

**Adjunct Professor Colleen Lewis  
National Centre for Australian Studies  
Level 5, H Building  
Monash University Caulfield Campus  
900 Dandenong Road  
Caulfield East 3145**

31 October, 2016

Senator Linda Reynolds  
Chair  
Joint Standing Committee on Electoral Matters  
PO Box 6021  
Parliament House  
Canberra ACT 2600  
em@aph.gov.au

Dear Senator Reynolds and Members of the JSCEM Committee

I appreciate the opportunity to make this submission to the Joint Standing Committee on Electoral Matters. My submission covers those sections of your terms of reference that refer to political donations. It includes the *Come Clean* research paper I authored for the John Cain Foundation earlier this year. That paper addresses the current state of political donations laws in Australia and calls for a national approach to the way in which politics is funded in this country. It recommends that the Federal government accept responsibility for achieving this outcome and does so quickly. The *Come Clean* report also makes suggestions about how the funding of politics might be improved to better reflect the public interest, rather than party and personal interests.

This submission also includes three articles I authored on political donations that have been published by *The Conversation* and this brief covering document.

Dr Colleen Lewis

### **Ethical dilemma that requires a speedy resolution**

Reforming political donations laws is a complex issue, made even more so because members of parliament (MPs), who have the power to deliver a robust and transparent system, with meaningful penalties for those who

breach political donation laws, are being asked to formulate and implement reforms that are not always seen, by them, to reflect their personal interest or the interest of the political parties to which most MPs belong.

This creates a moral challenge for MPs as it is asking them to resist the *vested interest urge* to place personal and party interests before the public interest. I raise this point because I appreciate the ethical dilemma such decisions create for the people's elected representatives. However, parliament is a key democratic institution, charged with protecting Australia's democratic political system. In terms of political donations laws, MPs have an obligation to deliver a regime that honours the trust the electorate bestows on them as parliamentarians. This trust embodies the expectation and indeed the requirement, that the public interest always take precedent over other considerations when MPs are formulating public policy and overseeing its implementation. This is particularly so when the policy goes to the heart of a crucial element of Australia's democratic political system: the funding of electoral campaigns, political parties and candidates.

The public office-public trust and public interest principles are raised in greater detail in the *Come Clean* report. I repeat them here as they must be the guiding principle for all recommendations made in JSCEM's forthcoming report on political donations at the federal level, and in any recommendations the committee makes to reform the system as a whole.

Reform of Australia's neglected federal political donations laws is long overdue. They do not (if they ever did) align with community expectations. In making this point, I take the committee back to 2004 and the role then leader of the opposition, Mark Latham played in closing down the grossly generous superannuation scheme for MPs. In the lead up to the 2004 election, Latham courageously argued that the superannuation scheme was 'well outside community standards' and that, if elected, he would bring it into line with the national scheme. Two days later, the Prime Minister at the time, John Howard promised the same reform. Howard strenuously denied he was playing 'catch up'. Rather, he explained his willingness to adopt the Latham-led policy by making it clear, and I quote, that:

*If a good idea is raised it ought to be dealt with immediately [and] I will do that.*

To Howard's great credit he did.

Reforming Australia's federal political donations laws by adopting an approach that does not deliver a lowest common denominator model is a good idea. Indeed, I argue it is an excellent idea and one that requires near

immediate implementation. The time for procrastination has passed, especially if the widening and worrying trust deficit between the people's elected representatives and the electorate is to be narrowed.

### **Political dilemmas that requires a speedy resolution**

The level of involvement by associated entities and third party entities in electoral politics in Australia needs to be resolved forthwith. The matter has been raised and debated many times, yet it seems resolution is no further forward than it was years ago. This raises the question of how much longer decisions about both entities are going to be allowed to remain unresolved by MPs.

Clearly, it is not beyond the skills of parliamentarians to arrive at a decision on how best to reform the role associated entities and third party entities play in this country's electoral process. Applying the public office-public trust principle by placing the public interest before all other interests would result in a modest cap being applied to both. Having made that obvious point, I do not underestimate the challenge involved in achieving such an outcome, particularly as it involves devising policies that MPs and political parties see as creating a level playing field for all.

This raises the important question of whether the issue has become so ensnared in partisan politics and so driven by the *vested interest urge*, that dispassionate, independent experts and independent statutory authorities, such as the Australian Electoral Commission, should be tasked with arriving at recommendations that political parties and parliamentarians be charged with implementing.

There is another issue I need to address here, and that is individuals and corporations paying for access, at a breakfast, lunch, dinner and/or drinks, with senior politicians. The terms used for this practice in the United States and Canadian context is 'pay to play'. This form of fundraising has been the subject of much criticism in Australia and has recently (28/10/2016) been condemned by one of Canada's leading newspapers, the Globe and Mail.

This newspaper acknowledges that, at the federal level, Canada has 'tough' political fundraising policies. However, it also points out that the Federal Government is using its position as 'the governing party to raise funds by access to prominent cabinet ministers for large sums of cash'.

The Globe & Mail asks the following important questions, which are directly relevant to the Australian practice of exchanging access to senior politicians for a fee.

Does [the Prime Minister], the avowed champion of the middle-class family, really believe that the average couple can afford \$3000 to share a cocktails with the Minister of Finance ... ?

Does he truly not see how allowing [a senior politician] to do this amounts to preferential access in exchange for large donations?

These questions must be addressed and answered by members of the JSCEM committee in its forthcoming report on political donations.

In closing, I would like to suggest that the onus is not first and foremost on the community, commentators or experts in the political donations field to justify their objections to the current system. Rather, as the elected representatives of the people, the onus is squarely on MPs to justify why no reforms to political donations laws have taken place at the federal level in the last eight years, why the recommendations of a previous detailed inquiry by JSCEM have never been implemented, and most importantly, to justify their support for all recommendations made in their forthcoming report on political donations policy with dispassionate and balanced evidence.

Dr Colleen Lewis  
Adjunct Professor, National Centre for Australian Studies