

Disclosure of political donations and electoral expenditure



The Centre for
Public Integrity

Proposal Summary

Federal political donations and electoral expenditure are largely hidden from public view in Australia. Donations under \$14,000 need not be disclosed, and reporting on expenditure is limited.

Disclosures are delayed so that the public will not be aware of political donations contributing towards the May 2019 federal election until February 2020.

The need for improved disclosure of donations and expenditure

- Donations threshold too high
- Expenditure disclosure limited
- Disclosures delayed for months after election
- Disclosures opaque and difficult to understand, with no categorising or aggregating of amounts

State models

Thresholds

NSW, Queensland, Victoria and the ACT all have a disclosure threshold of \$1000, where gifts and loans over \$1000 must be reported to the electoral commission. The federal threshold is currently \$14,000.

Definitions

NSW is the only state to define political donations as separate to gifts or disposition of property. The definition allows for the inclusion of interest in property or companies, membership fees over \$2000, money received at party fundraisers, transfers of money from other state or federal branches of the party, and any contribution that is used for electoral expenditure. The full definition is provided below for reference (Appendix 1).

Electoral expenditure is defined in Queensland as expenditure that advocates for or against the election of a candidate or party, if it is spent on a specified list of advertising and promotion items in the legislation. NSW has a slightly broader definition as it includes expenditure for promoting or opposing a party or candidate, or influencing voting at an election. NSW also has a specified list of expenditure items. The Commonwealth legislation provides the broadest and most useful definition, as expenditure incurred for the dominant purpose of creating or communicating electoral matter, meaning matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election. The full definition is provided below for reference (Appendix 2).

Timeliness

Queensland has the shortest disclosure period. Disclosures are due within 7 days of a donation being made. Victoria also has a short disclosure period, where donations are required to be reported within 21 days. Both Victoria and Queensland legislation require publication of disclosures by the electoral commission as soon as practical after disclosures are received.

Third parties

Third parties are required to disclose donations if they spend over a certain threshold of electoral expenditure. In Victoria this is \$4030 in a financial year and in NSW this is \$2000 during the capped expenditure period. Political campaigners are defined in the Commonwealth legislation as those spending more than \$100,000 in a financial year on electoral expenditure. How electoral expenditure is defined, and what third party threshold is set are therefore the key issues for regulation of third party disclosures.

Recommendations

1. Low threshold to report all individual donations over \$1000, or aggregated donations of \$3000 over 3 years, to political parties, candidates, associated entities and third parties
2. Broad definition of 'donation' to include income from party fundraisers, corporate sponsorship of business forums, membership fees over \$2000 per year, and any gift that is spent on electoral expenditure (see section 5 of the *Electoral Funding Act 2018* (NSW))
3. Definition of electoral expenditure as expenditure for the dominant purpose of influencing voting at an election (see section 287AB of the *Electoral Act 1918* (Commonwealth))
4. Real time disclosure of donations and expenditure, plus quarterly reports providing categorisation and aggregates of donations and expenditure
5. A single dedicated campaign account to facilitate auditing and enforcement
6. Related companies to be categorised accordingly, and aggregated for any donation or expenditure caps (see for example section 9(8) and section 24(6) of the *Electoral Funding Act 2018* (NSW))
7. Third party donations only need to be disclosed when the donation contributes to electoral expenditure
 - a. Third parties classified as those with electoral expenditure of an amount that would be significant in influencing voting (for example more than \$5000 in an election period, or \$50,000 in a financial year).
8. Enforcement through strengthened and resourced enforcement division within Australia Electoral Commission

Appendix 1 – definition of political donation in Section 5 of the *Electoral Funding Act 2018* (NSW)

(1) For the purposes of this Act, a **political donation** is:

(a) a gift made to or for the benefit of a party or a group of candidates, or

(b) a gift made to or for the benefit of an elected member, the whole or part of which was used or is intended to be used by the elected member:

- (i) solely or substantially for a purpose related to an election or to the elected member's duties as an elected member, or*
- (ii) to enable the elected member to make, directly or indirectly, a political donation or to incur electoral expenditure, or*
- (iii) to reimburse the elected member for making, directly or indirectly, a political donation or incurring electoral expenditure, or*

(c) a gift made to or for the benefit of a candidate, the whole or part of which was used or is intended to be used by the candidate:

- (i) solely or substantially for a purpose related to an election, or*
- (ii) to enable the candidate to make, directly or indirectly, a political donation or to incur electoral expenditure, or*
- (iii) to reimburse the candidate for making, directly or indirectly, a political donation or incurring electoral expenditure, or*

(d) a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:

- (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure, or*
- (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.*

(2) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function (being an amount that forms part of the gross proceeds of the venture or function) is taken to be a gift for the purposes of this section.

(3) An annual or other subscription paid to a party by:

- (a) a member of the party, or*
- (b) a person or entity (including an associated entity or industrial organisation) for affiliation with the party, is taken to be a gift to the party for the purposes of this section.*

Note. Unless details of any such subscription are required to be disclosed because it is a reportable political donation of or exceeding \$1,000, the total amount of subscriptions and other details are required to be disclosed under section 19 (4).

(4) The following dispositions of property are taken to be a gift for the purposes of this section:

- (a) a disposition of property to a NSW branch of a party from the federal branch of the party,*
- (b) a disposition of property to a NSW branch of a party from another State or Territory branch of the party,*
- (c) a disposition of property from a party to another party.*

Note. Any such disposition will be a political donation that is required to be disclosed and subject to the caps on political donations under Part 3. Any such donation paid into (or held against the assets of) a federal election campaign account is not subject to the cap on donations—see section 24 (2).

(5) Uncharged interest on a loan to an entity or other person is taken to be a gift to the entity or person for the purposes of this section. Uncharged interest is the additional amount that would have been payable by the entity or person if:

- (a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind, and*
- (b) any interest payable had not been waived, and*
- (c) any interest payments were not capitalised.*

(6) A payment under Part 4 (Public funding of State election campaigns) or Part 5 (Administrative and New Party policy development funding) is not a political donation.

Note. Even though an electoral funding payment to a candidate is not a donation required to be disclosed, the amount is required to be paid into the separate campaign account that is established for donations to and electoral expenditure by the candidate—see section 76 (3).

(7) However, if any part of a gift that is not a political donation pursuant to subsection (1) (b)–(d) is subsequently used to incur electoral expenditure, that part of the gift becomes a political donation.

(8) For the purposes of this Act, a political donation made to or for the benefit of a party, third-party campaigner or associated entity is a **political donation for a local government election** if:

(a) in relation to a donation to a party—the donation is paid into (or held as an asset of) the local government campaign account of the party under Subdivision 1 of Division 5 of Part 3, and

(b) in relation to a donation to a third-party campaigner or associated entity—the third-party campaigner or associated entity establishes that the donation was made solely for the purposes of a local government election campaign.

Appendix 2 – definition of electoral expenditure in Electoral Act 1918 (Cth.) Section 287AB

(1) Electoral expenditure means expenditure incurred for the dominant purpose of creating or communicating electoral matter, except to the extent that:

(a) the expenditure is, or is to be, paid or reimbursed by the Commonwealth (except under Division 3 (election funding)) to or in relation to a person who is or was a member of the House of Representatives, a Senator or a Minister, because that person is or was such a member, Senator or Minister; or

(b) the expenditure is incurred by a person or entity (the service provider):

(i) in providing a communication service or communication platform that is used to create or communicate electoral matter; or

(ii) in providing a service for another person or entity that engaged the service provider, on a commercial basis, to create or communicate electoral matter.

Note 1: For example, expenditure incurred in relation to the communication of electoral matter for which particulars are required to be notified under section 321D is electoral expenditure.

Note 2: Expenditure by a person who creates matter that is covered by an exception under subsection 4AA(5) is not electoral expenditure. However, as each creation or communication of matter is treated as separate matter under subsection 4AA(2), expenditure incurred by another person who communicates the same matter for the dominant

Authorised Version

(1) Electoral matter means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election (a federal election) of a member of the House of Representatives or of Senators for a State or Territory, including by promoting or opposing:

(a) a political entity, to the extent that the matter relates to a federal election; or

(b) a member of the House of Representatives or a Senator.

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).

(2) For the purposes of subsection (1), each creation, recreation, communication or recommunication of matter is to be treated separately for the purposes of determining whether matter is electoral matter.

Note: *For example, matter that is covered by an exception under subsection (5) when originally communicated may become electoral matter if recommunicated for the dominant purpose referred to in subsection (1).*

Rebuttable presumption for matter that expressly promotes or opposes political entities etc.

(3) Without limiting subsection (1), the dominant purpose of the communication or intended communication of matter that expressly promotes or opposes:

- (a) a political entity, to the extent that the matter relates to a federal election;*
 - (b) a member of the House of Representatives or a Senator, to the extent that the matter relates to a federal election;*
- is presumed to be the purpose referred to in subsection (1), unless the contrary is proved.*

Matters to be taken into account

(4) Without limiting subsection (1), the following matters must be taken into account in determining the dominant purpose of the communication or intended communication of matter:

- (a) whether the communication or intended communication is or would be to the public or a section of the public;*
- (b) whether the communication or intended communication is or would be by a political entity or political campaigner (within the meaning of Part XX);*
- (c) whether the matter contains an express or implicit comment on a political entity, a member of the House of Representatives or a Senator;*
- (d) whether the communication or intended communication is or would be received by electors near a polling place;*
- (e) how soon a federal election is to be held after the creation or communication of the matter;*
- (f) whether the communication or intended communication is or would be unsolicited.*

Exceptions

(5) Despite subsections (1) and (3), matter is not electoral matter if the communication or intended communication of the matter:

- (a) forms or would form part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or*
- (b) is or would be by a person for a dominant purpose that is a satirical, academic, educative or artistic purpose, taking into account any relevant consideration including the dominant purpose of any other communication of matter by the person;*
- (c) is or would be a private communication by a person to another person who is known to the first person; or*
- (d) is or would be by or to a person who is a Commonwealth public official (within the meaning of the Criminal Code) in that person's capacity as such an official; or*
- (e) is or would be a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration; or*
- (f) occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.*

Note: *A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act).*

References

Electoral Funding Act 2018 (NSW) s. 5

<https://www.legislation.nsw.gov.au/#/view/act/2018/20/part2/sec5>

Commonwealth Electoral Act 1918 (Cth.) s. 287AB

<https://www.legislation.gov.au/Details/C2019C00103>

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon David Ipp AO QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC.

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