

Political Donations. A Problem for our Democracy?

Victorian Branch of the Australian Fabians online event:

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Counter-measures,¹ by Ken Coghill

Most would readily answer the question of whether political donations are a problem for our democracy with a resounding YES, at least Federally. Here, we look for solutions.

Underlying the discussion of solutions to the problem is the propensity of people to reciprocate the receipt, from another, of a gift or gesture, no matter whether intrinsically valuable or trifling. Accordingly, any donation to a politician is liable to attract favourable treatment of the donor.²

However, we should be optimistic about the possibility of reform. Over the past five decades there have been huge improvements to the integrity of the electoral system at the Commonwealth level and even more so in the States and Territories.

To illustrate the point: Each vote is of equal value. The voting age is extended to 18 years. Electoral boundaries are no longer decided by incumbent governments. Re-distributions are conducted by commissions independent of Government. Their proposals are never over-ridden by parliament. Compare that with USA's commonplace gerrymandering of federal district boundaries by state legislatures and legalised voter suppression.

That background of impressive progress provides a foundation for further lessons, especially in respect of campaign finance, to be learnt from well-established electoral law and practice among Australian State and Territory jurisdictions and other countries.

In particular, we must look into donor contributions to political candidates and parties. These vary between classes of donors. The most obvious classes are members of political parties, individual supporters and businesses.

¹ This paper is adapted from *Caps on Campaign Costs*, Accountability Round Table, 2022.

² Titl, De Witte & Geys found that in the Czech Republic “the efficiency of public good provision is lower when a larger share of public procurement contracts is awarded to firms donating to the party in power (‘party donors’). (They) link this efficiency difference to two underlying mechanisms: i.e., shifts in procurement contract allocations from firms with previous procurement experience to party donors, and the use of less restrictive allocation procedures that benefit party donors.” (Titl, Vitezslav / De Witte, Kristof / Geys, Benny. *Political donations, public procurement and government efficiency*. CESifo, Munich, 2019, CESifo Working Paper No. 7591. Available from <https://www.cesifo.org/en/publikationen/2019/working-paper/political-donations-public-procurement-and-government-efficiency>)

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Members of political parties are overwhelmingly individuals who support the values of their party. They may participate in policy making, pre-selection of candidates, campaign activities and fund-raising. Donations by party members reflect their commitment to the party but are miniscule in comparison with donations by businesses.

Donations by individuals who are not party members vary widely such as simple donations and ticket prices for fund-raising events. They are not a major source of funds.

Donations to political parties by businesses make up the great majority of donations reported to the AEC. These donations are made by a tiny proportion of businesses and there is a worrying bias to donors from businesses that benefit from government contracts, grants and approvals.

Further, directors of corporations that make donations are either inciting corrupt behaviour by politicians, or breaching each director's responsibility to act in the best interests of the corporation by expenditure corporate funds with no benefit to that company. Corporations law requires directors to act in the best interests of the company, which do not necessarily coincide with the interests of shareholders.

All classes of donations are subject to a disclosure threshold, currently \$14,500 per year. Donations below that threshold partly account for the half of donations that are not disclosed and remain hidden

These facts tell us what happens but not why. The reasons are pretty obvious. Candidates (and their parties) need to communicate their personalities and policies to voters. Voters have a reasonable expectation that they will receive information relevant to their voting from candidates. This communication is expensive and competitive.

Political parties and candidates are engaged in a so-called "arms race" and, to compete, have to use every advantage and opportunity they may have to raise the funds needed to do so. They seek to outdo their competitors, which drives them to maximise their campaign funds.

The need to attract funds creates pressures on leading members and officials of political parties and on candidates to raise funds. They will look for ways and means around legislation limiting donations.

Improved disclosures alone cannot address the underlying issues and we see that it has little effect. Without reform, Australia is becoming an increasingly unequal society where wealth (personal or corporate), equates to the ability to influence and to control the narrative, which undermines democracy. Excessive inequality disenfranchises the majority of voters, harms the most vulnerable and destroys social cohesion.

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Accordingly, caps on donations are a necessary but not sufficient measure to counter the pressures on parties and candidates to raise ever more funds to meet increasing campaign expenditure.

ELECTION EXPENDITURE

Without campaign funding reform, Australian electorates will continue to be offered major party candidates pre-selected for association with campaign donors and party power-base interests.

There is strong, consistent evidence from Australian and international research confirming that caps on expenditure:

- affect not only who is elected, but who chooses to run.
- where decreased, lead to an increase in the number of individuals who run for office, and candidates who are less wealthy on average and, where more stringent, lead to the election of less wealthy candidates, and of candidates who spend less of their own funds in their campaigns.
- lead to re-election rates that are lower in places with more stringent expenditure caps, suggesting that expenditure limits reduce the advantage of incumbency.

Australian research has found that:

- although the party or candidate with the deepest pockets does not always win, there is generally a positive relationship between expenditure and electoral performance.
- money appeared to deliver similar electoral benefits to those seen internationally, although the size of that benefit varied in connection with the level of political volatility at any given election.
- comparisons of election expenditure in Queensland and NSW before and after the expenditure caps were introduced show that caps do work to ‘level the playing field’ but also that parties continued to receive significant donations, which could not be spent.
- the introduction of caps appears to have significantly reduced financial disparities between the two major parties in Queensland—at least on the expenditure side. The ALP and the LNP went from expending vastly different amounts on their campaigns to having budgets that were almost identical, as is evident from their respective expenditure per voter.
- the introduction of caps has somewhat narrowed the financial gulf between the two major parties and their minor counterparts, but again only on the expenditure side.
- referring to Queensland data, “minor parties do not spend or receive anything like the amount of money that major parties do, regardless of what campaign finance rules are in place. While the ratio of minor to major party expenditure fell in 2012, **The Greens** were still expending just

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18 cents per voter compared with approximately AUD 2.60 each for the two major parties, while One Nation spent slightly more than 1 cent per voter.”³

- while Rayner’s analysis suggests that donation and expenditure caps do not provide a substantial benefit to minor parties at a State-wide level, NSW offers one case that suggests that they may do so at the individual electorate level.

While Australian States have a wide range of electoral financing rules, Australia’s federal electoral system has few constraints on donations and expenditure, and a weak disclosure regime:

- There are no caps on campaign expenditure.
- Competition between the major parties is driving up expenditure on elections, funded largely by donations from individuals, associations (including unions) and other organisations (including businesses) that have a vested interest in the outcomes of those decisions.
- Donations under AUD 14,500 (2022; adjusted annually) can be made anonymously and donors have 20 weeks after the end of the financial year to disclose them which means voters cannot be fully informed before they cast their vote. More seriously, large donations facilitate much greater access and disproportionate influence.

The current campaign finance regime has resulted in an election campaign expenditure ‘arms race’ and the assumption seems to be that the greater the expenditure, the more likely electoral success. This competition to raise increasing amounts of money for elections places Australia at great risk of corruption and excessive influence. Large amounts of funds are raised by candidates and parties (and possibly third-party organisations) from donors whose identity is not disclosed (“dark money”).

As a result, the public perceives that high levels of corruption are associated with donations, which erodes public trust in governments and elected representatives and, through amplifying a sense of powerlessness in voters, creates apathy and the disengagement in the democratic system that serves the vested interests of many of those behind the funding.

³ Jennifer Rayner (2016) *More regulated, more level? Assessing the impact of spending and donation caps on Australian State elections*, chapter in PARTY RULES? Dilemmas of political party regulation in Australia, Australian National University Press p. 163. Available from <https://press-files.anu.edu.au/downloads/press/n2109/pdf/book.pdf>

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Manifestations of these problems include:

- Parliamentary Party members attend private fund-raising dinners and other functions with the express purpose of giving attendees (prospective donors) privileged access to ministers or shadow ministers which compromises their entrusted responsibilities as public officers.
- Those donors whose identities are disclosed are disproportionately individuals or entities who benefit from government approvals, contracts and grants.
- Directors of corporations that make donations are either inciting corrupt behaviour by politicians, or breaching each director’s responsibility to act in the best interests of the corporation by expenditure of corporate funds.

The extraordinary amounts involved in campaign expenditure are shown in Table 1⁴.

Table 1. Australian Federal Political Party election receipts and expenditure 2018-2019 (AUD million)

	Labor	Liberal National	United Australia (formerly Palmer United)	Australian Greens	Other Parties	All Parties
Party Receipts	\$126.3m	\$181.2m	\$89.5m	\$20.4m	\$17.3m	\$434.7m
Party Expenditure	\$121.8m	\$178.3m	\$89.5m	\$23.2m	\$20.4m	\$433.2m
Public Funding	\$39.0m	\$52.0m	\$5.6m	\$7.7m	\$9.2m	\$113.5m

⁴ AEC Transparency Register available from https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/

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These sums are vastly greater than the comparable figures in the Territories, States, New Zealand, Canada and the United Kingdom. The explanation lies in campaign finance laws. Australian federal elections have no caps on expenditure and involve significantly higher expenditure per voter than other jurisdictions that do have caps (Table 2).

Table 2. Political campaign caps on expenditure in Australian and comparable Commonwealth jurisdictions

Jurisdiction	Expenditure Cap (most recent)	Expenditure per Voter (AUD)
Australia (Federal)	No cap	AUD 29 (2019) *
New South Wales	AUD 122,900 per party for each assembly electorate. AUD 184,200 for independent candidates.	AUD 2.10 (parties) AUD 3.30 (independent candidates)
South Australia	AUD 75,000 per assembly candidate for each party. AUD 3,525,000 total for each party with a cap of AUD 100,000 per electorate. AUD 100,000 for independent candidates	AUD 2.86 (parties)AUD 3.81 (independent candidates)
Queensland	AUD 57,000 per party for each electorate. AUD 87,000 for independent candidates	AUD 1.55 (parties) AUD 2.37 (independent candidates)
Tasmania	No cap for parties. AUD 17,500 per candidate	AUD 2.44
Northern Territory	AUD 1,000,000 per party. AUD 40,000 per candidate	AUD 6.98
ACT	AUD 42,750 per party or independent candidate	AUD 3.50
Canada	Varies between electorates depending on the number of electors for each electoral district in which the party has endorsed confirmed candidates. Range CAD 105,000-136,000.	AUD 1.83-1.89 (2015)
New Zealand	NZD 1,169,000 per party. NZD 27,000 per individual candidate	AUD 0.39 (2014)
United Kingdom	Greater of GBP 810,000 or GBP 30,000 per contested constituency for parties. GBP 8,700 + GBP 0.06-GBP 0.09 per registered voter for independent candidates	AUD 0.034 (parties) AUD 1.28-1.82 (independent candidates) (2015)
Scotland	Greater of GBP 120,000 or GBP 30,000 per contested constituency for parties. GBP 8,700 + GBP 0.06-GBP 0.09p per registered voter for independent candidates	AUD 0.028 (parties) AUD 1.28-1.82 (independent candidates) (2015)
Wales	Greater of GBP 60,000 or GBP 30,000 per contested constituency for parties. GBP 8,700 + GBP 0.06-GBP 0.09p per registered voter for independent candidates	AUD 0.025 (parties) AUD 0.27 (independent candidates) (2015)
Northern Ireland	GBP 30,000 per contested constituency for parties. GBP 8,700 + GBP 0.06-GBP 0.09p per registered voter for independent candidates	AUD 1.80-2.34 (parties) AUD 0.20 (independent candidates) (2015)
* Note: the Australia (Federal) figure is the total for all candidates and parties whereas other jurisdictions are per party or candidate, as shown.		

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In the USA 2020 elections, total campaign expenditure in Federal (President & Congress) and States has been estimated as almost USD14 billion⁵. We have estimated this as AUD76 using the total adult population. However, these figures are indicative only, due to the complex exceptionalism of the US electoral system.

Arguments have been raised against expenditure caps, as follows:

1. The need for providing effective information for voters to make a judgement.

Making expenditure limits too low may have unintended consequences.

Political expenditure is actually a democratic good, insofar as it enables candidates and parties to reach and attempt to persuade voters. Limiting that expenditure too much, or for too long, may create a less well-informed electorate. This effect may be particularly keenly felt by smaller or newer political actors who find it more difficult to gain coverage from the 'free media'.

Anne Twomey, in a recent discussion on ABC RN radio⁶ about methods to elect a new head of state, provided an interesting solution. She says:

"The problem with election inherently is that once you elect someone, you've got yourselves a politician", meaning someone competitive who focuses on political wins rather than national interest. "How do you get an election that is non political and get the type of person you want? I think that's the real issue."

She argued firstly that particularly for that kind of election, solutions needed to be found to select the type of people that would be of high repute, but who would not usually stand for election.

Second, that in general it is a good idea to minimise campaign expenditure.

" If you want to get good people to run it might work better if you banned all campaigning, if you banned all advertising, if you made it so there was no expenditure on the campaign at all,

⁵ BBC (2022) US election 2020: How much did it cost and who paid for it?. Available from <https://www.bbc.com/news/av/election-us-2020-54696386>

⁶ Adams, Phillip. 'The Australian Republic Mark '22'. Late Night Live. ABC Radio National, 25 January 2022. <https://www.abc.net.au/radionational/programs/latenightlive/the-australian-republic-mark-22/13727860>. Link to sound file https://abcmedia.akamaized.net/rn/podcast/2022/01/lnl_20220126_2205.mp3. Relevant section starts at 26 minutes.

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and instead like a yes no case in a referendum campaign, you just distributed to all voters a pamphlet with one page by each person, saying what their background is and how they would fulfil the role, and just took all the politics and campaigning out of it.

And that would also reduce the role of political parties as well, and the need for political parties which you would have if you were trying to run a national campaign."

This approach may be a good one to adopt for all elections. It enables a focus on selecting people who wish to serve rather than on people who wish to win.

2. The "free speech " argument

Expenditure limits should not be characterised as curtailing 'freedom of speech'. They curtail expenditure, not speech. While courts have found there is an implied right to free speech in the Australian Constitution, there is no right of any sort to having that speech amplified by money from any source to buy media coverage, photo opportunities or to curry favour with media barons.

Certainly, MPs themselves already possess access to possibly the country's biggest megaphone for announcement and self-promotion - the Parliament. They should have no need for further leverage through unbridled campaign spending.

We are making an argument for moderation in expenditure limits rather than not having them.

3. Specific limitations

Although expenditure caps help curb the 'arms race' between parties and candidates, some caps only apply to advertising within a specified period prior to the elections and may not include expenditure on activities such as opinion polling, running focus groups, candidate travel, hiring campaign advisors, renting campaign offices and the like.

A study of the Canadian model investigated the impact of expenditure limits on broader measures of electoral outcomes and found that larger limits lead to less close elections, fewer candidates, and lower voter turnout.

OPTIONS FOR CHANGE – ELECTION EXPENDITURE

Australian federal elections have no caps on expenditure and involve significantly higher expenditure per voter than other jurisdictions (see Table 2).

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The form of caps on expenditure are meant to level the playing field for candidates in each electorate and to give “clear air” to voters during an election campaign period in deciding which candidate can best represent them or their electorate as noted by Reid (2018) quoting a UK Court of Appeal decision:

In *Attorney General v Jones*, the Court of Appeal explained that the purpose of spending caps is to promote “a level financial playing field between competing candidates, so as to prevent perversion of the voters’ democratic choice between competing candidates within constituencies by significant disparities of local expenditure.”⁷

It prevents the massive campaigns conducted by the major parties and corporate actors over the last 25 years that flood national media with misinformation, outright lies and scaremongering. It allows voters to focus on how the individual candidates present policy and how they will represent the electorate in parliament.

It also acts as a pre-selection process, returning the power of selecting representatives to the voters rather than voters only being able to vote for party power structure selected candidates who owe their allegiance solely to their party. Good candidates with a good policy story to offer voters will attract donations and be able to fund their campaigns up to the cap. Poor incumbents and weak candidates will find it difficult to raise donations and have less funding available to promote their candidacy. If electorates have many good candidates, then they have a more equal opportunity, while incumbency comes with an inherent advantage. Under the present arrangements the major parties pour extraordinary amounts of money into electorates they want to ensure they win and members they want to save: real competition and representation of the electorate are drowned out.

The proposed caps on donations also have the potential to alter behaviour of the mainstream commercial media. At the present time Australia has two major political groupings, one of which is outspending the other by 85%.

⁷ Reid, Madeline (2018) Ch. 13 Campaign Finance Laws: Controlling the Risks of Corruption and Public Cynicism. In Ferguson, G. *Global Corruption: Law, Theory and Practice Course Book* (Third Edition, July 2018). p. 49

Recommendations

1. There should be caps (limits) on election expenditure for candidates, political parties, associated entities and third-party campaigner entities, to reduce the “arms race” and lessen the influence of individual donors.
2. The caps should be equivalent on a dollars per vote basis to those applying to elections to the New South Wales Legislative Assembly.⁸
3. The cost of campaign staff employed by candidates and parties i.e., campaign workers, and the costs of materials or advertising supplied by parties, should be included as costs subject to the cap.
4. Donations should be limited to donors who are on the electoral roll.
5. Donations should be limited to \$1,000 per year per donor.
6. Donations should be disclosed within two business days of receipt.

Additional Option

A further refinement has been suggested in the Accountability Round Table paper *Caps on Campaign Costs*, as follows:

1. During the campaign period for an election, defined as the 6 months preceding expiry of the current Parliament, or from the time a Prime Minister calls an election (if earlier than that), all campaign activities to be carried out via candidates within their own electorate, i.e., national party-based advertising campaigns are restricted to non-election periods
2. Expenditures made by a candidate during the defined election period, up to the cap, to only be made out of donations received directly by the candidate and expenditure made within the candidate’s electorate only.
3. All payments for campaign expenditure should be made from the campaign account.
4. Excess of donations over expenditure in each electorate should be directed to social goods, in the electorate in which the donations were raised. Disposition of excess funds to be administered by an independent body.
5. Successful candidates’ donations and expenditures, and the transfer of excess funds, should be reported and approved by the Auditor General’s Office (ANAO) as a pre-requisite to taking up a seat in parliament.

⁸ The NSW LA model is chosen as it is well established and has been reviewed since its most recent use in the 2019 NSW general elections (see *Administration of the 2019 NSW State Election* / Joint Standing Committee on Electoral Matters. [Sydney, N.S.W.] : the Committee, 2020. 1 electronic resource (193 pages). (Report ; no. 1/57). Available from <https://www.parliament.nsw.gov.au/ladocs/inquiries/2549/Final%20Report%20-%20Administration%20of%20the%202019%20NSW%20State%20Election.PDF>)

CONCLUSION

A cap on election campaign expenditure is the key reform to resolve voters' suspicions and concerns about the integrity of the Australian Commonwealth electoral system.

Caps on donations to political parties, candidates and third-party campaigners are also necessary but are not sufficient in themselves to address the integrity issues associated with campaign finance.

State, territory and international schemes provide examples of models that successfully address the straw-man arguments against reform.

Adoption of the recommended complementary caps on campaign expenditure and donations and rules on community grants can restore confidence and trust in Australian democratic government.