



Case Study: The resources and energy industry

*'Equality of opportunity to participate in the exercise of political sovereignty is an aspect of the representative democracy guaranteed by our Constitution.'*¹

Summary

At a time when public trust in our democracy is low – undermined by a perceived lack of integrity in Australia's political and bureaucratic processes, weak laws regulating the flow of money and undue influence in government – reform is needed to help strengthen confidence and trust in liberal democracy and the rule of law.

One of the key reasons for which citizens doubt that government decisions are made in their best interests is the fact that undue influence is able to be bought by well-resourced individuals and groups via the making of political donations and disclosable payments.

In order to promote the transparency of political donations and disclosable payments in Australia, we have analysed data disclosed over the period 1999-2019 to the Australian Electoral Commission (**AEC**) in accordance with the requirements of the *Commonwealth Electoral Act 1918 Cth* (**Electoral Act**).

Our analysis categorised this data by industry and concluded that the largest single industry contributor over the period studied was the resources and energy industry, which disclosed a total of \$136,757,553 in payments over the period (according to donor-reported data).

We found that over the 20 years studied, donations peaked in 2019 at \$ 84,335,967: this peak is owed entirely to donations made by companies owned by Clive Palmer to his United Australia party, which donated \$ 83,493,606 – or 99% of that year's donations.² Had it not been for the Palmer donations, the peak would have occurred in 2014, at \$25,716,524: this is almost three times the next-highest year on record (2015, at \$9,374,462) and is potentially owed to lobbying efforts to repeal the carbon tax.

Of the major parties, the Liberal Party received a total of \$13,320,195, the Labor Party received \$4,884,458 and the Nationals received \$1,862,546.

We also found that since the introduction of political campaigner provisions into the Electoral Act in 2018,³ political campaigners including Coal21 – now known as LET

¹ *McCloy v New South Wales* [2015] HCA 34, 45 (per French CJ, Kiefel, Bell and Keane JJ).

² This total includes donations by Mineralogy Pty Ltd, Queensland Nickel Sales Pty Ltd and Waratah Coal Pty Ltd.

³ Via provisions in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth).

Australia –, the Minerals Council of Australia, the Business Council of Australia and the Construction Forestry Maritime Mining and Energy Union National Office have received a total of \$39,675,440 in disclosable payments. Many of the entities making these payments have long-abandoned the practice of making payments directly to political parties and promote this as meaning that they do not, in fact, make political donations; however, insofar as the *raison d'être* of political campaigners is the reason for which payments made to them are disclosable under the Electoral Act, there is a legitimate question to be asked about the ethical implications of an entity publicly vaunting its policy of not making political donations (presumably in an effort to show that it is not unduly influencing politics), at the same time as it is making substantial payments to bodies which are treated as political campaigners under electoral law. This is particularly relevant in the case of payments made to the Minerals Council and the and Construction Forestry Maritime Mining and Energy Union National Office, which themselves make donations to political parties.

The enormous amounts donated by a sector whose existence depends on the issuing of government permits is highly problematic for public trust in the democratic process. After all, impartiality in decision-making must not only exist but also be *seen* to exist.

Our analysis makes a strong case for reform of the regulation of donations, including the introduction of donations caps and strengthened disclosure requirements:

Donations caps

- Phase in to set donation cap at \$2000 per annum per candidate and \$5000 per party, from a single person or entity (aggregated);
- An exclusion for membership, limited to \$1000; and
- Private funding capped at around 50% of total party funding

Donations disclosure regulations

- A reduction in the reporting threshold for donations, with individual donations over \$1,000 and aggregated donations of \$3,000 over 3 years to political parties, candidates, associated entities, third parties and political campaigners being required to be disclosed;
- A broadening of the definition of 'donation' to include income from party fundraisers, corporate sponsorship of business forums, membership fees over \$1,000 per year, and any gift that is spent on electoral expenditure (see section 5 of the *Electoral Funding Act 2018 (NSW)*);
- Real time disclosure of donations, plus quarterly reports providing categorisation and aggregates of donations;
- A single dedicated campaign account to facilitate auditing and enforcement;
- 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)*); and
- Enforcement through a strengthened and appropriately resourced enforcement division within the Australia Electoral Commission.

Australia's resources and energy industry

Resources activity occurs Australia-wide, as well as in Australian waters, with over 300 operational mines and 2200 quarries spread across the continent.⁴

The resources sector has a 62% share of Australia's exports,⁵ and accounts for approximately 20% of business investment.⁶ As at 2018, the resource sector together with mining services made up over 8% of Australia's economy.⁷

The Productivity Commission has described the evolution of the sector in the following terms:

From the mid-2000s, Australia experienced an unprecedented resources investment boom. Rapid industrialisation and urbanisation in emerging economies drove a spike in global prices for commodities used in steel and energy production, leading Australian producers to expand production capacity, particularly in coal, iron ore and liquefied natural gas.

Investment peaked in 2012-13 at \$102 billion, about ten times the level of the early 2000s [...] Since then, it has wound down as new projects have transitioned into production. Exploration expenditure has also decreased — from a peak of \$8.4 billion in 2012-13 to \$3.6 billion in 2018-19. And at October 2019, the pipeline of committed major projects — about \$30 billion worth — while still large, was about one-tenth of the October 2012 level.⁸

The industry's big donors

Figure 1 sets out the top ten entities by total amount disclosed to have been donated over the period 1999-2019.

In determining the top 10 donors, companies belonging to the same corporate group or having the same donor identification number have been classed together and their donations counted towards a single total.⁹

⁴ Productivity Commission Draft Report, *Resources Sector Regulation* March 2020 <https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft-overview.pdf> accessed 15 November 2020.

⁵ Reserve Bank of Australia, *Composition of the Australian Economy Snapshot* <https://www.rba.gov.au/snapshots/economy-composition-snapshot/pdf/economy-composition-snapshot.pdf?v=2020-11-02-14-20-59> accessed 2 November 2020.

⁶ Heath, A., Reserve Bank of Australia, *Australia's Resource Industry – A Look into the Crystal Ball* 5 June 2019 <https://www.rba.gov.au/speeches/2019/sp-so-2019-06-05.html> accessed 3 November 2020.

⁷ Department of Industry, Science, Energy & Resources, *The Australian resources sector - significance and opportunities* < <https://www.industry.gov.au/data-and-publications/australias-national-resources-statement/the-australian-resources-sector-significance-and-opportunities> > accessed 10 November 2020

⁸ Above n 4.

⁹ Mineralogy includes Mineralogy, Mineralogy Pty Ltd and Mineralogy Pty Limited; donations attributed to Mineralogy Pty Ltd have been counted towards the total donations made by Mineralogy Pty Ltd, on the basis that both have the same donor identification number (3255) and ASIC has no record of a company named "Minerology Pty Ltd". Queensland Nickel includes Queensland Nickel Pty Ltd and Queensland Nickel Sales Pty Ltd. Woodside includes Woodside, Woodside Energy, Woodside Energy Limited, Woodside Energy Ltd.

Santos includes Santos, Santos Centre, Santos GLNG, Santos Limited and Santos Ltd.

Figure 1: Top 10 entities making disclosable payments over the period 1999-2019

Entity	Amount
1. Mineralogy	\$98,570,579
2. Queensland Nickel	\$21,081,433
3. Woodside	\$1,959,000
4. Santos	\$1,544,465
5. Aus Gold Mining Group	\$1,119,230
6. WMC Ltd	\$755,000
7. Australian Gypsum Industries	\$555,777
8. Trepang Services Pty Ltd atf Trepang Services Unit Trust	\$520,000
9. Western Areas NL	\$515,000
10. Minara Resources Pty Ltd	\$515,000

Both Mineralogy and Queensland Nickel are owned by Clive Palmer, with Mineralogy's interests in iron ore and Queensland Nickel's in nickel and cobalt. Minara Resources – which is wholly owned by Glencore – also produces nickel and cobalt,¹⁰ while Western Areas produces nickel.¹¹ Woodside describes itself as Australia's largest natural gas producer,¹² while Santos describes itself as Australia's biggest domestic gas supplier.¹³ The Aus Gold Mining Group (now known as AusGold) works in gold exploration and development.¹⁴ Before its delisting in 2005, following a takeover by BHP, WMC's interests were in mining and fertiliser.¹⁵ Australian Gypsum Industries is involved in the distribution of roofing, siding and insulation materials,¹⁶ while Trepang provides accommodation for mobile workforces operating out of Darwin.¹⁷

2019 resource and energy sector donors

Because some of the biggest donors over the period 1999-2019 either no longer exist (WMC), or no longer make direct donations to political parties (Minara, since 2014 and Western Areas, since 2013¹⁸), Figure 2 shows payments to political parties made by the resources and energy sector in 2019, together with how the payments were directed:

¹⁰ Minara, *Who we are at a glance* <https://www.minara.com.au/who-we-are/at-a-glance> accessed 19 December 2020.

¹¹ Western Areas, *Who we are* <<https://www.westernareas.com.au/who-we-are>> accessed 19 December 2020.

¹² Woodside, *About us* < <https://www.woodside.com.au/about-us>> accessed 19 December 2020.

¹³ Santos, *About us* <https://www.santos.com/about-us/> accessed 19 December 2020.

¹⁴ AusGold, < <http://www.ausgoldlimited.com/site/content/>> accessed 20 December 2020.

¹⁵ BHP's Bidder Statement to acquire shares in WMC Resources Ltd, 21 March 2005.

¹⁶ Bloomberg, company profile of Australian Gypsum Industries <https://www.bloomberg.com/profile/company/9731241Z:AU> accessed 7 January 2020.

¹⁷ Trepang Services, < <https://trepang.com.au/>> accessed 20 December 2020.

¹⁸ Minara, which is wholly owned by Glencore, has not donated since 2014 (Glencore itself has not donated since 2018). Glencore's Code of Conduct states that "We do not permit any of our funds and resources to be used as a contribution towards a political campaign, political party, political candidate or any a liated [sic] organisations. According to Western Areas' Code of Conduct, "Bribery is strictly prohibited by the Company and by bribery and anti-corruption laws. The Company prohibits the making of payments or payments in kind (including gifts or personal favours) to influence any person, including a Government official to award business or business opportunities to the Company". It specifically prohibits the use of corporate funds to

Figure 2: 2019 disclosable payments by entity

Disclosing entity	Amount	Recipients
Mineralogy	\$83,493,606	100% to UAP
Minerals Council of Australia	\$33,378,634	69% to ALP, 31% to Liberal
Australian Gypsum Industries	\$13,300,000	39% to Liberal, 61% to National
Aus Gold Mining Group	\$888,888	100% to Liberal
Santos	\$63,280	54% to ALP, 27% to Liberal, 19% to National
Waratah Coal (wholly owned subsidiary of Mineralogy)	\$42,188	100% to UAP
Woodside	\$40,058	50% to ALP, 50% to Liberal
Adani	\$32,616	100% to Liberal
Aus Gold Exchange	\$25,000	100% to Liberal
Origin	\$25,000	100% to ALP
Queensland Nickel	\$20,000	100% to UAP
Mineral Resources	\$53,449	42% to ALP, 42% to Liberal, 16% to National Party
The trustee for St Baker Family Trust	\$55,000	70% to ALP, 30% to National Party

Donors' attitudes to donating

While the returns lodged by the entities listed in Figure 2 do not permit identification of the nature of their disclosed payments, we note that a number of them have policies prohibiting the making of political donations.

Santos's Code of Conduct prohibits the making of any cash donation to a political party on behalf of Santos, as well as the provision of any facilitation payments or benefits that could be construed as a bribe to a government body.¹⁹

According to Woodside, that organization "regularly engages with governments of countries where we are active. We believe that the exchange of information and views is essential to mutually-informed decision making."²⁰

Origin's Anti-bribery and Corruption policy states that it "does not make direct political donations to political parties", and that it allows employees of the company to attend functions or events organised by a political party and requiring financial contribution or

pay money or give anything of value to any political party, official of a political party or candidate for political office in order to influence them to act or fail to act in any official capacity". We note that Santos and Woodside also have policies prohibiting the making of political donations, but given that they provided returns disclosing payments to parties in 2019 and it is impossible to determine the nature of those payments, they have not been included in this list.

¹⁹ Santos, *Code of Conduct* <https://www.santos.com/wp-content/uploads/2020/02/code-of-conduct-1.pdf> accessed 19 December 2020.

²⁰ Woodside, *Political Contributions* <https://www.woodside.com.au/sustainability/working-openly/political-contributions> accessed 19 December 2020.

payment only where "the function or event is relevant to Origin's activities and any amount payable is not disproportionately above the value of the event."²¹

The Anti-bribery and Corruption policy of Mineral Resources commits to "uphold appropriate controls around political donations", and states that the company will not "directly or indirectly [...] seek to improperly influence the decisions of a public official in any country [or] give or receive benefits [...] where the purpose of the provider is to improperly influence a decision or obtain an illegitimate commercial advantage".²² Its Code of Conduct contains the following commitment:

MRL will only participate in political activities in an ethical and legal way. We respect every country's political system and processes and do not favour any political party or individual. We may contribute to public debate on issues which impact our business. In our dealings with government officials, we ensure that our processes are fair and transparent.²³

We have been unable to locate any ethical guidelines on the making of political donations published by Mineralogy, Queensland Nickel, Waratah Coal, Adani, Aus Gold Mining Group, Aus Gold Exchange, Australian Gypsum Industries or the Trustee for the St Baker Family Trust.

Who benefited from disclosable payments?

Figure 3 sets out the parties which benefited from disclosable payments made by the resources and energy industry over the period 1999-2019. The donations received by Clive Palmer's United Australia Party and Palmer United dwarf those received by any other group – indeed they amount to more than 19 times the total donations received by the Liberal Party of Australia (which, after the Palmer parties, benefited most).

Of the major parties, the Liberal Party received a total of \$13,320,195, the Labor Party received \$4,884,458 and the Nationals received \$1,862,546.

Figure 3: Recipients of resource and energy sector donations 1999-2019

Recipient	Amount
United Australia Party	\$116,239,854
Liberal Party of Australia	\$5,872,826
Liberal Party (W.A. division) Inc	\$2,938,300
Australian Labor Party (ALP)	\$2,600,023
Liberal Party of Australia (S.A. Division)	\$1,863,323
Liberal National Party of Queensland	\$1,325,124
Australian Labor Party (Western Australian Branch)	\$708,350

²¹ Origin, *Anti-bribery and Corruption Policy* https://www.originenergy.com.au/content/dam/origin/about/investors-media/documents/202006_antibribery_and_Corruption_policy_external.pdf accessed 19 December 2020.

²² Mineral Resources, *Anti-bribery and Corruption Policy* <<https://s3.ap-southeast-2.amazonaws.com/assets.mineralresources.com.au/app/uploads/2020/07/01111005/MRL-FI-POL-0019-MRL-Anti-Bribery-and-Corruption-Policy.pdf>> accessed 19 December 2020.

²³ Mineral Resources, *Code of Conduct* <https://s3.ap-southeast-2.amazonaws.com/assets.mineralresources.com.au/app/uploads/2020/04/14143226/Code-of-Conduct_200410-1.pdf> accessed 19 December 2020.

National Party of Australia (WA) Inc	\$644,777
National Party of Australia	\$605,750
National Party of Australia (Queensland)	\$521,000
Australian Labor Party (N.S.W. Branch)	\$391,200
Australian Labor Party (Victorian Branch)	\$379,010
Liberal Party of Australia NSW Division	\$366,500
Australian Labor Party (Northern Territory) Branch	\$352,500
Country Liberals (Northern Territory)	\$340,000
Lib-Vic	\$257,713
Australian Labor Party (State of Queensland)	\$224,500
Lib-Tas	\$210,000
Australian Labor Party (South Australian Branch)	\$200,000
Family First Party	\$100,000
National Party of Australia - N.S.W.	\$79,017
Liberal Party of Australia - Queensland Division	\$66,409
Federal Labor Business Forum (ALP-Nat)	\$55,000
The Free Enterprise Foundation	\$45,000
Liberal Party of Australia (W.A Division) Inc	\$40,000
Free Enterprise Foundation	\$35,000
Australian Labor Party (ACT Branch)	\$28,875
Forward Brisbane Leadership	\$27,500
Liberal - Curtin Liberal Federal Campaign (WA)	\$25,000
Free Enterprise Foundation	\$18,000
Katter's Australian Party	\$17,000
Australian Greens Tasmanian Branch	\$15,000
Liberal Party of Western Australia	\$15,000
National Party of Australia - Victoria	\$12,002

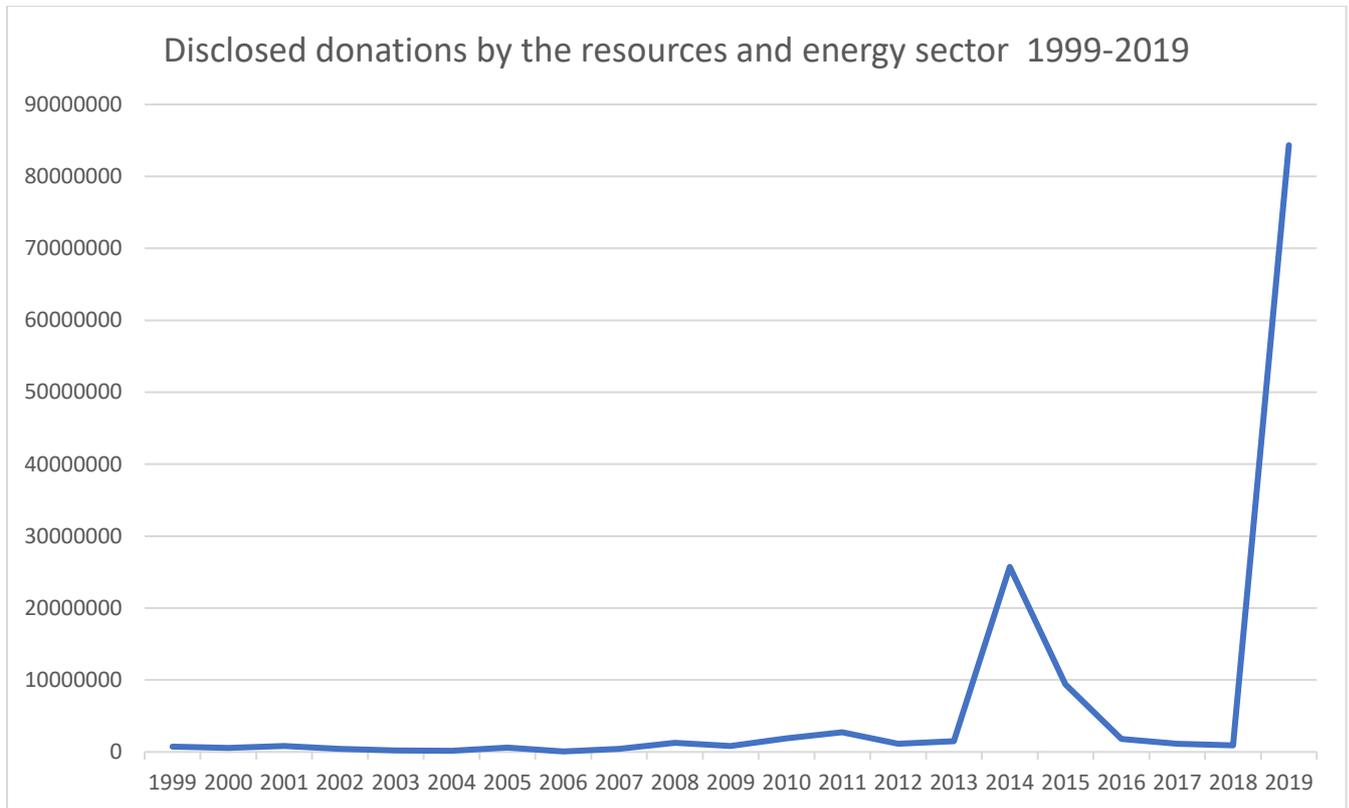
Donations and disclosable payments over time

Figure 4 shows that disclosable payments peaked in 2019 at \$ 84,335,967, as a result of the \$83,493,606 – or 99% of the year's total – donated by companies owned by Clive Palmer to his United Australia party. The previous peak of \$25,716,524 in 2014 may be explained by intense lobbying efforts to repeal the carbon tax which had been enacted by the Gillard Government, before the Abbott Government began the process of repealing the tax in September 2013: the amount donated in 2014 is close to three times the amount donated in 2015 (\$9,374,462), which is the next highest year on record.

Donations over the period 2013-14 saw \$635,187 donated to the federal ALP, and more than double that that – \$1,415,050– donated to the federal branches of the Liberal and National parties.

Although 2019 was an election year, it cannot be inferred from the data that disclosable payments are generally greater in election years (insofar as elections were also held in 2001, 2004, 2007, 2010, 2013, and 2016, and donations did not peak at these times).

Figure 4: Distribution of donations and disclosable payments over the period 1999-2019



Political campaigner disclosable payments

Section 314AB(1) of the Electoral Act requires political campaigners to submit a return to the AEC within 16 weeks after the end of the financial year. Under s 287F of the same Act, a person or entity must be registered for a financial year as a political campaigner if they have incurred or authorised electoral expenditure of \$500,000 or more in that financial year or any of the three previous financial years, or if they have incurred or authorised electoral expenditure of more than \$100,000 and during the previous financial year the amount expended was at least two-thirds of the revenue of that person or entity. Electoral expenditure means expenditure incurred for the dominant purpose of creating or communicating electoral matter (s 287AB), and electoral matter is defined as “matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election of a member of the House of Representatives or of Senators for a State or Territory”: s 4AA.

The data on disclosable payments analysed in this study have been obtained by virtue of political campaigner returns submitted by the Minerals Council, Coal21 (now known as LET Australia), the Business Council of Australia and the Construction Forestry Maritime

Mining and Energy Union National Office: none of the contributors to any of these campaigners disclosed their contributions.

Many of the disclosable payments made to political campaigners have been classified on the submitted returns as 'other', rather than as donations. Presumably this covers membership fees and the like – as well as, in the case of Coal21, the voluntary levy paid by its members.

Figure 5 shows the total disclosed payments by the resource and energy industry to political campaigners over the period, while Figure 6 shows the industry's top ten contributors to political campaigners over the period

Figure 5: Total disclosed payments by the resource and energy industry to political campaigners

Political campaigner	Amount
Minerals Council of Australia	\$20,515,115
Coal21	\$15,467,973
Construction Forestry Maritime Mining and Energy Union National Office	\$2,913,992
Business Council of Australia	\$764,500
Australian Chamber of Commerce and Industry	\$13,860

Figure 6: Top 10 industry contributors to political campaigners

Contributor	Amount
Rio Tinto	\$4,591,423
Glencore	\$4,108,938
BHP	\$3,618,200
Anglo American Metallurgical Coal	\$2,601,543
Mt Thorley Warkworth (owned by Yancoal)	\$2,600,059
BHP Mitsui Coal (80% owned by BHP)	\$2,594,824
Peabody	\$2,330,987
Hunter Valley Energy Coal (owned by BHP)	\$1,974,604
Newmont Australia Holdings Pty Ltd	\$1,368,988
Coal21 Ltd	\$1,159,636

We note that if BHP's total contributions are combined with the contribution made by its subsidiaries BHP Mitsui Coal (80% owned by BHP), Hunter Valley Energy Coal (owned by BHP), and the BM Alliance (50% owned by BHP), it surpasses Rio Tinto as the biggest industry contributor to political campaigners over the period analysed (contributing a total of \$10,460,880).

Political campaigner funders' attitudes to political donations

Many of the resource giants amongst the top 10 entities making disclosable payments to political campaigners have policies disavowing the making of political donations.

BHP's Code of Business Conduct states that they "do not contribute funds to any political party, politician, elected official or candidate for public office in any country."²⁴ Given that Hunter Valley Energy Coal belongs to BHP and BHP Mitsui Coal is 80% owned by it, presumably BHP's Code of Conduct and related policies apply to these entities.

Mt Thorley Warkworth belongs to Yancoal, whose Code of Conduct states that "It is against the Company policy to use corporate funds for political purposes".²⁵

Rio Tinto says that "As a company, we do not involve ourselves in party political matters nor do we make any type of payments to political parties or political candidates"; according to Glencore it "does not permit any of its funds or resources to be used to contribute to any political campaign, political party, political candidate or any of their affiliated organisations". Anglo too states that it does not make political donations.²⁶

However, Rio Tinto also says that "We engage on public policy and legislative issues that affect our business. We contribute relevant information and share our experiences to help in the creation of robust policy, regulation and legislation",²⁷ and Glencore's position on lobbying acknowledges that "Although Glencore does not directly participate in party politics, it does on occasion engage in policy debate on subjects of legitimate concern to its business, employees, customers and end users and the communities in which they operate."²⁸

In the case of all those companies which admit to seeking to "engage in" and "contribute to" the policy-making process, their "contribution" and "participation" appears to be in part through industry associations (which may be characterised as political campaigners under Australian electoral law). In respect of these associations, Anglo American – which has also banned the making of political donations – says the following:

*Industry associations play an important role for Anglo American around the world. Our memberships of, and partnerships with, industry associations allow us to share best practice and be well informed on relevant technical, political and social developments. They also offer a route for Anglo American's voice to be amplified alongside peer companies in policy and other debates.*²⁹

²⁴ BHP, *Interacting with governments* <https://www.bhp.com/our-approach/operating-with-integrity/interacting-with-governments/> accessed 21 December 2020.

²⁵ Yancoal, *Our Code of Conduct* [https://www.yancoal.com.au/content/Document/Code%20Of%20Conduct%20\(August%202020\)--.pdf](https://www.yancoal.com.au/content/Document/Code%20Of%20Conduct%20(August%202020)--.pdf) accessed 21 December 2020.

²⁶ Anglo-American, *Policy Influence* <https://www.angloamerican.com/sustainability/our-sustainable-mining-plan/politicaltransparency#:~:text=We%20do%20not%20make%20political,what%20is%20to%20be%20delivered> accessed 21 December 2020.

²⁷ Rio Tinto, *The way we work* August 2017.

²⁸ Glencore, *Global Anti-Corruption Policy* <https://www.glencore.com/dam/jcr:53c744dd-0295-44f2-b08d-dc1f044aed0b/Global-Anti-Corruption-policy-Final-201808-EN.pdf> accessed 21 December 2020.

²⁹ Anglo-American, *Policy Influence* <https://www.angloamerican.com/sustainability/our-sustainable-mining-plan/politicaltransparency#:~:text=We%20do%20not%20make%20political,what%20is%20to%20be%20delivered> accessed 21 December 2020.

Others amongst the top funders of political campaigners continue to contribute directly to parties themselves. For example, Peabody says that it "is committed to participating in the democratic process to the extent allowed by applicable laws."³⁰ According to Woodside, that organization "regularly engages with governments of countries where we are active. We believe that the exchange of information and views is essential to mutually-informed decision making."³¹ Newmont, in one of the most frank admissions of the reasons for which it seeks to participate in political decision-making (in part via that making of political donations), acknowledges that "We participate in the legislative and political process in a variety of ways, in order to positively impact the environment in which we operate, to increase the likely success of our operations, and to enhance our future opportunities."³²

There is a legitimate question to be asked about the ethical implications of an entity disavowing participation in the political process but funding political campaigners who produce "matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election of a member of the House of Representatives or of Senators for a State or Territory",³³ particularly where those campaigners themselves make direct political donations.

Political campaigners' attitudes to campaigning

Minerals Council of Australia

The Minerals Council of Australia (MCA) describes itself as the "leading advocate" for Australia's minerals industry.³⁴ Insofar as Anglo American, BHP, Peabody, Rio Tinto and Newmont are full members of the MCA, it is reasonable to presume that decisions being lobbied for by the organisation are at least broadly representative of these companies' interests. Currently, the Mineral Council's lobbying efforts are directed towards:

- Lower corporate tax rates;
- The maintenance of fuel tax credits;
- Government policy that supports "Australia's attractiveness as an exploration destination", and maintaining immediate deductibility for exploration expenditure;³⁵
- Avoidance of what it terms "excessive regulation, inflexible workplace relations practices and high tax rates";
- Government investment in "an extensive program of survey work that gathers new pre-competitive science data on areas of Australia that remain largely un-explored or under-explored";
- Increased funding to Geoscience Australia's Exploring for the Future program;

³⁰ Peabody, *Political Contributions and Peabody Political Action Committee* March 2018 <https://www.peabodyenergy.com/Peabody/media/MediaLibrary/Sustainability/700-02-Political-Contributions-and-Peabody-Political-Action-Committee.pdf> accessed 21 December 2020.

³¹ Woodside, *Political Contributions* <https://www.woodside.com.au/sustainability/working-openly/political-contributions> accessed 21 December 2020.

³² Newmont, *Political Contributions Standard* https://s24.q4cdn.com/382246808/files/doc_downloads/about_us/political_contributions/Political-Contributions-Standard-FINAL-040214.pdf accessed 21 December 2020.

³³ Electoral Act s 4AA.

³⁴ Minerals Council of Australia, *About the MCA* < <https://minerals.org.au/about-mca> > accessed 1 December 2020.

³⁵ Minerals Council of Australia, *Taxation* <https://minerals.org.au/taxation> accessed 1 December 2020.

- Increased funding to its industry partnership programs (such as the Minex Cooperative Research Centre, which in 2018 had its \$50 million funding request approved by the Federal Government;
- Increased funding to CSIRO programs developing new mining and processing technologies; and
- Retaining an exploration incentive for junior explorers involved in greenfields exploration

In respect of climate change, the MCA's position is as follows:

Policy measures must deliver reliable and affordable energy at least cost while putting Australia on a pathway to meeting its emissions reduction targets [...] The MCA believes a technology-neutral approach should be adopted for all low emissions energy sources where no one technology is favoured to the exclusion of others.

The MCA continues to make donations directly to political parties. The purpose for which it does this has been explained by the MCA itself, in response to a request for information made by the Commonwealth Parliament's Select Committee into the Political Influence of Donations:

The MCA makes the political contributions [detailed above] because they provide additional opportunities for the MCA to meet with members of parliament. The MCA uses these opportunities to update members of parliament about conditions in the Australian minerals industry and the policy priorities of the MCA [...] MCA members benefit from the MCA's advocacy efforts on issues such as economic and fiscal policy, taxation policy, climate and energy policy, Indigenous affairs, education and skills, safety, workplace relations and regulatory reform. The MCA also energetically represents and promotes the benefits of the minerals industry to Australian communities and the national economy.³⁶

If the MCA and its members are to be treated as rational entities, the fact that they continue to make donations suggests that donations have, to date, achieved their stated aims.

The Business Council of Australia

The Business Council of Australia has a range of non-industry-specific policies on tax, trade, regulation and workplace relations. Its position on energy and climate is specifically relevant to the resources and energy industry, and includes advocating for the adoption of "an integrated energy and climate change policy which focuses on affordability, reliability and emissions reduction".³⁷ It supports a "technology-neutral approach to the energy mix", which should "allow all forms of clean energy technologies to succeed based on merit including carbon capture and storage for gas, geothermal, solar, wave or wind". It notes that nuclear energy should not be ignored.³⁸

Coal21 (now known as LET Australia)

³⁶ MCA responses to questions from Senate Select Committee into the Political Influence of Donations dated 6 November 2017.

³⁷ Business Council of Australia, *Energy and Climate* https://www.bca.com.au/energy_and_climate accessed 21 December 2020.

³⁸ Business Council of Australia, *Energy and Climate* https://www.bca.com.au/energy_and_climate accessed 21 December 2020.

According to BHP, "The primary objective of Coal21 is to undertake research and development, and demonstration projects, in relation to low-emissions technology options", though it has "traditionally engaged in a range of communication and awareness activities".³⁹ Indeed, it submitted a political campaigner return in 2018-19 and prior to that the AEC's Transparency Register connects LETA with the third party returns submitted by ACA Low Emissions Technologies Ltd in 2015-16, 2016-17 and 2017-18.⁴⁰

BHP's "Industry association review", published on 12 December 2019, reports that in September 2019 Coal21's Board changed its constitution to "confirm its mandate on low-emissions research and development, and to ensure that any communications relate only to technical matters in service of its technical program of work".⁴¹ This amendment was described as confirming that "broader advocacy and communications activities are not within the scope of the company and will not form any part of the company's forward program of work".⁴²

CEO Mark McCallum (formerly of the Minerals Council) explained the rebranding effort to LET Australia (an acronym for Low Emissions Technology Australia) in the following terms: "Our mission is to work with members to invest in technology that reduces emissions in line with the goals of the Paris agreement, and we are looking for a name that better communicates that to the market".⁴³ There is not a great deal of information available yet on LET Australia, including in relation to its membership; Coal21's members included BHP, Peabody, Glencore, Whitehaven Coal, Yancoal, Centennial Coal and Bloomfield Group, among others.⁴⁴

LET Australia has been a long-time advocate for carbon capture and storage, and welcomed the Federal Government's inclusion of CCS as a priority technology in the 2020-21 Budget (CCS is so important to the resources sector because it is, in the words of LET Australia, "one of the few technologies able to decarbonise hard-to-abate industries"). We note that in the 2021 Budget, \$10 million has been allocated specifically to a carbon capture, use and storage development fund, with another \$20 million promised in 2021-22 and again in 2022-23.⁴⁵

Construction Forestry Maritime Mining and Energy Union National Office

The Union advocates for continuing jobs in coal mining and coal power stations,⁴⁶ and claims that renewables projects should not be seen as a substitute to the jobs created by coal.⁴⁷

³⁹ BHP, *Industry Association Review* March 2019 <https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/191212_bhpindustryassociationreview2019.pdf?la=en> accessed 21 December 2020.

⁴⁰ Australian Electoral Commission Transparency Register, searched 21 December 2019.

⁴¹ Above n 39. https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/191212_bhpindustryassociationreview2019.pdf?la=en.

⁴² Ibid.

⁴³ Ker, P. *Coal21 to drop the 'coal' in emissions rebrand*, Financial Review 11 May 2020 <<https://www.afr.com/policy/energy-and-climate/coal21-to-drop-the-coal-in-emissions-rebrand-20200510-p54rj4>> accessed 21 December 2020.

⁴⁴ Ibid.

⁴⁵ *Portfolio Budget Statements 2020-21, Budget Related Paper No 1.9, Industry, Science, Energy and Resources Portfolio* <https://www.industry.gov.au/sites/default/files/2020-10/2020-21-department-of-industry-science-energy-and-resources-pbs.pdf> accessed 21 December 2020.

⁴⁶ CFMEU Mining & Energy, *Coal power workers left in the cold under renewables roadmap* <https://me.cfmeu.org.au/news/coal-power-workers-left-cold-under-renewables-roadmap> accessed 21 December 2020.

⁴⁷ Ibid.

It also supports the development of a commercial coal-to-hydrogen industry.⁴⁸

Donations and corruption

In the High Court decision of *McCloy v New South Wales* [2015] HCA 34 (**McCloy**), which upheld the constitutionality of NSW laws imposing caps on political donations, banning donations by property developers and prohibiting indirect campaign contributions, the plaintiff (a property developer) argued that gaining access through political donations to exert persuasion was not undue influence.

The Court pointed out that the line between ingratiation and access, and corruption, "may not be so bright",⁴⁹ before going on to consider the nature of different kinds of corruption.

It described "quid pro quo" corruption as occurring where a candidate for office "may be tempted to bargain with a wealthy donor to exercise his or her power in office for the benefit of the donor in return for financial assistance with the election campaign".⁵⁰

The Court then considered clientelism – a "more subtle kind of corruption" – which concerns "the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder."⁵¹ It explained the genesis of this form of corruption in the following terms:

*It arises from an office-holder's dependence on the financial support of a wealthy patron to a degree that is apt to compromise the expectation, fundamental to representative democracy, that public power will be exercised in the public interest. The particular concern is that reliance by political candidates on private patronage may, over time, become so necessary as to sap the vitality, as well as the integrity, of the political branches of government.*⁵²

The Court went on to cite the US decision of *McConnell v Federal Election Commission* 540 US 93 at 153 (2003), which described clientelism as being neither easy to detect nor practical to criminalise, leading to the conclusion that " [t]he best means of prevention is to identify and to remove the temptation".⁵³

Both quid pro quo and clientelistic corruption, according to the Court, "threaten the quality and integrity of governmental decision-making".⁵⁴ Then there is "war-chest" corruption, where money may pose a threat to the electoral process.

The Court concluded in respect of the constitutionality of donations limitations that "[t]he risk to equal participation posed by the uncontrolled use of wealth may warrant

⁴⁸ CFMEU Mining & Energy, *Hydrogen offers new future to Latrobe valley coal* <<https://me.cfmeu.org.au/news/hydrogen-offers-new-future-latrobe-valley-coal>> accessed 21 December 2020.

⁴⁹ *McCloy v New South Wales* [2015] HCA 34, 35.

⁵⁰ *Ibid.*, 36.

⁵¹ *Ibid.*, 36, citing *McConnell v Federal Election Commission* 540 US 93 at 153 (2003).

⁵² *Ibid.*

⁵³ *Ibid.*, 37.

⁵⁴ *Ibid.*, 38.

legislative action to ensure, or even enhance, the practical enjoyment of popular sovereignty".⁵⁵ It found that donations caps do not impede the system of representative government provided for by our Constitution; it also found that the NSW provisions were not only compatible with representative government, but preserved and enhanced it.⁵⁶

Impartiality in government decision-making

It is critical for public trust in democracy that impartiality in government decision-making not only exist but be *seen* to exist. While it is not our intent to impugn the decision-making in the below case study, it serves as an example of an instance where citizens may not *perceive* impartiality in government decision-making to exist.

Case study

We have examined one record of stakeholder meetings and teleconferences in respect of the Carbon Tax Repeal Bill in order to determine whether impartiality can be seen to exist in the treatment of stakeholders – at least in respect of the opportunities afforded to them to participate in discussions with government on the Bill.⁵⁷

This analysis found that Rio Tinto participated in discussions on six occasions, and Glencore, Santos, the Business Council and Minerals Council each participated on two occasions; the interests of these and other resource companies were also represented by groups including the Energy Suppliers Association of Australia (consulted on four occasions), the Carbon Market Institute (consulted on one occasion) and the Australian Pipeline Industry Association (consulted on two occasions).

In contrast, NGOs participated on one occasion.

In this case study, at least, there is clearly a correlation between donor-status and frequency of access; we are unable to determine whether this correlation is causative or otherwise.

Revolving door

The issue of the revolving door – whereby government officials become lobbyists after departing government, and ex-lobbyists become government officials – has been described as something which is “severely undermining efforts to regulate corruption and lobbying”,⁵⁸ and capable of undermining democracy itself.⁵⁹

In one of the most infamous cases of such a transition relating to the resources and energy industry, in 2013 Martin Ferguson left office as Resources and Energy Minister, and mere months later took up an advisory position with peak resources lobby group Australian Petroleum Producers & Exploration Association (APPEA).⁶⁰ In a more current

⁵⁵ Ibid, 45.

⁵⁶ Ibid, 46-47.

⁵⁷ Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 Revised Explanatory Memorandum <https://www.legislation.gov.au/Details/C2014B00165/Revised%20Explanatory%20Memorandum/Text> accessed 21 December 2020.

⁵⁸ Rennie G., *Australia's political lobbying regime is broken and needs urgent reform*

The Conversation 11 September 2019 <<https://theconversation.com/australias-political-lobbying-regime-is-broken-and-needs-urgent-reform-123003>> accessed 21 December 2020; Rennie, G., *The revolving door: why politicians become lobbyists, and lobbyists become politicians* The Conversation 22 September 2016 <<https://theconversation.com/the-revolving-door-why-politicians-become-lobbyists-and-lobbyists-become-politicians-64237>> accessed 21 December 2020.

⁵⁹ Ibid.

⁶⁰ ABC, *Labor ex-minister Martin Ferguson labels WA party's call for his ALP expulsion a 'put-up job'* 20 May 2014

example, Dr John Kunkel, Prime Minister Scott Morrison's Chief of Staff, previously held the position of Rio Tinto's Chief Advisor for Government Relations, and of Deputy CEO of the MCA.⁶¹

Amongst the reasons for prohibiting this kind of behaviour are the risks posed by unfair access, insider information, and the potential for bias insofar as those making government decisions may be aware that they may in future be employed by the entities and people the subject of their decision-making.⁶²

Need for reform

The following measures in respect of donations caps and donations disclosure are required to achieve transparency of donations and improve public trust in politics:

Political donations caps

Caps on donations are necessary to eliminate the ability of those with large amounts of money to buy undue influence and access. Our current system of unlimited donations means that those with the capacity to donate more are given more attention by politicians and political parties than an average constituent. Implementing caps set at \$2000 per annum per candidate and \$5000 per party, from a single person or entity (aggregated) would level the playing field, as most individuals on an average wage would be able to afford to donate this amount.

The provision of an exclusion for membership would encourage political parties and organisations to raise basic organisational revenue through broad participation of individuals, and limiting this exclusion to \$1000 would avoid corporations having undue influence through \$10,000 'membership' to a party's business networks or advocacy peak bodies. It would also put the national scheme in line with section 96D of the *Election Funding, Expenditure and Disclosure Act 1981* (NSW).

Private funding should be capped at around 50% of total party funding.

Political donations disclosure

Current disclosure regulations allow the majority of political donations to be hidden. With the threshold for reporting set at \$14,000 and without a cap, donors could potentially donate \$13,900 multiple times through federal and state parties and not be disclosed to the public.

Donations above \$14,000 and disclosed are only made publicly available in early February of the following year, meaning that a donation made in July may be hidden for 18 months.

Donations made through attendance at party fundraisers, priced at \$10,000-20,000 per person, are currently not categorised as gifts. Corporate sponsorship or membership of cash-for-access business forums, with reports citing corporate contributions of \$27,500 and \$110,000, are at risk of being hidden from public view. The Millennium Forum, a former business network of the Liberal Party, has been exposed in funnelling illegal

< <https://www.abc.net.au/news/2014-05-20/labor-wa-calls-on-alp-to-expel-martin-ferguson/5465872>> accessed 21 December 2020.

⁶¹ LinkedIn profile of Dr John Kunkel, accessed 21 December 2020.

⁶² Above n 58.

property developer donations, and facilitating the undue influence of property developers seeking assistance with a debt-ridden company.

Other membership fees that contribute to advocacy and electoral expenditure are also not disclosed to the AEC, including corporate membership of peak advocacy bodies. The Minerals Council of Australia, which "represents the minerals industry with a common purpose in advocating responsible policies..." raised over \$200 million in revenue from 2007-2016 with a peak in 2011-12 that coincided with the campaign against the Minerals Resource Rent Tax.

We make the following recommendations in respect of political donations disclosure regulations:

- A reduction in the reporting threshold for donations, with individual donations over \$1,000 and aggregated donations of \$3,000 over 3 years to political parties, candidates, associated entities, third parties and political campaigners being required to be disclosed.
- A broadening of the definition of 'donation' to include income from party fundraisers, corporate sponsorship of business forums, membership fees over \$1,000 per year, and any gift that is spent on electoral expenditure (see section 5 of the Electoral Funding Act 2018 (NSW))
- Real time disclosure of donations, plus quarterly reports providing categorisation and aggregates of donations
- A single dedicated campaign account to facilitate auditing and enforcement;
- 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))
- Enforcement through a strengthened and appropriately resourced enforcement division within the Australia Electoral Commission.

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 Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.