

Inquiry into the Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023

Submission

October 2023

We would like to acknowledge at the outset that the practice of donating to political parties is not of itself problematic; on the contrary, the making of modest donations by individual citizens can contribute to a thriving democracy. But political donations that are made within an opaque system, and potentially for the purpose of securing favourable outcomes or giving donors privileged access to decision-makers, undermine our democracy and the public trust in institutions on which it depends.

The corrosive potential of political donations is particularly pronounced where donors have a direct interest in how the governing political party distributes public funds through grants, approvals, tendering or procurement processes. For this reason, we welcome and support the objectives that the Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023 (Cth) seeks to achieve.

I. What do the data tell us?

The Centre for Public Integrity has analysed donations and procurements data from 2013–2023 in order to determine whether any correlation exists between the making of donations and the awarding of procurement contracts.¹

We have found that over this period, donors were **2.49 times more likely** to win procurement contracts than non-donors. Our analysis also revealed that the value of procurements was skewed in favour of donors, with procurements won by donors **4.44 times larger**, on average, than those won by non-donors (whereas the average procurement won by a non-donor is \$762,449.80, the average procurement won by a donor is \$3,387,099.93).

While there is no causative relationship able to be established, it is concerning that donors appear to secure better outcomes than non-donors when it comes to the awarding of substantial amounts of public money via the procurement process.

¹ These data are taken from disclosures to the Australian Electoral Commission, as well as data from AusTender. There are limitations of this data, as discussed in our previous [research](#).

II. Recommendations

Of the recommendations made in this submission, two relate specifically to the Bill while three relate more broadly to the *Commonwealth Electoral Act 1918 Act* (Cth) (***the Act***).

While it is our hope that the latter will be dealt with as a consequence of recommendations made by the Commonwealth Joint Standing Committee on Electoral Matters (***JSCEM***) in May 2023, as the Government is yet to respond to those recommendations, and the potential for this Bill's ability to achieve its objectives would be limited if they were not adopted, we reiterate here the importance of them.

i. Recommendations relating specifically to the Bill

a. Duration of prohibitions

We welcome the proposal to establish timeframes in which:

- following a donation to the party (or, in the case of a coalition, a party) in government, corporations and their close associates cannot apply for or receive Commonwealth funds (s 302K); and
- following an application for or receipt of such funds, corporations and their close associates cannot make such a donation (s 302J).

In our recent submission to the Senate inquiry into the management and assurance of integrity by consulting services, we proposed a similar prohibition and recommended that an appropriate timeframe for its application would be an electoral cycle (that is, the period from the most recent past federal election to the next). In our view, this would allow for better protection against the risk that donations are used to influence the allocation of public funds.

Recommendation 1 Consider amending the prohibitions at ss 302K and 302J of the Bill to cover an electoral cycle rather than 12 months

b. Prohibited donors

The prohibitions created by ss 302K and 302J apply to gifts made by corporations and their 'close associates'. The definition of 'close associate', among other things, captures lobbyists 'engaged to conduct lobbying activities on behalf of the corporation'.²

It is unclear whether in-house lobbyists would be captured by this definition. There is no definition of 'lobbying' in the Bill, which means guidance may be taken from the Lobbying Code of Conduct. The definition in the Code is limited to those who lobby on behalf of a third party client,³ that is, it covers only third-party lobbyists to the exclusion of their 'in-house' counterparts.

While in-house lobbyists may fall within the definition of 'close associate' through meeting another limb of the definition — namely, directors or other officers of the corporation⁴ — this would make the regulation of 'in-house lobbyists' dependent on their position within the relevant corporation.

Insofar as in-house lobbyists wield significant influence on behalf of private interests, any prohibitions on conduct by third-party lobbyists should apply equally to them.

Recommendation 2 Amend the definition of 'close associate' in the Bill to clarify that in-house lobbyists are included.

ii. Recommendations relating more broadly to the Act.

a. Gifts

Sections 302K and 302J cover the making of 'gifts'. The way in which 'gift' is currently defined at s 287(1) of the *Act* is too narrow to capture the full range of payments used by private entities to influence and access the political process.

Currently, payments do not qualify as gifts unless they are made '**without consideration in money or money's worth or with inadequate consideration** [emphasis added]'.⁵ The effect of this characterisation is that many kinds of payment that should be disclosed but are arguably made for adequate consideration — such as fundraising attendance fees, payments made at such functions, and corporate memberships and sponsorships — are

² Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023 (Cth) s 302B.

³ *Lobbying Code of Conduct* (Cth) cl 6(2).

⁴ Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023 (Cth) s 302B.

⁵ *Commonwealth Electoral Act 1918 Act* (Cth) s 287(1).

unlikely to be 'gifts' under the Act. They therefore fall outside the scope of disclosure requirements as well as the prohibitions put forward in this Bill.

The Senate Select Committee into the Political Influence of Donations six years ago made clear how payments of the kind described above can facilitate privileged access to politics. According to the testimony of a Woodside Energy Ltd representative, the large sums that Woodside paid for membership in the Liberal Party's 'Australian Business Network' and ALP's 'Federal Labor Business Forum' entitled it to significant benefits including places at policy briefings, dinners, and other exclusive opportunities to network with elected representatives.⁶

[Research](#) released by the Centre for Public Integrity in May 2023 found that the \$4,289,253 donated by the 'Big Four' consulting firms (Deloitte, EY, KPMG, PwC) to the ALP and Coalition over the last decade appeared to be aimed at currying favour with whichever party happened to be in power.⁷ This dynamic, we warned, exposed the major parties to 'corruption in the form of clientelism' whereby 'political support is exchanged for privileged access to public goods'. While PwC, following recent events, has publicly committed to stop making political donations — on the sound basis that this is the 'best way of ensuring the highest standards of governance' — the other firms have so far failed to do so.

In our view, amendment of the definition of 'gift' for the purposes of political donations merits urgent attention. We share this view with the JSCEM which, in its interim report following its inquiry into the 2022 federal election, recommended that the government consider an amendment to ensure the definition of gift 'meets community expectations of transparency in political donations'.⁸

New South Wales and Queensland provide some guidance as to how this might be achieved. Both jurisdictions define 'gift' almost identically to the Commonwealth but, unlike the Commonwealth, specifically include fundraising payments. Queensland goes a step further by including sponsorship arrangements.

⁶ Senate Select Committee into the Political Influence of Donations, Parliament of Australia, *Inquiry into the Political Influence of Donations* (Report, June 2018) 32–3.

⁷ The Centre for Public Integrity, *Booming Business for Big Four Comes at a High Cost* (Briefing Paper, May 2023).

⁸ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Conduct of the 2022 Federal Election and Other Matters* (Interim Report, June 2023) 66 [2.248].

In Queensland, the definition of 'gift' includes fundraising contributions that exceed \$200,⁹ as well as payments or services provided to a registered political party under a sponsorship arrangement.¹⁰ In New South Wales, fundraising contributions, entry fees, and other payments that enable participation in or benefit from a fundraising venture or function, are deemed to be gifts.¹¹

Insofar as the Government is yet to respond to the JSCEM's recommendations, we would be supportive of a broadened definition being included in this Bill.

Recommendation 3 Broaden the definition of 'gift' located at s 287(1) of the Act

b. Donation threshold

The prohibitions established by ss 302K and 302J of the Bill are limited to gifts that are (singularly or cumulatively) at least equal in value to the disclosure threshold.¹² The current threshold, indexed for the 2023/2024 financial year, is \$16,300.¹³

We note that the JSCEM, in its interim report, has recommended the disclosure threshold be lowered to \$1,000. Introducing amendments to this effect would mean that more donations would fall within the scope of the prohibitions proposed in this Bill and be subject to scrutiny through the disclosure regime.

Recommendation 4 Lower the donation disclosure threshold to \$1,000

c. Real-time disclosure

The timing of disclosures is relevant to the integrity of the award of Commonwealth funds insofar as timely disclosure allows any correlation between donations and favourable outcomes to be examined. Under the current Act, disclosable payments may not be made public for up to 18 months.

⁹ *Electoral Act 1992* (Qld) s 201(2)(d).

¹⁰ *Electoral Act 1992* (Qld) ss 201(2)(e). The meaning of 'registered political party' is expanded upon in section 202. 'Sponsorship arrangement' is defined at section 200A(1).

¹¹ *Electoral Funding Act 2018* (NSW) s 5(2).

¹² Joint Standing Committee on Electoral Matters, Parliament of Australia, *Conduct of the 2022 Federal Election and Other Matters* (Interim Report, June 2023) 65 [2.242].

¹³ *Commonwealth Electoral Act 1918* (Cth) ss 287(1); 321A.

In addition to its recommendations in respect of the disclosure threshold, the JSCEM has recommended that disclosure be made in 'real-time'.¹⁴ The precise timing entailed by 'real-time' varies across jurisdictions: disclosure within 7 days is considered to be real-time in Queensland, whereas disclosure within 21 days is considered to be 'real-time' in Victoria.

The value of real-time disclosure is increased in election periods, during which voters have a significant interest in knowing the makers, amounts and recipients of political donations. The political finance regimes of New South Wales,¹⁵ Queensland,¹⁶ South Australia,¹⁷ and the ACT¹⁸ all implicitly accept the particular importance of disclosure during elections insofar as the disclosure period for which they provide during elections is shorter than the period that would otherwise apply.

Recommendation 5 Implement real-time disclosure by requiring disclosure within 7 days, or, in election periods, within 24 hours of receipt of the donation

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 Anthony Whealy KC, Hon Stephen Charles AO KC, the Hon Pamela Tate AM KC, Professor George Williams AO, Professor Joo Cheong Tham, Professor Gabrielle Appleby and Geoffrey Watson SC. Former board members include the Hon Tony Fitzgerald AC KC and the Hon David Ipp AO KC. More information at www.publicintegrity.org.au.

¹⁴ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Conduct of the 2022 Federal Election and Other Matters* (Interim Report, June 2023) 65 [2.242].

¹⁵ *Electoral Funding Act 2018* (NSW) s 13.

¹⁶ *Electoral Act 1992* (Qld) div 7.

¹⁷ *Electoral Act 1985* (SA) pt 13A div 7.

¹⁸ *Electoral Act 1992* (ACT) div 14.4.