⁰

- 3.118 On a related matter, the AEC raised the issue of the limitation period on prosecution for offences under Part XX of the Electoral Act. It argued that the current delay between a financial year or an electoral event gave rise to difficulties in instituting prosecution action in time, explaining that:

Under subsection 315(11) of the Act prosecutions for offences against the funding and disclosure provisions must be commenced within three years of the offence being committed. In practical terms (particularly due to the post event reporting of matters), this means, in some instances, that by the time the AEC becomes aware of a possible breach and/or conducts inquiries to accumulate sufficient evidence to warrant the preparation of a brief of evidence, there is no opportunity to pursue prosecution action. This can leave the AEC with no opportunity to enforce a correction to the public record.⁶¹

- 3.119 The reason for the lag in the commission of the offence and the AEC being able to take prosecution action is the delay in disclosure requirements. The AEC also noted the general provision in section 4H of the *Crimes Act 1914* for commencing criminal proceedings for a summary offence is 12 months. Contemporaneous disclosure, coupled with incidental changes to offences that are straightforward matters of fact to administrative ones (discussed in Chapter 8), should alleviate some of the issues in this area.

- 3.120 The AEC also indicated that in order for a contemporaneous disclosure system to operate effectively, it has to be complemented by a suitable enforcement scheme that operates proactively, or its effectiveness could be undermined if people did not meet their obligations, whether intentionally or through poor management.⁶²

60 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 8.

61 Australian Electoral Commission, *Supplementary submission 19.1*, p. 3.

62 Australian Electoral Commission, *Submission 19*, p. 4.

Donation reports during elections

- 3.121 The concept of donation reports during elections is closely linked to that of contemporaneous disclosure. In fact, the only difference between each concept, depending of course on the precise model proposed, is that one involves weekly reporting during an election period, instead of continuous reporting as donations are received.
- 3.122 The United Kingdom disclosure scheme involves a requirement that political parties provide weekly disclosure in the form of donation reports. This requires parties to submit reports for all transactions considered to be donations which disclose the amount and date of such donations and identifies the status of the donor as an individual, trade union, company or other entity.
- 3.123 Individual candidates are not subject to this requirement, but they must report their donations to the Returning Officer in their constituency after the election. Third parties are also not subject to weekly donation reporting during an election period, and accordingly, this may provide a loophole for those seeking to avoid disclosure under weekly donations reporting obligations. Third parties do have separate reporting obligations depending on whether they are registered or unregistered and the amount of expenditure they incur.

Six-monthly reporting

- 3.124 Currently, the Electoral Act provides in Part XX that political parties, associated entities, donors and third parties must report certain financial details to the AEC annually. Candidates, Senate groups and donors to each of these must submit returns following every election.
- 3.125 Some submitters to the inquiry recommended that the reporting timeframe be changed to six-monthly instead of annual or contemporaneous disclosure. This is the measure that is contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. For example, Mr Andrew Norton expressed the view that 'six monthly reporting should be enough'.⁶³
- 3.126 However, others commented that 'bi-annual returns [did] improve the frequency of disclosure', but still failed to provide the 'real time disclosure' required for informed voting.⁶⁴

63 Mr Andrew Norton, Private capacity, *Committee Hansard*, 10 August 2011, p. 19.

64 Dr Joo-Cheong Tham, *Submission 90*, JSC EM inquiry into the 2010 federal election and matters related thereto, p. 111.

Special reporting of large donations

- 3.127 Under the Commonwealth funding and disclosure scheme, political parties and associated entities report annually. Candidates and Senate groups report following every election.
- 3.128 Recent measures implemented in Queensland saw a requirement inserted into the *Electoral Act 1992* whereby a large donation or a series of donations from the same source adding up to an amount greater than \$100 000, gives rise to an obligation to report the details by both the political party and the person making the donation within a prescribed time.⁶⁵
- 3.129 Mr Andrew Norton supported this measure, commenting that:
- [Large donations] are actually the donations we are the most concerned about. Most of the smaller donations, even though they are disclosed, never get much attention. It is really the big donors we are interested in.⁶⁶

Conclusion

- 3.130 The current reporting obligations on political parties, associated entities, candidates and Senate groups result in the details surrounding sources of funding not being revealed until after polling day, thus preventing electors from using the information to help determine how they cast their votes.
- 3.131 Due to comparably weak penalties and enforcement provisions that accompany the Commonwealth disclosure scheme, this *ex post facto* approach to reporting and enforcement is not conducive to the transparency and accountability that the funding and disclosure regime is intended to facilitate.
- 3.132 The committee supports an immediate move to six monthly reporting, which should result in at least some information regarding political party sources of funding being available before polling day in a given election. This move must be accompanied by measures to encourage or even compel political parties to lodge their disclosure returns using the AEC's online system.

65 *Electoral Act 1992* (QLD), s. 266.

66 Mr Andrew Norton, Private capacity, *Committee Hansard*, 10 August 2011, p. 19.

- 3.133 A move to six-monthly reporting must also be accompanied by an effective enforcement scheme to act as a deterrent to non-compliance with disclosure obligations. The issue of compliance is addressed in detail in Chapter 8.

Recommendation 6

- 3.134 **The committee recommends that the Australian Government introduce a six-monthly disclosure reporting timeframe, as outlined in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.**
- 3.135 The committee noted comments from submitters indicating that larger donations are the ones in which there is significant public interest in releasing. The disclosure rules regarding these donations must be made more robust and conducive to the transparency and accountability aims of the scheme.
- 3.136 There is significant value in having special reporting of large donations in excess of a prescribed amount. Such a mechanism would improve the visibility of large donations. At the Commonwealth level, such a requirement would best operate in relation to a single donation above the special reporting amount. In addition, the requirement to aggregate donations to political party branches would not apply regarding Special Reporting Events, as it could result in an undue administrative burden on political donors.

Recommendation 7

- 3.137 **The committee recommends that if a single donation above \$100 000 is made to a political party, associated entity, third party, candidate or Senate group, then a 'Special Reporting Event' return must be lodged with the Australian Electoral Commission by the political party, associated entity, third party, candidate or Senate group and the donor within 14 days of receipt of the donation. The Australian Electoral Commission must publish details of these returns within 10 business days of lodgement.**
- 3.138 Moving to a system of contemporaneous disclosure is a feasible and desirable option, and will not cause an undue administrative burden on political parties provided there is sufficient electronic lodgement capability provided by the AEC. Accordingly, research into such systems and issues regarding their implementation and administration, and their potential for application in the Australian context is warranted.
- 3.139 A contemporaneous disclosure system would facilitate the implementation of requirements relating to immediate public release of donation reports and special reporting of large donations, if such a requirement was deemed feasible.

Recommendation 8

- 3.140 **The committee recommends that the Australian Electoral Commission investigate the feasibility and requirements necessary to implement and administer a system of contemporaneous disclosure and report back to the Special Minister of State by 31 March 2012.**

Different reporting obligations for donors and political parties

- 3.141 The reporting obligations for donors and political parties under the Electoral Act contain a number of key differences. While political parties are only required to aggregate individual receipts that exceed the disclosure threshold, donors must aggregate donations of any value. The

AEC explained that this difference between the precise disclosure requirements of political parties and donors was a key reason that disclosure returns by each often do not reconcile, stating that:

The most obvious point of difference has come about since legislative amendments in 1995 that introduced a 'transaction threshold' for political parties when aggregating receipts from individuals. Currently, political parties only need to aggregate individual receipts above the threshold (sums above \$11,900 for the 2011/12 financial year) when compiling their disclosure returns. Donors, however, continue to be required to aggregate donations of any value made to political parties. This can mean that a donor will lodge a return but not appear on a party's return or a donor will disclose a larger total of donations than the party discloses.⁶⁷

- 3.142 The AEC suggested that to overcome some of the discrepancies between donor and party returns, the disclosure requirements for each could be brought 'back into alignment'.⁶⁸ It suggested removing the 'transaction threshold' from political party disclosures because the introduction of such a requirement for donors would result in a 'loophole' allowing donors to make multiple donations to different branches of a political party below the threshold without needing to disclose.
- 3.143 The AEC also identified a number of other issues with the current disclosure obligations for political parties and donors to political parties, following further questioning from the committee. One of these related to the issue addressed earlier in the chapter in relation to the inclusion of 'fundraising events' in the definition of 'gift'.
- 3.144 The AEC stated that the absence of fundraisers from the definition of 'gift' meant that some companies may consider that a payment for access to a minister at an event a genuine transaction and would not conceive it as a donation, but it may be listed as such by the political party on its disclosure return. The AEC stated that it does not feel it is in a position to demand that a donor return be lodged, given that the definition of 'gift' in section 287 does not include payments at fundraisers.⁶⁹ Accordingly, the inclusion of fundraising events in the definition of gift would give the AEC a basis on which to initiate enquiries of relevant donors.

67 Australian Electoral Commission, *Supplementary submission 19.1*, p. 5.

68 Australian Electoral Commission, *Supplementary submission 19.1*, p. 6.

69 Australian Electoral Commission, *Supplementary Submission 19.1*, pp. 4-5.

Conclusion

- 3.145 The lack of consistency between the disclosure requirements for donors and political parties makes the current scheme more difficult to administer and inhibits its potential to meet its ends.

Recommendation 9

- 3.146 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require political parties to aggregate all individual donation receipts, not just those individual receipts that exceed the disclosure threshold, in line with the current disclosure requirement for donors.**