

Foreign and anonymous donations

Background

- 4.1 The desirability of allowing foreign donations to be made to, or received by candidates, political parties or Senate groups has been raised on a number of occasions in the past.
- 4.2 Despite concerns about the ability of those making such donations to exert influence on domestic politics, no restrictions have yet been placed on the ability of candidates, political parties or Senate groups to receive or use foreign donations.
- 4.3 The *Commonwealth Electoral Act 1918* currently enables donations of up to \$10,900 to be received from anonymous sources.¹
- 4.4 This has not always been the case. In its 1983 report, the then Joint Select Committee on Electoral Reform noted that, even then, there were differing views about the desirability of allowing anonymous donations to be made.
- 4.5 Some members of that committee believed that substantial anonymous donations should be allowed, whilst others argued against their desirability. Those against argued:

... evasion of the requirements of law under the cloak of anonymity should be prevented. The desire for anonymity on the part of some donors should not be allowed to outweigh the rights of the general public to know the source of finance for political

1 *Commonwealth Electoral Act 1918*, ss. 304, 305A, 305B and 306.

activity which because they were anonymous, could not be said to influence decisions.²

4.6 Ultimately, that committee recommended as follows:

That anonymous donations for election campaign purposes above the set limits including those received via solicitors' trust funds not be accepted or where they have been received and cannot be returned they be forwarded to the proposed Electoral Commission and be used to defray the costs of the public funding process.³

4.7 The government of the day agreed and the Commonwealth Electoral Act was amended to provide that the limit above which anonymous donations could not be accepted was \$200 for an individual candidate, \$1,000 for a political party and \$1,000 for a Senate Group.

4.8 These limits on anonymous donations applied for all federal elections up to and including the 2004 federal election.

4.9 It is difficult to ascertain how often political parties and candidates receive anonymous gifts. A report by the Australian Electoral Commission following the 2001 federal election noted that no such gifts came to the attention of the Commission.⁴ In a similar report following the 2004 election, the Commission noted that a number of candidates reported donations in excess of \$200 (the threshold applying at the time) without giving details of the donor involved. Follow-up action by the Commission resulted in amended returns being lodged that show donor details.⁵

4.10 With respect to foreign donations, the Australian Electoral Commission has previously highlighted receipts shown in political party returns with an overseas address.⁶ Table 4.1 provides an example of some of these returns over the period 1998-99 to 2002-03.

2 Joint Select Committee on Electoral Reform, *First Report*, September 1983 p. 165.

3 Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 165.

4 Australian Electoral Commission (2005), *Funding and Disclosure Report Election 2001*, p. 12.

5 Australian Electoral Commission (2005), *Funding and Disclosure Report Election 2004*, p.29.

6 Australian Electoral Commission, submission 11 to the 2005 inquiry into disclosure of donations to political parties and candidates, pp. 25-26.

Table 4.1 Party receipts with an overseas address, 1998-99 to 2002-03

Year	Party	Amount	Name	City/Country
1998-99	Liberal Party of Australia - Federal Secretariat	\$5,000	M J Dwyer	PORT MORESBY
1998-99	Citizens Electoral Council of Australia	\$5,250	Michael Esdaile	WEST AUCKLAND
1998-99	Liberal Party of Australia (WA Division) Inc	\$5,000	W S Cairns	GUERNSEY ISLAND
1999-00	Australian Labor Party (NSW Branch)	\$25,000	B Salizar	MANILLA, PHILLIPINES
1999-00	Australian Greens	\$19,438	Green Forum Foundation	SWEDEN
2000-01	Liberal Party of Australia - NATIONAL	\$3,301	International Democrat Union	WESTMINISTER
2001-02	Australian Labor Party - SA	\$10,000	Alastair Walton	HONG KONG
2001-02	Australian Labor Party (State of Queensland)	\$9,586	Chen Kang	HONG KONG
2001-02	Liberal Party of Australia - Queensland Division	\$2,000	David Argyle	CHINA
2001-02	Liberal Party of Australia - Queensland Division	\$2,000	Flextronics	SAN JOSE, 95131
2001-02	Australian Greens - NATIONAL	\$7,724	French Greens (Les Verts)	PARIS, FRANCE
2001-02	Australian Greens - NATIONAL	\$1,553	French Greens (Les Verts)	PARIS, FRANCE
2001-02	Liberal Party of Australia (Victorian Division) -VIC	\$1,948	J Mackay Gill	NEW YORK NY USA
2001-02	Australian Democrats - NATIONAL	\$2,200	Lucent Technology	HONG KONG
2001-02	Australian Labor Party – WA	\$5,000	Potain Pty Ltd	SINGAPORE
2001-02	Australian Labor Party (State of Queensland)	\$9,769	Zhang Ziaojing	HONG KONG
2002-03	Liberal Party of Australia (Victorian Division)	\$14,000	Dr Kazumasa Ikoma MD	KAWABE, HYOGO, JAPAN
2002-03	Australian Labor Party (N.S.W. Branch)	\$17,674	Hatco Corporation	FORDS, NJ, 98568
2002-03	Liberal Party of Australia, NSW Division	\$8,360	Icon Productions LLC	SANTA MONICA
2002-03	Australian Labor Party - SA	\$5,500	SkyCity Entertainment Group	AUCKLAND NZ

Source Australian Electoral Commission, Australian Electoral Commission, submission 11 to the 2005 inquiry into disclosure of donations to political parties and candidates, p. 26.

- 4.11 More recently, there have been instances where more significant funds have been received from overseas sources. For example, in 2004-05 the Liberal Party of Australia received a \$1 million donation from British citizen Lord Michael Ashcroft.⁷ In 2006-07, the Australian Labor Party (NSW Branch) received \$100,000 from Hong Kong Kingson Investments, whose return address was listed as being in Hong Kong.⁸

Impact of 2006 amendments

- 4.12 Following the 2004 federal election, the Joint Standing Committee on Electoral Matters considered the issue of disclosure thresholds (above which donations must be declared) and recommended that the threshold be substantially increased so that disclosure applied to amounts over \$10,000 and that the threshold be indexed to the Consumer Price Index (CPI).⁹
- 4.13 As noted in chapter 3, the Government then acted by implementing this change, amongst others, with the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, which received royal assent on 22 June 2006.
- 4.14 The current level of \$10,900, which applied from 1 July 2008, will continue until 30 June 2009, after which time it will increase again, unless changes are made to the relevant provisions of the Commonwealth Electoral Act.
- 4.15 Donations below this threshold are not required to be disclosed by the donor, nor the receiver. Therefore, the relevant provisions of the Commonwealth Electoral Act effectively now enable any number of individual donations below the \$10,900 threshold to be made to any political candidate, party or senate group, without the public knowing the source of those funds, providing the donor does not disclose their identity.
- 4.16 This anonymity also currently extends to those who make foreign donations of amounts below the threshold.

7 Australian Electoral Commission, Funding and Disclosure: Annual Returns Locator Service, viewed on 30 September 2008 at <http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=7>.

8 Australian Electoral Commission, Funding and Disclosure: Annual Returns Locator Service, viewed on 30 September 2008 at <http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=9>.

9 Joint Standing Committee on Electoral Matters (2005), *Report of the Inquiry into the Conduct of the 2004 Federal Election and matters related thereto*. p. 333.

Proposed changes

- 4.17 The bill seeks to make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use foreign or anonymous donations. ‘Foreign property’ is defined to be money in an account outside Australia, other money outside Australia, or property other than money that is located outside Australia.¹⁰
- 4.18 The Australian Electoral Commission told the committee about why the legislation was framed around the movement of foreign property in or out of Australia:
- The issue became our limited power to enforce things offshore. The way that the legislation had to be drafted, therefore, was to do with foreign property coming into Australia that was being donated to a political party or used for a political purpose. That is what the new controls are proposing the bill regulate.
- ... If there was no movement of property from offshore to Australia – and that is how the amendments have been drafted – then it would not be caught. There has to be an actual movement of foreign property from offshore to onshore.¹¹
- 4.19 Under the proposed changes, it will be unlawful for a registered political party, State branch of a political party, a candidate or a member of a group, or a person acting for any such party or person to receive a donation of foreign property. The prohibition will only apply to candidates and members of groups during the candidacy or group period (the period from when they announce their nomination for election or when they request to have their names grouped on the ballot paper and ending 30 days after polling day).¹²
- 4.20 Further, the bill seeks to make it unlawful for foreign or anonymous donations to be used to incur political expenditure by specified persons, groups or entities, where the donor’s main purpose on making the

10 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40.

11 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 19.

12 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed s. 306AC.

donation was, either directly or through the use of intermediaries to enable the recipient to incur that expenditure.¹³

4.21 The bill specifies that the proposed provisions would not apply where the foreign or anonymous donation was returned to the donor within 6 weeks of its receipt.¹⁴ Where the donation is not returned, the bill seeks to make the amount of the donation payable to the Commonwealth and provides for liability and debt recovery arrangements to apply. The bill seeks to ensure that the value of any such donation is recoverable only once.¹⁵

4.22 The Democratic Audit of Australia supported the ban on anonymous donations but considered that it may be impractical for small donations made in the course of fundraising events:

It seems odd that the ban applies to all 'gifts', however small. A scrupulous party fund-raiser, shaking a tin or selling raffle tickets, will be required to demand and record the names and addresses of every contributor, or refuse or forfeit the contribution to the Commonwealth. It may be sensible to legislate a low threshold, say \$50. If so, regular contributions under the threshold would still have to be covered by the anti-anonymity rule (eg direct debits, cheques or other financial transfers) since such contributions could otherwise be used to make cumulatively substantial donations.¹⁶

4.23 At a public hearing, the Australian Electoral Commission was asked about whether the bill intended to ban all anonymous donations as the Democratic Audit suggested or whether only amounts below the proposed threshold (\$1,000) would be prohibited.

4.24 The Commission confirmed that the bill, as drafted, would ban all anonymous donations. In its response to the committee the Commission noted that:

The amendments contained in Item 40 of Schedule I to the Bill seek to repeal the existing section 306 and to introduce new sections 306 to 306AI. The effect of these new provisions is to ban all anonymous donations to those involved in the political process. The Second Reading Speech that accompanied the introduction of

13 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed ss. 306AD, 306AG and 306AI.

14 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed ss. 306AA and 306AF.

15 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clauses 14 and 21.

16 Democratic Audit of Australia, submission 1, p. 4.

this Bill into the Senate stated (Senate Hansard 15 May 2008 page 1965):

The Bill includes measures that extend the current prohibition on accepting anonymous donations to all anonymous gifts

Accordingly, the Bill contains a complete prohibition on the receipt by political parties and candidates of any anonymous gifts irrespective of the amount involved. This prohibition also applies to others involved in the electoral processes where those anonymous funds are used for electoral expenditure. This was a deliberate policy decision based on the concern that setting a threshold below which anonymous donations could be lawfully received has the potential to create a loophole that could be exploited to undermine the accountability and transparency of other measures designed to inform the Australian community of the sources of donations that are accepted and expended by the main players in the electoral process.

However, since the AEC's evidence on Friday, the Minister has indicated that Government amendments to the Bill will be considered that introduce a low threshold (of say \$50) below which anonymous donations can be lawfully received by the key players in the electoral process. This will facilitate the collection of donations in the circumstances outlined in the further submission from the Democratic Audit of Australia that was provided to the AEC at the Committee's hearing.¹⁷

- 4.25 The committee agrees that it would be difficult for the organisers of small-scale fundraising activities to comply with a complete ban on anonymous donations. The approach suggested by the Democratic Audit of implementing a low threshold of \$50 appears to provide a workable solution.
- 4.26 The committee therefore recommends that clause 40 of the bill (proposed section 306AE) be amended to provide for anonymous donations of less than \$50 to be received without imposing a requirement that the receiver of the gift obtain personal details of the person or organisation providing the gift.

17 Australian Electoral Commission, submission 3, p. 2.

Views about current and proposed arrangements

- 4.27 The committee received a number of submissions for its 2007 election inquiry that canvassed issues relating to foreign or anonymous donations.
- 4.28 Mr Andrew Murray, on behalf of the Australian Democrats, welcomed the changes proposed by the bill, noting that:

The Democrats applaud the Labor Government's proposal (by press release on March 28 2008) to ban foreign political donations from overseas. It is long overdue. The AEC on-line disclosure returns show that between 1998/99 to 2006/07, Australian political parties received \$2 319 220 from overseas sources. Of this amount, \$1 664 279 went to the Liberal Party, \$475 067 to Labor, \$170,564 to the Greens, \$7,110 to the Citizens Electoral Council and \$2,200 to the Democrats.

Within those figures was a startling \$1,000,000 for the Liberal Party from British citizen, Lord Michael Ashcroft for the 2004 federal election. Interestingly, this donation would have been illegal in Britain because of that country's ban on foreign donations. Under British law, a donation of more than £200 sterling or \$A470 is allowed only if it comes from a person eligible to enrol to vote in Britain or from registered corporations operating in Britain.¹⁸

- 4.29 Support for a ban on foreign and anonymous donations was also given by the Australian Labor Party, Dr Tham and the Eurobodalla Greens.¹⁹ The Democratic Audit of Australia also supported the proposals, noting that:

Some parties may be ideologically or organisationally linked to global movements eg socialist and environmental parties. But as long as Australia forms a single, sovereign electoral system and is not part of a supra-national electoral system like the ED, the principle that foreign interests should have no say is valid.²⁰

- 4.30 As noted in chapter 1, the Liberal Party of Australia and The Nationals viewed the current arrangements as operating without problems and

18 Australian Democrats, submission 56 to the 2007 election inquiry, p. 27

19 Australian Labor Party (National Secretariat), submission 159 to the 2007 election inquiry, p. 1; Tham J, submission 133 to the 2007 election inquiry, p. 37; The Eurobodalla Greens, submission 54 to the 2007 election inquiry, p. 2.

20 Democratic Audit of Australia, submission 1, p. 3

considered that any reviews of these arrangements should wait until the green paper process is established.²¹

Committee conclusion

- 4.31 The committee believes that the current high disclosure threshold (\$10,900), which enables significant donations to be made anonymously, both domestically and from overseas, requires urgent action to enhance disclosure requirements and ensure that overseas interests are not able to use foreign property to unduly influence the Australian political system.
- 4.32 The committee notes with alarm the potential for large sums of money to flow to political participants in Australia from overseas, such as the significant donation of \$1 million from British citizen, Lord Michael Ashcroft.
- 4.33 The committee believes that the time has come for a ban on foreign donations so that the domestic political environment is not influenced by overseas persons or corporations, who should not be entitled to participate in Australian elections by secret means or otherwise.
- 4.34 The committee agrees with Dr Tham, who describes the increase to the disclosure threshold as 'regressive'²². The committee believes the current situation has resulted in reduced transparency and has increased the potential for influence to be exerted on the making of public policy in such a way that the Australian public may be unaware of where such influence has its origins.
- 4.35 This situation appears to be untenable and in conflict with the original aims of the funding and disclosure scheme as it was implemented for the 1984 election, and as applied up to and including the 2004 election.
- 4.36 Lifting of disclosure thresholds to the unprecedented high levels that currently exist has indeed made it possible for significant donations to be made in secret.
- 4.37 However, the committee shares the concern raised by the Democratic Audit of Australia in its submission to this inquiry, that the changes proposed in the bill may create some difficulty for fundraisers, where persons who make minor purchases of raffle tickets, or contribute

21 The Liberal Party of Australia, submission 156 to the 2007 election inquiry, p. 2; The Nationals, submission 145 to the 2007 election inquiry, p. 1.

22 Tham J, submission 133 to the 2007 election inquiry, p. 37

relatively small sums of money by donation may be required to disclose their details, otherwise those amounts would be subject to forfeit to the Commonwealth.

- 4.38 The committee believes that in attempting to restrict the potential for anonymous donations, the proposals in the bill might create an onerous burden in such minor situations. The committee believes that there should be a small threshold of \$50 below which anonymous donations would be allowable.
- 4.39 Accordingly, the committee recommends that the bill be amended to allow for anonymous donations to be made and received below a threshold of \$50 without incurring a disclosure obligation for the donor or the recipient.

Recommendation 5

- 4.40 **The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use anonymous donations or to receive or use a donation of foreign property.**

Recommendation 6

- 4.41 **The committee recommends that clause 40 (proposed section 306AE) of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be amended to allow for anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.**