



Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

25 September 2019

Submitted via email: em@aph.gov.au

Dear Committee,

Submission to Joint Standing Committee on Electoral Matters

The Australian Conservation Foundation (ACF) would like to thank you for the opportunity to make a submission to the Joint Standing Committee on Electoral Matters.

The Australian Conservation Foundation strongly supports reforms to strengthen the integrity of Australia's federal donations and expenditure regime including: greater transparency of political funding; caps on political donations to parties; caps on election spending; a fair system of public funding of political parties and candidates; and more effective regulation of lobbyists.

The 2019 Federal Election reaffirms the need for reform to the federal political finance system. While all of the above reforms are critical, we believe the 2019 Federal Election highlights the urgent need to focus on implementing electoral expenditure caps, as this submission addresses below. We urge the Committee to direct their inquiry into the unprecedented expenditure during the election and reforms to limit spending.

The influence of corporations and industry on Australian democracy through elections

There is little doubt that the private sector exerts substantial influence over Australia's political process. In the 2016 Federal election, political parties received \$43 million dollars in declared donations, with over 50% of these donations coming from just 5% of donors¹. We are yet to know how much was donated to political parties and by whom in the 2019 Federal Election, and this lack of transparency is just one part of a larger problem.

¹ Wood, D and Griffiths, K, 2018 *Who's in the room? Access and influence in Australian politics*, Grattan Institute



Political donations give those who can afford it more face-time with policy makers. Research by the Australia Institute supported by ACF and WWF Australia found that the mining industry donated \$16.6 million to major political parties over the last ten years, with peaks in funding correlating with policy changes advantageous to the sector.

“...[the] mining industry spends millions of dollars on political donations, and can scale up their donations at important times as they did in 2010-2011. The timing, scale and political leanings of these donations can be linked with election campaigns, leadership changes and important debates on policies such as the mining tax and carbon price.”²

Political donations are also an indicator of a broader industry strategy of political influence.

“With the majority of political donations and political expenditure hidden, and industry influence being likely extended into the realm of personal and financial relationships, the public currently has little knowledge of how this industry is influencing our policy decisions. The implications of this influence was demonstrated in NSW by anti-corruption investigations called Operation Jasper and Operation Acacia. The NSW anti-corruption commission (NSW ICAC) found that a complex web of personal relationships, and mutual financial interests resulted in the issuing of mining licenses without any proper process.”³

Australians will not know who donated to political parties and candidates until February of next year. This delay in disclosure of donations is unacceptable, reinforces secrecy and harms public confidence. Increasingly states are leading the way on donations reform; both Victoria and New South Wales require disclosure of donations within 21 days in the lead up to elections, and Queensland now require real-time donations disclosure within 7 days.

‘Dark’ or hidden money is a further, and significant transparency issue. A major 2018 report by the Grattan Institute found that “[f]orty per cent of the money received by political parties in the [2016] election had no identifiable source”⁴. Sources of political donations to parties and their associated entities are made opaque by a relatively high disclosure threshold (currently \$13,800 indexed to inflation). Furthermore, there is no requirement to disclose aggregated donations from a single entity in a single reporting period. A donor can effectively hide their political influence through ‘splitting’ donations; giving multiple amounts under the threshold, to multiple party affiliated Associated Entities and party branches, at different times in the

² Aulby, H, 2017 *The tip of the iceberg, political donations from the mining industry*, The Australia Institute, 16

³ Ibid

⁴ Wood, D and Griffiths, K (n 1)



reporting cycle. Neither the donor nor the recipient are required to disclose the aggregated amount of these donations. This means that even where local fundraising efforts are constructed under the auspices of registered Associated Entities, there are substantial gaps in the data. For example, the Kooyong 200 club, an Associated Entity that fundraises on behalf of Josh Frydenburg only disclosed the source of 16% of its income from 2015-2016⁵, while Progressive Business, a Labor fundraising entity declared the source of only a fifth of the \$1.6 million raised over the same period⁶.

Once in government certain Ministers have decision making powers that allow them to grant access to publicly owned environmental and natural resources. This access often results in extensive profit for project proponents. The benefits of commonly owned nature must be secured for the common, public benefit. The distribution of these common goods for public benefit is a hallmark of a just and democratic society. Opaque and secretive political donation regimes create the opportunity and motivation for corruption and undermine citizens' confidence and participation in the institutions of democracy and government.

Recommendation: The Committee should prioritise examining the extent that donations to political parties and/or candidates remain unreported and ways to enhance transparency and timeliness of reporting.

Unprecedented expenditure and the influence of corporate interests and private individual wealth in the 2019 election

The 2019 Federal Election draws attention to the imperative for limits to be placed on electoral expenditure. Expenditure limits are necessary in order to ensure a level playing field in elections and to ensure that it is not simply those with the largest wallets who have the most access to participate in the electoral process, dominate policy debates, or to run for office.

Weak federal expenditure regulation allows industry groups to distort policy debates and sway election outcomes through massive advertising campaigns. Since the Mineral Council of Australia's successful campaign against the Resource Super Profits Tax, industry lobby groups have become increasingly savvy to mounting massive campaigns around policy debates which disguise self-interest as public interest. Some recent, high profile examples include

⁵ Australian Electoral Commission, *Annual Returns Locator Service*, Available at <https://periodicdisclosures.aec.gov.au>Returns/60/VLTM0.pdf>

⁶ McGhee, A. 2016, Nearly \$2m of political donations missing from AEC disclosures, Australian Broadcasting Corporation, Available at: [https://www.abc.net.au/news/2016-02-19-\\$1.7m-of-political-donations-missing-from-party-disclosures/7178228](https://www.abc.net.au/news/2016-02-19-$1.7m-of-political-donations-missing-from-party-disclosures/7178228)



industrial relations reform, the mining tax, plain tobacco packaging, poker machine regulation, carbon pricing and coal seam gas⁷

In addition to industry groups, the 2019 Federal Election saw the ability of wealthy individuals to use private wealth to influence the election. Mining mogul Clive Palmer, through his political party the United Australia Party (UAP), spent a widely reported 60 million dollars of his personal fortune during the federal election. Political funding expert, Joo-Cheong Tham, has stated that the UAP's spending appears to be the largest election spending record, however, as he points out, we can not know for certain because there is a regulatory gap, as the parties have not been required to report on campaign expenditure since 1998⁸.

The influence of Clive Palmer in the 2019 election illustrates the magnitude of the problem and the urgency in investigating expenditure caps. While initially intending to win seats for the UAP, Clive Palmer's stated purpose in the final weeks of the election was to 'polarise the electorate' to deliver the election outcome which he favoured⁹. In the final three weeks before the election, the UAP spent an estimated \$15 million, more than both major parties combined, the majority of which focused on negative attack-ads on Labor¹⁰.

Regardless of political affiliation, the ability of a single individual to use their personal fortune to drown out the voices of others and to influence election outcomes raises grave concerns about fairness and the integrity of the electoral system. The UAP's spending in the election sets an unnerving precedent where future parties must now consider the possibility of having to compete with the private war chests of wealthy individuals. Without regulation of expenditure, we can expect expenditure to continue to increase, leading to pressure to raise more funds which both distracts candidates from their parliamentary duties and increases the risk of corruption that arises with political donations

Recommendation: The Committee should examine implementing electoral expenditure caps on all actors, including political parties, candidates and third parties.

⁷ Orr, G and Guaja, A 2014, Third-Party Campaigning and Issue-Advertising in Australia, *Australian Journal of Politics & History*, v 60, n 1, pp 73-92

⁸ Murphey, K. 2019 'Clive Palmer outspends McDonald's, Toyota and Coles to advertise his political party', *The Guardian*, Available at <https://www.theguardian.com/australia-news/2019/aug/16/clive-palmer-outspends-mcdonalds-toyota-and-coles-to-advertise-his-political-party>

⁹ Howells, M. 2019 'Clive Palmer says big election spend more effective than charity donations', *Australian Broadcasting Corporation*, Available at <https://www.abc.net.au/news/2019-05-21/clive-palmer-55m-federal-election-ad-spend/11135636>

¹⁰ Murphey, K. (n 6)



The new definition of ‘electoral matter’

One of the key changes made last year to the Commonwealth Electoral Act via the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2018* was a change to the definitions of ‘electoral matter’ and ‘electoral expenditure’. ACF supported these changes at the time, as it improved the previous definition which was imprecise and broad. Subsequent to the enactment of the amendments the Commonwealth Electoral Commission released some guidance material that assisted greatly in the implementation of the new definition in the lead up to the 2019 Federal Election. ACF believes the present definition represents a good balance between being broad enough to capture the appropriate range of activities for regulation without being so vague that it is impossible to implement. We remind the Committee that the definition was arrived at only last year and after extensive consultation by the government with regulated actors, and it should not be opened up again without a very compelling reason to do so.

Charities, advocacy and the role of civil society third parties actors in elections

ACF is a charity registered with the Australian Charities and Not-for-profits Commission (ACNC) and has been a deductible gift recipient (DGR) since 1966. ACF is governed by a Board and guided by a group of democratically elected Councillors. ACF is supported by approximately 12,000 members and represents nearly 500,000 active supporters.

ACF activities involve advocacy. By ‘advocacy’ we simply mean influencing decision-making in the interests of conservation and sustainability. These activities inevitably involve generating public awareness and debate over an issue and through that, encouraging legislative and/or policy change to protect the environment and the people, plants and animals that depend upon it. Indeed, while on-the-ground activities such as tree planting and the conservation of national parks are of course also of value to the environment, advocacy is fundamental to our success in driving large scale positive impacts to protect the environment.

The High Court of Australia in the *Aid/Watch Incorporated v Commissioner of Taxation*¹¹ (Aid/Watch) left no doubt that advocacy activities aimed at policy or legislative change may be charitable as they are, in themselves, activities beneficial to the community.

The advocacy role of charities, such as ACF, have an important role to play in facilitating and encouraging debate and policy engagement, especially during elections. Civil society groups uniquely placed to support long term goals or policy, as opposed to a Government that reacts to a three or four year electoral cycle, or a business which considers how policy decisions impact its immediate bottom line. Civil society organisations have the ability to take a considered long-term approach in formulating policy asks and desired outcomes which is

¹¹ Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42



indisputably in the public interest. In the lead up to elections is when political candidates vying for seats in Parliament make promises on the issues that these groups care about. Accordingly, it is a crucial time for groups to be actively advocating around their issues.

Further, it is through charities and other not for profit organisations that voters come together to unite their voice around issues which are important to them. This is an essential role in modern democracy, providing ways for voters to speak up for their views and values where they otherwise have limited ability to be heard or to influence the political process.

ACF supports the regulation of third parties in elections and supports measures which aim to ensure fairness in elections, however we do not support regulation that seeks to redefine issues-based advocacy as political campaigning. Care must be taken by the Committee to ensure any reforms it may consider do not impact on the ability of charities to pursue public interest, independent, issues-based advocacy. Regulation must also be proportionate to an organisations' capacity to comply and should take special consideration of the potential regulatory burden on small organisations, particularly those without professional legal and finance teams.

Recommendation: The Committee should focus its examination on the conduct and regulation of actors who are the largest spenders in Australia's political system namely political parties, big business and large political donors.

Thank you for the opportunity to provide this submission. ACF would be grateful for the opportunity to appear before the Committee on these matters in due course.

For more information:

JOLENE ELBERTH | Democracy Campaigner | P: 03 9345 1234 | E: jolene.elberth@acf.org.au

The Australian Conservation Foundation is Australia's national environment organisation. We stand up, speak out and act for a world where reefs, rivers, forests and wildlife thrive.

www.acf.org.au