

## 2016/21: Should there be a ban placed on foreign, corporate and union donations to political parties?

### What they said...

*We need to look long and hard at restricting donations to real people on the electoral roll. To that end, there should be no union donations, company donations or foreign donations... Obviously we don't want influence buying, we don't want subversion of our system'*

Tony Abbott, former Prime Minister of Australia

*The system fails without activist citizens and organisations engaging and taking responsibility for political debate and action. That is why banning donations would stifle democracy'*

Tim Ayres, the New South Wales secretary of the Australian Metal Workers Union (AMWU)

### The issue at a glance

On September 7, 2016, Labor New South Wales senator, Sam Dastyari, quit as manager of opposition business in the Senate and shadow spokesman for consumer affairs, after it was revealed he may have broken Labor Party rules on political donations by allowing Chinese donors to make payments on his behalf for travel and legal bills.

On the same day, the Prime Minister, Malcolm Turnbull, renewed his support for restrictions to be placed on donations to Australian political parties.

Mr Turnbull argued that only those on the Australian electoral roll should be able to donate to political parties. Mr Turnbull claimed that this would exclude donations from foreign groups or individuals, as well as preventing corporations or trade unions from financially supporting political parties.

The Labor Party has rejected proposals that would see union donations banned; however, it supports a ban on foreign donations and is calling for continuous disclosure of donations and for donations of a smaller size to also be disclosed.

The Greens have also not supported a ban on union donations; however, they also want a ban on foreign donations and have called for strict caps on the size of donations from private individuals.

To this point there is no clear consensus on the issue beyond a call for foreign donations to political parties to be banned.

This is despite criticisms of Australia's unregulated and undisclosed political donations relative to other comparable democracies.

### Background

(The information below is abbreviated from a Wikipedia entry titled 'Political funding in Australia '.

The full text of the entry can be accessed at [https://en.wikipedia.org/wiki/Political\\_funding\\_in\\_Australia](https://en.wikipedia.org/wiki/Political_funding_in_Australia))

#### Political funding in Australia

In Australia, the majority of political donations come in the form of donations from corporations, which go towards the funding of the parties' election advertising campaigns. Donations and affiliation fees from trade unions also play a big role, and to a lesser extent donations from individuals. Donations occasionally take the form of non-cash donations, referred to as gifts-in-kind.

The Australian Electoral Commission (AEC) monitors donations to political parties, and publishes a yearly list of political donors. Donors can sometimes hide their identities behind associated entities.

#### Corporate political donations

Between the years 1995-1998, corporations donated \$29 million to Australian political parties. The largest corporate donor during this period was Westpac. By the year 2002-2003, the amount of corporate funding to Australian political parties had risen to \$69.4 million. In 2004-2005, the Labor Party raised \$64.8 million from both the corporate sector and public funding, while the Liberal Party raised over \$66 million. Most of the large corporate donors conduct business in an area greatly affected by government policy, or are likely to benefit from government contracts.

#### Trade union political funding

The Australian Labor Party is the main beneficiary of trade union affiliation fees, special levies and donations. The Labor Party received \$49.68 million from trade unions in 2004/05. Critics have accused the unions of buying seats at ALP state conferences. In 2001/02, money from trade unions amounted to 11.85% of the Labor Party's income.

#### Public funding for political parties

In 1984, the Labor Hawke Government introduced public funding for political parties, with the intention that it would reduce the parties' reliance on corporate donations. To be eligible for public funding a political party needs to be registered with the Australian Electoral Commission under the Commonwealth Electoral Act 1918. A candidate or Senate group is eligible for election funding if they obtain at least 4% of the first preference vote in the division or the state or territory they contested. The amount payable is calculated by multiplying the number of first preference (i.e., primary) votes received by the rate of payment applicable at the time. The rate is indexed every six months in line with increases in the Consumer Price Index. At the time of the 1984 election the rate was 61.2 cents for the House of Representatives and 30.6 cents for the Senate. That amount was based on the cost of a standard 30¢ postage stamp per elector per year. By the 1996 election, the rate was set at \$1.58 per vote for both Houses. By the 2013 election the rate was \$2.49. At 1 January 2014 the rate was \$2.52 per vote. By the 2016 election, the election funding rate from 1 July 2016 to 31 December 2016 is 262.784 cents per eligible vote.

As a result of the 2013 election, political parties and candidates received \$58.1 million in election funding. The Liberal Party

received \$23.9 million in public funds, as part of the Coalition total of \$27.2 million, while the Labor Party received \$20.8 million. When public funding was introduced in 1984, the amount paid was \$12 million. For the 1996 election, the total public funding had increased to \$32.2 million, and was \$41.9 million for the 2004 election.

#### Disclosure of political donations

At the time of introducing public funding for political parties in 1984, the Hawke Government also introduced a requirement for public disclosure of political donations. The threshold amount was set at \$1,500. The disclosure scheme was introduced to increase overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process.

In May 2006, the Howard Government increased the disclosure threshold to \$10,000, which is then increased six-monthly by the consumer price index. In announcing the laws, the government said it will result in a 'fairer' and 'more competitive' electoral system, however, failed to discuss how the changes achieved these goals. Critics of the change claimed the new law would increase the chances of corruption, by making political donations harder to track, and by making conflicts of interest harder to detect. The change allowed corporations to secretly donate up to \$90,000 spread across the national and the eight state/territory branches of political parties without public disclosure of that funding. In 2007, the Commonwealth Parliamentary Library estimated this disclosure change will increase the number of non-disclosed political donations from 25% to 36%.

Since 2006, the donations limit has increased by \$200 or \$300 each year so that by 2014 the threshold was \$12,400, and \$13,200 for 2016/17 (and applicable to the 2016 federal election). This meant that in 2014 up to \$111,600 could be donated to a political party from a donor without disclosure, if donations are spread across the national and the eight state/territory branches.

Another way of getting around the donation disclosure limits is for donations to be channelled through more than one entity or individual.

#### Criticism of political donations

The Australian Shareholders Association has called for political donating to end, arguing that the donations are a gift and a form of bribery.

Former Qantas chief, John Menadue, said, 'Corporate donations are a major threat to our political and democratic system, whether it be state governments fawning before property developers, the Prime Minister providing ethanol subsidies to a party donor, or the immigration minister using his visa clientele to tap into ethnic money.'

Political researchers Sally Young and Joo-Cheong Tham from the Australian National University concluded, 'There is inadequate transparency of funding. Moreover, there is a grave risk of corruption as undue influence due to corporate contributions and the sale of political access.'

Some critics say Australia should follow the example of the United Kingdom, where corporate donors must disclose their political donations in the company's annual report to shareholders.

Other critics have called for limits to cap the amount that corporations and unions can donate to political parties, similar to the \$5000 personal donation limit in Canada, with a virtual ban on union and corporate donations. Some point to the success New Zealand has had, limiting the amount of money that political parties can spend on their election campaigns. In January 2008, New South Wales Opposition Leader Barry O'Farrell demanded political donations be limited to \$30,000 per candidate, and a cap of \$250,000 on what a corporation or union can donate to a political party. Describing the NSW government of Morris Iemma, O'Farrell said, 'This is a Government where many people are of the view donations buy influence and decisions. That's why we need to take action to clean up the system.'

Under a proposal launched by Shadow Federal Treasurer Malcolm Turnbull in January 2008, only individuals who are Australian citizens or on the Electoral Roll would be eligible to donate to political parties, and must declare the money came from their own funds. Turnbull said that the democratic system was not working properly when there is such a disparity between the amount of political donations a government can raise compared to the opposition.

#### **Internet information**

On January 21, 2016, The Age published a report titled 'Distrustful nation: Australians lose faith in politics, media and business'

The report details the results of a recent international survey examining trust in public institutions. It reveals a general lack of trust and one which is particularly marked in Australia.

The full text can be accessed at <http://www.theage.com.au/federal-politics/political-news/distrustful-nation-australians-lose-faith-in-politics-media-and-business-20170118-qttmpd.html>

On December 7, 2016, ABC News published a report titled 'Political donations to reach \$1 billion thanks to big business donors'

The report analyses the extent of large corporate donation to political parties in Australia and suggests it may be even greater than the published figures suggest as the Australian system does not require full disclosure.

The full text of this report can be accessed at [http://www.abc.net.au/news/2016-12-07/political-donations-top-\\$1b-thanks-to-big-business/8097030](http://www.abc.net.au/news/2016-12-07/political-donations-top-$1b-thanks-to-big-business/8097030)

On November 5, 2016, The Vancouver Sun published a comment titled 'Foreign money poses threat to B.C. democracy'

The comment compares Australia's lack of control over foreign political donations with the situation in British Columbia and uses the Australian position as a negative example which shows the damage a lack of regulation can cause.

The full text can be accessed at <http://vancouversun.com/opinion/columnists/douglas-todd-australias-foreign-political-donations-storm-cautionary-for-b-c>

On October 8, 2016, Inside Story published a comment by Graeme Orr, law professor at the University of Queensland,

specialising in the law of politics. The article is titled 'New York: Where political Finance Never Sleeps'  
The article analyses those features of party campaign funding adopted in New York which could be usefully incorporated into the Australian campaign funding system.

The full text of the comment can be accessed at <http://insidestory.org.au/new-york-where-political-finance-never-sleeps>

On October 7, 2016, Inside Story published a comment by Graeme Orr, law professor at the University of Queensland, specialising in the law of politics. The article is titled 'Is the Party Over? It examines the negative effect that banning union donations would have on the Labor Party's election campaign funding.

The full text of this article can be accessed at <http://insidestory.org.au/is-the-party-over>

On September 14, 2016, CBS News published a report titled 'U.S. shocked by China's "undue influence" in major ally's politics'. The report details United States Ambassador to Australia, John Berry's, concern at the extent of Chinese donations to Australian political parties.

The full text of this article can be accessed at <http://www.cbsnews.com/news/us-ambassador-australia-john-berry-surprised-china-undue-influence-donations/>

On September 14, 2016, Overland published a comment by Chris O'Regan, a unionist in Brisbane. The point of view is titled 'The spectre of union donations'. O'Regan defends the right of unions to make political donations as vital to fostering political debate.

The full text of this comment can be accessed at <https://overland.org.au/2016/09/the-spectre-of-union-donations/>

On September 12, 2016, The Daily Telegraph published a comment by Simon Breheny, director of policy at the Institute of Public Affairs.

The point of view is titled 'Banning political donations is banning freedom'

Breheny argues that banning groups from making political donations is an attack on freedom of speech.

The full text can be accessed at <http://www.dailytelegraph.com.au/news/opinion/banning-political-donations-is-banning-freedom/news-story/d521a9db5e1f8818216a75e0a18ad54b>

On September 12, 2016, The Herald Sun published an analysis titled 'Why can't we stop political donations?'

The article looks at the various impediments to reforming political donations.

The full text can be found at <http://www.heraldsun.com.au/business/companies/why-cant-we-stop-political-donations/news-story/73456c79c6adef0a9e5adb819bfd1e70>

On September 10, 2016, The Guardian published a comment titled 'Australian political donations: how hard would it really be to clean up?'

The article looks at some of the impediments to reform and how these obstacles might be overcome.

The full text of the piece can be found at <https://www.theguardian.com/australia-news/2016/sep/10/australian-political-donations-how-hard-would-it-really-be-to-clean-up>

On September 9, 2016, The Examiner published a news report titled 'Tony Abbott proposes sweeping political donations reform, challenges Turnbull government'

The report outlines the proposals for political donation reform being put forward by Tony Abbott.

The full text of this report can be accessed at <http://www.examiner.com.au/story/4153178/tony-abbott-proposes-sweeping-political-donations-reform-challenges-turnbull-government/?cs=8>

On September 8, 2016, The Guardian published a news report titled 'Malcolm Turnbull says "ideally" donations should be limited to Australian voters.'

The report details proposals to limit those who can make contributions to political parties to individual voters.

The full text of this report can be accessed at <https://www.theguardian.com/australia-news/2016/sep/08/malcolm-turnbull-says-ideally-donations-should-be-limited-to-australian-voters>

On September 8, 2016, The Huffington Post published an article titled 'These Are The Biggest Money Donors To Australian Politics'

The article lists the major donors to Australian political parties for the 2014-2015 financial year as released by the Australian electoral commission.

The full text can be accessed at <http://www.huffingtonpost.com.au/2016/09/07/these-are-the-biggest-money-donors-to-australian-politics/>

On September 7, 2016, The Sydney Morning Herald published a news report titled 'Labor senator Sam Dastyari quits over Chinese donations scandal'

The report details the circumstances surrounding the senator's resignation and gives the views of some of those seeking reform to the current system of political donations.

The full text of this article can be accessed at <http://www.smh.com.au/federal-politics/political-news/labor-senator-sam-dastyari-quits-over-chinese-donations-scandal-20160907-grb3p1.html>

On September 7, 2016, The Sydney Morning Herald published an analysis titled 'Five ways to fix Australia's political donations mess (and why they might not happen)'

The article reviews some of the common proposals made to reform the political donation process in Australia and then explains the impediments to these reforms.

The full text can be accessed at <http://www.smh.com.au/federal-politics/political-opinion/five-ways-to-fix-australias-political-donations-mess-and-why-they-might-not-happen-20160907-grajuu.html>

On September 7, 2016, John Menadue's Internet site published a comment by Marian Sawer, Emeritus Professor and Public Policy Fellow, School of Politics and International Relations, Australian National University.

The article is titled 'Democracy for sale?' and outlines a number of the weaknesses of the manner in which political donations are made in Australia,

The full text of the comment can be accessed at <http://johnmenadue.com/blog/?p=7644>

On September 6, 2016, The Nyngan Observer published an article titled 'Political donations would fall 90% if unions and businesses were banned'

The article looks at the extent of corporate and union donations to political parties.

The full text of the article can be accessed at <http://www.nynganobserver.com.au/story/4147669/political-donations-would-fall-90-if-unions-and-businesses-were-banned/>

On September 6, 2016, The Australian published a comment by Judith Sloan titled, 'Follow the money to find paths of union influence'.

The opinion piece argues that union donations to the Labor Party are a means of buying political influence.

The full text of this comment can be accessed at <http://www.theaustralian.com.au/opinion/columnists/judith-sloan/follow-the-money-to-find-paths-of-union-influence/news-story/010a6ab20b6cf86b5fbbdebb93f3e3cd>

On September 5, 2016, Civil Liberties Australia published a comment by Professor George Williams, Dean of Law at the University of New South Wales, and a member of Civil Liberties Australia. The comment is titled 'Bought for a pittance, MPs hide details'. Williams argues for reform of Australia's system of political donations.

The full text can be accessed at [http://www.cla.asn.au/News/category/charter\\_rights/](http://www.cla.asn.au/News/category/charter_rights/)

On June 2, 2016, The Conversation published a comment by Marian Sawer, Emeritus Professor, School of Politics and International Relations, Australian National University. The comment is titled 'Australia trails way behind other nations in regulating political donations'.

Professor Sawer argues that Australia's system of political donations needs reform.

The full text of this comment can be accessed at <https://theconversation.com/australia-trails-way-behind-other-nations-in-regulating-political-donations-59597>

On May 24, 2016, The New Daily published a comment titled 'Donations now an issue for all parties'

The report examines the revelations made in a recent Four Corners program into potential political corruption in Australia and gives the views of a number of experts concerned about the issue.

The full text can be accessed at <http://thenewdaily.com.au/news/national/2016/05/23/political-donations-four-corners/>

On May 23, 2016, The Inverell Times published a report titled 'Chinese interests play increasing role in Australian political donations'. The report details the growing number of Chinese corporations making political donations.

The full text can be accessed at <http://www.inverelltimes.com.au/story/3920995/chinese-interests-play-increasing-role-in-australian-political-donations/?cs=8>

On October 7, 2015, the High Court of Australia ruled against a property developer who challenged New South Wales law restricting the right of corporations to donate to political parties. The High Court found that the use of wealth to secure access to the political process was contrary to democratic principles.

The full text of this ruling can be found at <http://eresources.hcourt.gov.au/downloadPdf/2015/HCA/34>

On September 11, 2014, The Guardian published an opinion piece by Warwick Smith titled 'Political donations corrupt democracy in ways you might not realise'.

The piece is a detailed and thoughtful analysis of the ways in which political donations can pervert the nature of Australian democracy.

The full text can be accessed at <https://www.theguardian.com/commentisfree/2014/sep/11/political-donations-corrupt-democracy-in-ways-you-might-not-realise>

On May 13, 2014, The ABC news segment The Drum published a comment by Tim Ayres, the New South Wales Secretary of the Australian Metal Workers Union (AMWU) and a member of the ALP national executive.

The comment is titled 'Banning donations would stifle democracy'. Ayres argues that unions should be able to make political donations as this promotes debate and the spread of ideas.

The full text of this comment can be accessed at <http://www.abc.net.au/news/2014-05-13/ayres-banning-donations-would-stifle-democracy/5447636>

In 2014, the Australian National University Press published an analysis by Professor Sally Young titled 'Campaign Advertising and Communication Strategies in the Election of 2013'

Professor Young examines the nature of campaign expenditure in the 2013 election.

The full text of this article can be accessed at <http://press-files.anu.edu.au/downloads/press/p309171/pdf/ch061.pdf>

On December 18, 2013, the High Court of Australia made a ruling in favour of unions which challenged the New South Wales government's legislation intended to deny unions' right to make campaign donations to particular parties.

The ruling indicated that such a prohibition denied the right to 'political communication' implied within the Australian Constitution. The High Court further ruled that such a right applied to groups as well as to individuals.

The full text of this ruling can be accessed at <http://www.austlii.edu.au/au/cases/cth/HCA/2013/58.html>

On October 10, 2013, news.com.au published an article titled 'Gina Rinehart has provided free travel and accommodation to nine Coalition MPs'

The article details the financial support given a number of politicians by wealthy businesswoman Gina Rinehart.

The full text of this document can be accessed at <http://www.news.com.au/national/gina-rinehart-has-provided-free-travel-and-accommodation-to-nine-coalition-mps/news-story/075faeb10fae0d8991f9291cccc2f3f0>

On August 19, 2013, CitizenJ published an analysis and comment by Jacqueline Ning outlining campaign-related party expenditure and the nature of political donations in Australia. The article is titled 'Democracy and the campaigning arms race (the politics behind our politicians).'

The full text can be accessed at <http://citizenj.edgeqld.org.au/democracy-and-the-campaigning-arms-race-the-politics-behind-our-politicians/>

The same article was abbreviated and republished by Crikey on August 21, 2013 under the title 'Money, politics and the campaign arms race: corporates outspend citizens'. This abbreviated version can be accessed at

<https://www.crikey.com.au/2013/08/21/money-politics-and-the-campaign-arms-race-corporates-outspend-citizens/>

In September 2007, the Australian Review of Public Affairs published a comment by former West Australian premier, Carmen Lawrence, titled 'Election 2007: Campaign finance reform'

Lawrence explains in detail the manner in which current party funding processes are undermining Australian democracy and suggests how the problem might be addressed.

The full text of the article can be accessed at <http://www.australianreview.net/digest/2007/election/lawrence.html>

### **Arguments in favour of banning foreign, corporate and union donations to political parties**

1. Foreign contributors may influence political decisions in ways that are not in Australia's strategic or economic interests Professor George Williams, Dean of Law at the University of New South Wales, and a member of Civil Liberties Australia, argued in a comment published on September 5, 2016, 'Money can drive outcomes that suit the foreign interest, and not the Australian community. This may be because national security is compromised, or policy decisions distorted.'

The rapid increase in the number of Chinese corporations and individuals, for example, making donations to Australian political parties has led to concerns that these groups and individuals may be buying influence with Australian governments.

A report published in The Inverell Times on May 23, 2016, noted, 'A Chinese government-backed propaganda unit and a swag of companies that stand to gain from the China Australia Free Trade Agreement have made more than half a million dollars of political donations in Victoria, raising concerns about the influence of foreign donors.' The article goes on to suggest that these companies may be seeking to buy influence.

In August, 2016, the ABC reported that businesses with Chinese connections gave Australia's major political parties more than \$5.5 million from 2013 to 2015, making them easily the largest source of foreign-linked donations.

On September 14, 2016, the United States Ambassador to Australia, John Berry, relayed his country's concern that the extent of Chinese political donations was leaving Australia open to undue foreign influence.

Ambassador Berry indicated that the United States objects to Beijing being able to fund political candidates in an Australian election campaign to advance Chinese interests.

Berry stated, 'That, to us, is of concern. We cannot conceive of a case where a foreign donation from any government, friend or foe, would be considered legitimate in terms of that democracy.'

Critics note that it has become plain that some foreign donors clearly expect to be able to exert political influence as a result of their donations. Huang Xiangmo, chairman of the Yuhu Group of developers, voiced a complaint which was published in Mandarin in China's state-run newspaper. Huang Xiangmo complained, '(They're) not delivering ... We need to learn how to have a more efficient combination between political requests and political donations.'

Those opposed to foreign political donations are concerned that these donations may result in politicians being pressured to act in ways that are not in Australia's national or economic interests.

2. Corporate donations may influence political decisions in ways that are not be in the interests of all Australians

There is concern that political donations from large corporations can give those groups influence over the policies political parties form and the decisions governments take. This is seen as undermining one of the basic principles of democracy - one vote, one value.

Critics claim that although the wealthy can only cast one vote in the same way as any other citizens, the corporations of which they are a part, are able, through their political donations to effect what governments do in a way the ordinary citizen cannot.

In 2008, the House of Lords argued that it was necessary to maintain a level playing field and prevent 'well-endowed interests' from using 'the power of the purse to give enhanced prominence to their views'.

In an opinion piece published in The Conversation on June 2, 2016, Marian Sawer, Emeritus Professor, School of Politics and International Relations, Australian National University, stated, 'Parties without wealthy backers should not have their message drowned out by those that do. And corporate donors should not be able to buy political access far in excess of what other citizens enjoy.'

The same point was made by former West Australian premier, Carmen Lawrence, in an opinion piece published in September 2007 in The Australian Review of Public Affairs. Lawrence stated, 'Well-funded lobbying and campaign donations...strip average voters of equality at the ballot box. Those who can afford the big donations (often made without

the agreement of shareholders or members), the flights to Canberra, the permanent lobbyists, and the hospitality may well drown out other less well-funded voices.'

The principle of electoral equality, maintaining that no group or individual should exert greater influence of the political process simply by virtue of wealth, was reinforced in a High Court decision brought down in 2015.

In the McCloy decision, the High Court decided, in response to a case brought by a property developer, that 'guaranteeing the ability of a few to make large political donations in order to secure access to those in power' was antithetical to the underlying constitutional principle of political equality. Political freedom needed to be balanced by 'equality of opportunity to participate in the exercise of political sovereignty'.

It has also been noted that corporate donations to political parties buy influence and secure government preferment in a way that is likely to be unfair and inappropriate. For example, managing Director Luca Belgiorno-Nettis told Four Corners in May 2016 that Transfield's large political donations had undoubtedly given it the ability to negotiate with its "political masters" for favourable contracts, such as that for the Sydney Harbour Tunnel.'

### 3. Union donations may influence political decisions in ways that are not be in the interests of all Australians

Opponents of unions making political donations argue that they too are seeking to buy influence in the manner corporations and foreign contributors are accused of doing.

In an opinion piece published in The Australian on September 6, 2016, Judith Sloan stated, 'The brutal reality is union donations to Labor purchase favours in a similar way to other donations, although union gifts are generally more effective at getting the job done. And because of the scale of the donations and the lopsided nature of them - most companies will generally give money to both sides of politics, although not always in equal measure - the pay-offs are substantial even when Labor is not in office.'

Sloan argues that unions should not be seen as representative bodies in their own right as only a small minority of the electorate are union members. Rather she argues, they are seeking to buy influence for a narrow sectional interest. Sloan contends, 'No one should kid themselves that the political actions demanded by the union movement as part of the quid pro quo are undertaken in the national interest. The aim is to foster narrow sectional interests; don't forget trade union members make up only 11 per cent of the workforce.'

Sloan further argues that trade unions will seek to exert this influence even when the Labor Party is not in government. She writes, 'Even if Labor is not in power, it will use its numbers in the Senate to block the removal of union privileges and to prevent the introduction of any policy initiative of which the unions disapprove.'

A Four Corners program televised in May, 2016, Four Corners exposed the bankrolling of the Australian Labor Party by the CFMEU and other powerful trade unions. Also bankrolling the Labor Party were the poker machine profits taken from its Canberra Club.

The program exposed substantial donations to the Greens from the CFMEU and the Electrical Trades Union which, some observers alleged, have been rewarded by the Greens' blocking of the Turnbull government's Australian Building and Construction Commission legislation.

### 4. Corporate and union donations favour the large, established parties

It has also been argued that corporate and union donations favour the large, established parties. It has been suggested that groups that intend to buy influence via donations are only likely to do so if the party to which they are contributing has a significant chance of achieving government.

Whatever their motivations, donation analysis demonstrates that corporations donate primarily to the Liberal Party and then to the Labor Party and that trade unions donate primarily to the Labor Party. Minor parties typically gain most of their private campaign funds through the donations of individual voters.

Critics argue that this pattern discriminates against the minor parties that are handicapped in delivering their positions in election campaigns through a relative lack of campaign funds.

In an opinion piece published in the Australian Review of Public Affairs in September 2007, former West Australian premier, Carmen Lawrence, stated, 'Easier access to unlimited private funds and uncapped expenditure entrench the interests of the major parties, deny electoral choice and reduce the competition of ideas; new parties and individuals simply cannot raise the money to run sufficiently visible campaigns to attract voters.'

In an opinion piece published in The Guardian on September 11, 2016, Warwick Smith argued that corporate interests use donations to the major parties to have them ignore issues the corporations want left off the political agenda. Minor parties, meanwhile, are starved of funds.

Smith wrote, 'Large donations to both the Liberal and Labor parties further marginalise minor parties who may seek to break the silence on policy issues that the corporates or elites have purchased. In Australia, the Greens are strong advocates of poker machine reform so donations that advantage the major parties over the Greens are still worth making for corporates who want this issue out of the spotlight.'

### 5. Foreign, corporate and union donations reduce the electorate's trust in Australia's political system

It has been claimed that the dominant role of corporate and trade union donations in party campaign funding, coupled with concern about foreign influence, is undermining faith in the Australian political system. It has been suggested that many voters believe that politicians are not motivated by the ideal of community service. Instead, it is believed, politicians are greedy and self-serving.

Part of this picture is the popular view that politicians want power for selfish reasons and will do the bidding of their campaign contributors in order to retain power.

In a comment published in the Australian Review of Public Affairs, former Western Australian premier, Carmen Lawrence stated, 'Australian Election Studies (2001) data show that almost half voters already believe that it is the preferences of big interests that determine policy, not the preferences of voters.'

Lawrence went on to explain further the manner in which this distrust of the operation of Australia's political system is created. Lawrence noted, 'Substantial campaign donations to the major parties by corporations and large organisations

such as unions and business foundations foster the perception (and perhaps the reality) that it is possible to buy privileged access to MPs and ministers and that this influence is in proportion to the amount of money donated.'

In an opinion piece published in *The Conversation* on June 2, 2016, Emeritus professor Marian Sawer, from the Australian National University, stated, 'Both political donations and the negative advertising these buy increase distrust in politicians and political parties.'

Greens Senator Lee Rhiannon has similarly stated, 'People are becoming increasingly cynical about the influence rich people and corporations are having on our political process.'

The 2017 Trust Barometer by Edelman, a group which conducts international attitude surveys, has documented an 'implosion of trust' where one in two countries (including Australia) believe the entire system is failing and harbour deep fears of immigration, globalisation and changing values.

The Edelman survey found that despite the narrow re-election of Malcolm Turnbull's Coalition government, Australians' trust in government plunged eight points last year to 37 (out of 100) - one of the sharpest falls of any country measured.

### **Arguments against banning foreign, corporate and union donations to political parties**

#### **1. Political campaigns are very expensive to run**

Commentators have noted that with the increasing expense of employing media advisers and paying for exposure in a variety of media outlets the cost of political advertising is increasing.

In 2013, Professor Sally Young of the Australian National University noted, '1969 was the last campaign that wasn't tailored mainly to TV. From 1972 onwards, the parties have focused both their "paid media" strategies (commercial advertising) and their "free media" (media management) activities upon TV. But in 2013, with fragmenting media audiences diminishing television's impact and audience reach, the major parties took a multi-faceted approach. While TV ads were still the major component of their communication strategies, these were supplemented by other forms of communication including both digital and one-to-one methods.'

The result of this diversification of campaign media outlets appears to have been swelling campaign costs. In Australia, political parties are not required to detail how they spend their campaign funds; however, the total expenditure figures that are released indicate the scope of the spending.

The federal government, followed closely by state governments, is often among the top one or two advertisers in Australia. In 2007 it was reported the New South Wales government spent more on advertising than McDonald's or Coca-Cola, with the investment continuing to grow.

Graeme Orr, electoral law academic at the University of Queensland, has claimed, 'Campaign expenditure no longer starts and ends in an election year, but is an ongoing and tightly orchestrated marketing exercise.'

The Coalition, for example, spent close to \$100 million on advertising in the 2004 election year, but over the period between 1996 and 2005 it spent almost \$700 million. In his book *The Law of Politics*, Orr noted that 'in relative terms, money politics in Australia is not too far behind America'.

The extent of this expenditure helps to explain why, despite frequent attempts to regulate campaign donations, parties are actually reluctant to do so. They believe they need large budgets to get their message out effectively. There is also concern that if there is a marked inequality in expenditure between the major parties then this will give the party that is able to spend the least a lesser chance of winning government.

In an opinion piece published in *The Conversation* on June 2, 2016, Emeritus professor Marian Sawer, from the Australian National University, stated, 'In Australia, the cost of television advertising and associated market research has driven political parties to chase ever-greater donations.'

#### **2. Limiting donations to individuals would dramatically reduce campaign funds**

According to analysis of Australian Electoral Commission disclosures, Australia's major political parties would lose the vast majority of high-value donations if only individuals on the electoral roll were allowed to donate.

In the 2014-15 financial year - the most recent available - the Liberals disclosed more than \$10,400,987 nationally in donations but only \$1,085,482 from individuals. Labor received \$7,193,902, only \$703,200 of which came from individuals. The Greens gathered \$1,842,649 but this would have been reduced to \$199,014 had they only received donations from individuals and the Nationals would have gone from \$613,233 down to zero dollars.

It is argued that if corporate and union donations were banned, political parties would find themselves unable to properly present their positions to the electorate and the quality of political debate and information would be reduced. Such a reduction, it is claimed, would undermine Australian democracy.

This trend has been developing for some time. In an analysis written by Carmen Lawrence and published in September 2007 by the *Australia Review of Public Affairs*, Lawrence noted, 'an increasing proportion of donations comes from large individual, corporate and institutional donors-so-called "plutocratic" financing-as opposed to "grass roots" sources such as membership dues and donations from party members and supporters. Analyses of party finances from 2001-02 indicate, for example, that the Liberal Party derived around 74 per cent of their private funding from corporate sources in that election year, a rise of approximately ten per cent from the previous election year (1998-99)...All the parties now rely heavily on private funding-approximately 80 per cent for the major parties, most of it spent on advertising and electioneering.'

One of the contributory factors to this trend is that membership of Australia's political parties has declined over the years, so they are less able to raise money from membership fees. Parties do receive some public funding, but not enough to pay for election campaigns. Instead, they claim they have to bolster their coffers by appealing to the public and corporations to donate funds.

The dilemma was outlined by Professor Graeme Orr from the University of Queensland. Professor Orr stated, 'Political campaigns and organisations need resources. Here lies a central democratic conundrum: how to regulate to improve political integrity and equality, without unduly restraining political liberty and activity?'

#### **3. Restricting donations to individuals would favour parties with wealthier support bases**

There is concern that precluding unions from making donations to political parties would damage labour-based parties, such as the Labor Party. According to this line of argument, conservative parties, such as the Liberal Party, have a larger support base among wealthy elites as well as corporations. If unions and corporations were prevented from making campaign donations, then, it is predicted, the conservative parties would attract more funding from their wealthy private supporters. With a less wealthy support base, the Labor Party and others would be disadvantaged.

Australian Council of Trade Unions president Ged Kearney has indicated that unions would oppose a move against their right to donate, saying 'a democracy where only the wealthiest individuals and formal political parties are allowed to actively participate is no democracy at all'.

The point has been made in a more subdued manner by Law professor Graeme Orr of the University of Queensland. Professor Orr has stated, 'The favoured conservative position is to ban organisational contributions to parties...It's a model that would benefit the Liberal Party, which embraces a network of well-heeled individual donors. And within the party, it would further empower MPs in well-off electorates.'

Gina Rinehart, the chair of Hancock Prospecting and Australia's wealthiest woman has been cited as an example of a private individual who makes large and regular contributions, in a variety of forms, to the Coalition. In October, 2013, it was reported that Ms Hancock had donated \$50,000 to Agriculture Minister Barnaby Joyce's election campaign. The same news report indicated that at least nine Coalition MPs have declared in their register of interests that Ms Rinehart has supplied free travel, hospitality and accommodation.

The Labor Party already claims to be under-resourced relative to the Coalition. In the three years leading up to the 2013 election, the Coalition has revealed that it has received \$220 million compared to the Labor Party's \$170 million. In an article published in *The Conversation* on August 26, 2013, it was stated, 'When Labor is out of office, or sure to lose it, it encounters a significant fundraising disadvantage and returns to depend on union contributions.'

#### 4. An effective democracy depends upon the right of 'political communication'

In 2012, in a case brought by the union movement, the High Court overturned a New South Wales government law restricting donations to individuals on the basis that it represented a breach of the constitution's implied right of 'political communication'.

The High Court endorsed a previous ruling which had found there is a need 'for there to be a free flow of political communication in order that electors can form judgments. Mason CJ observed that freedom of communication could not be understood as confined to communications between electors and elected representatives, candidates or parties. It cannot be so confined because the efficacy of representative government depends upon free communication between all persons and groups in the community. An elector's judgment on many issues will turn upon free public discussion, often in the media, of the views of all those interested.'

The High Court thus ruled that groups as well as individuals should be able to make financial contributions which promoted democratic debate and thus that unions could not be barred from making campaign contributions to political parties. Others who have argued for the right of unions and corporations to make campaign donations also claim that those who make financial contributions are not simply acting out of self-interest, but are acting in what they believe is in the best interests of the nation.

David Fawcett, a South Australian Liberal Member of the House of Representatives, has stated, 'There are many people-businesses, corporations and private individuals-who feel passionately enough about wanting to see government in the flavour and character that suits their own ideology, but it is not about their individual interests; it is about the interests of the nation-and that is not just true for the coalition.'

A similar claim was made by Tim Ayres, the New South Wales secretary of the Australian Metal Workers Union (AMWU). Mr Ayres stated, 'The system fails without activist citizens and organisations engaging and taking responsibility for political debate and action. That is why banning donations would stifle democracy... It is fundamental to all of our freedom that everyone can play on the field of democracy.'

It has been argued that preventing unions from making political donations denies working class people one of their few available opportunities to influence governments. In an opinion piece published in *Overland* on September 14, 2016, Chris O'Regan, a Brisbane unionist stated, 'To deny unions the most direct mode of collective political participation - donations and campaign expenditure - doesn't advance the cause of working people, who currently have little relationship to politicians and little chance of shaping policies that govern their lives.'

#### 5. Bans on foreign donations to political parties are unenforceable

Banning foreign donations would not automatically end the practice. Many companies have complicated ownership structures that include branch companies located in other countries such as Australia. Therefore these companies could potentially find loopholes in the law by donating through local affiliates. As Professor George Williams, Dean of Law at the University of New South Wales, and a member of Civil Liberties Australia, noted in a comment published on September 5, 2016, 'Foreign interests can also avoid identification by donating via front organisations or third parties.'

Further, if the aim is to reduce foreign influence, merely banning donations from foreign companies may not achieve this. Australians with close overseas connections or who are dual citizens could continue donating. Minshen Zhu, the businessman who paid Senator Dastyari's debt, is a Chinese-Australian with reportedly has strong connections with the Chinese government.

Another reason it is impossible to know the extent of political donations is the use of 'associated entities'. These are basically fundraising organisations for political parties; they invest money and receive donations on behalf of the party. Each year, they need to report to the AEC how much they made/received, but they don't have to break this figure down to specify donations and donors, meaning that corporations et al can remain anonymous. Associated entities are major contributors to political funds, accounting for 40% to 90% of revenue, depending on the year.

Donating through 'associated entities' allows foreign and local corporations to support the campaign funds of Australian political parties without disclosing their 'gifts'.



### Further implications

Few governments or oppositions in Australia have shown any real enthusiasm for regulating political donations. Time and again, attempts at reform have appeared tokenistic and essentially stalling devices.

On October 15, 2015, the Senate referred an inquiry into political donations to the Joint Standing Committee on Electoral Matters. The terms of reference of this inquiry referred to previous recommendations the Standing Committee had made in 2011. In four years there has been no government response to the 2011 recommendations.

Understandably the Committee chose not to consider the matter further without a government response to its previous work. No response was received before the dissolution of the Senate and the House of Representatives prior to the 2016 elections.

With a range of significant issues having emerged from the July 2 poll - including the Australian Electoral Commission's administration of the election, the use of campaign material and messages purporting to be from Medicare, and the influence of campaign donations - separate spinoff inquiries are likely to follow. This will mean another inquiry into electoral funding.

Senator Sam Dastyori's resignation as manager of opposition business in the Senate and shadow spokesman for consumer affairs, after it was revealed he may have broken Labor Party rules on political donations by allowing Chinese donors to make payments on his behalf for travel and legal bills makes an inquiry into political donations all but inevitable.

Following Dastyori's resignation New South Wales Greens senator Lee Rhiannon and South Australian senator Nick Xenophon put a motion before the senate urging it to back a ban on foreign donations. Just before the motion was put, the Labor opposition added its name.

What will come of this of this call remains to be seen. Though a ban on foreign donations has long been supported by Prime Minister Malcolm Turnbull, support for the call across the Liberal Party seems shaky. Liberal Party director Tony Nutt has warned of potential dangers and difficulties in seeking to ban foreign political donations while Foreign Affairs Minister and Deputy Liberal Party Leader, Julie Bishop, has stated, 'There are many instances of donations being made by naturalised citizens, by dual citizens, by companies that are incorporated in Australia. And like other businesses across Australia they can choose to make a donation to a political organisation...'

Any review of Australia's system of political donations would need to be more wide ranging than one which addressed only foreign donations. Senator Xenophon has drafted a further motion calling for a full-blown inquiry into the donations system. Xenophon has stated, 'We need to have a root-and-branch review of political funding and donations in this country.'

Areas which would need to be addressed include full public disclosure of donations (both corporate and individual); timely and perhaps on-going disclosure of donations; a cap on the size of donations and parties' use of 'associated entities' to disguise from whom they receive donations.

A total ban on corporate or union donations is unlikely and has already been rejected by one High Court ruling. What might be considered is a ban on particular types of corporate funding from groups which are deemed to have a negative social impact, such as donations from the gaming industry. A ban of this kind has been put in place in New South Wales.

However, what appears to be occurring is that, rather than real enthusiasm for reform, each of the major political parties is using political donations as a stick with which to beat the other. The Coalition's current focus on banning corporate and union donations appears to be aimed at wrong-footing the Labor Party which would not be prepared to accept a ban on union donations. Each party can safely assert the need to limit or ban foreign donations (it plays well into the growing xenophobia in Australia); however, their genuine support for taking such action remains questionable. Even the Greens and the Xenophon parties' attempted reforms may in part be motivated by the fact that the current system favours the major parties.

It will be interesting to see how long it takes whichever party is then in power to respond to the next set of recommendations from the Standing Committee on Electoral Matters.

### Newspaper items used in the compilation of this issue outline

AGE, September 10, 2016, page 24, background / investigative by Nick O'Malley et al, 'High stakes, hard cash and soft power'. [↗](#)

AGE, September 10, 2016, page 25, background / comment by Philip Wen, '"In time, this world will be China's"'. [↗](#)

AGE, September 8, 2016, page 18, comment by Peter Martin, 'Small gifts, big trouble'. [↗](#)

AGE, September 8, 2016, page 5, background (photo of Huang Xiangmo) by Philip Wen, 'Mouthpiece who helped senator reach millions'. [↗](#)

AGE, September 8, 2016, page 1, news item (photo) by J Massola, 'Dastyari quits' (see also pages 4-5 items, incl comment by M Gordon, 'Dastyari pays price, now for big picture').

AUST, September 7, 2016, page 13, editorial, 'Shorten fails the Dastyari test'. [↗](#)

AUST, September 7, 2016, page 4, comment (photos, other items) by James Jeffrey, 'Dasher delivers a train wreck right on time'. [↗](#)

AUST, September 7, 2016, page 4, comment by Greg Sheridan, 'Slammin' Sam only option for Shorten'. [↗](#)

AGE, September 7, 2016, page 12, editorial, 'Political donation laws must be cleaned up'. [↗](#)

AGE, September 7, 2016, page 5, comment by Michael Gordon, 'Shorten stumbles, Dastyari crashes'. [↗](#)

AUST, September 6, 2016, page 13, editorial, 'Shorten must find answers about Dastyari's dealings'. [↗](#)

AUST, September 5, 2016, page 10, comment by Philip Hudson, 'Dastyari could come a lot cleaner on bill payment'. [↗](#)

AUST, September 15, 2016, page 15, editorial, 'US and China at odds over "soft power" donations'. [↗](#)

AGE, September 18, 2016, page 24, editorial, 'Donation dollars make no sense'. [↗](#)

AGE, September 30, 2016, page 16, editorial, 'Robert's disgrace adds to graft law reform case'. [↗](#)

AUST, October 7, 2016, page 14, comment by Richard Alston, 'Force taxpayers to fund system'. [↗](#)

AGE, October 3, 2016, page 14, comment by George Williams, 'Canberra needs its own anti-corruption watchdog'. [↗](#)

