

Committee Secretary
Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

E-mail: fpa.sen@aph.gov.au

**Submission by the Australian Democracy Network and the Synod
of Victoria and Tasmania, Uniting Church in Australia to the inquiry
into the *Electoral Legislation Amendment (Fairer Contracts and
Grants) Bill 2023*
20 October 2023**

The Australian Democracy Network (ADN) and the Synod of Victoria and Tasmania, Uniting Church in Australia, welcome the opportunity to make a submission on the *Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023*. The ADN and the Synod support the Bill and urge that the Committee recommends its passage through the Parliament. Below are additional preferences that would further strengthen the intent of the Bill, but the Bill is still worthy of passage even without these amendments.

The ADN and the Synod believe that the Bill addresses the critical issue that government processes to award contracts and grants should be above reproach of any concern that political donations may have influenced the process.

For example, there is legitimate concern regarding the political donations that have been made by the Big Four consultancy firms at the same time as receiving substantial government contracts. KPMG, Deloitte, PwC and EY have been reported to have donated nearly \$4.3 million to the major parties in the last decade.¹ We note that five large consulting firms, Accenture, KPMG, Deloitte, PwC and EY, have between them contracts from the Commonwealth Government that deliver approximately \$2 billion a year in revenue to them.² We note that PwC has committed to no longer providing political donations.

Mark Nixon, EY Government and Public Sector Consulting Leader, was refreshingly honest at a hearing before the Senate Finance and Public Administration Committee on 18 July 2023. When asked why EY makes indirect donations to political parties, his answer was all about securing the profits of EY. After the CEO of EY said they would not ban making indirect political donations, Mr Nixon explained the sponsorship they run "gives us some idea of policy direction in the future by both political houses so we can start to actually understand what skills and experience we need that will be taken forward in the policy of the government of the day when they come forward."

Senator Barbara Pocock put it to Mr Nixon that donating gives EY access and information that someone who does not donate does not have. Mr Nixon responded, "Part of it is the sponsorship so that we understand, if a party is in opposition, what their policies look like going forward and how we can build our skills and experience around that."

¹ David Crowe and Matthew Knott, "Big four consultancies win \$1.4 billion a year in taxpayer-funded contracts", *The Sydney Morning Herald*, 22 May 2023, <https://www.smh.com.au/politics/federal/big-four-consultancies-win-1-4-billion-a-year-in-taxpayer-funded-contracts-20230521-p5d9za.html>.

² Rex Patrick, "Rex Patrick: put PwC top of blacklist for government procurement payments", *Michael West Media*, February 6, 2023.

In the definition of “close associate” in the Bill, the threshold of more than 20% of the voting power in the corporation is too high in the view of the submitting organisations. The ADN and the Synod would prefer the definition to extend to anyone with a 5% or more beneficial ownership in the corporation. Beneficial ownership is often an indicator of influence within a corporation. A 5% beneficial ownership stake for a huge government contract could still be very profitable for the person in question if the corporation obtains the contract.

It is worth considering the thresholds required for beneficial ownership disclosure as a measure of thinking as to the size of such ownership for it to indicate influence within the corporate entity. The banking industry often uses a definition of ten per cent, as does the US FACTA Act, which requires foreign financial institutions to provide information on US taxpayers to the US authorities.

Corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves. The lower threshold is particularly important for high-risk sectors or companies using high-risk business models.

It is widely regarded that investors with five per cent holdings can have a significant influence on management decisions, particularly when coordinating approaches or interventions with other investors. In particular, hedge funds with less than five per cent holdings have significantly impacted pushing for corporate changes. For example, Elliott Management, with a five per cent holding, pushed for substantial changes in BHP.³ Elliott Management currently holds three per cent of German healthcare giant Fresenius and appears to be pushing for significant changes there as well.⁴

The allowance in the Bill that a corporate entity and its close associates can each donate up to the disclosure threshold without it being prohibited is too high in our view. There are at least two reasons for that concern. The first is that the disclosure threshold is very high as it stands. The disclosure threshold amount that applies from 1 July 2023 to 30 June 2024 is more than \$16,300.⁵ The ability of the corporation and its close associates to each donate up to the threshold could result in quite a sizeable cumulative donation being provided. For example, a corporation donating, as well as four of its close associates, could result in a cumulative donation of up to \$81,500.

One way to partially address the problem would be to lower the disclosure threshold to \$2,500.

A second concern is the empirical research showing that wealthy entities and individuals can skew political decision-making with relatively small sums of money in the absence of a political finance system where public funds overwhelm private political donations.⁶

In addition, we are concerned that the Bill will only restrict donations being made to a political entity or associated entity where the related political party is in government when the gift is made. That leaves open the possibility that a corporation or close associate could donate to a party not in government in the lead-up to an election in the hope that if they form part of the new government, it will assist the corporation in obtaining government contracts.

³ <https://citywire.com/au/news/feared-activist-investor-sells-out-of-bhp/a2401770>

⁴ <https://www.bloomberg.com/news/articles/2022-10-31/fresenius-to-review-portfolio-as-elliott-stake-climbs-over-3>

⁵ https://www.aec.gov.au/parties_and_representatives/public_funding/threshold.htm

⁶ Julia Cagé, “The Price of Democracy. How money shapes politics and what to do about it”, (Cambridge: Harvard University Press, 2020).

It would be simpler to prohibit entities from securing government contracts if they, or their close associates, have made any political donation. Given that the Parliament and its Committees also oversee government contracts and hold the government of the day to account for contracts, such a prohibition is warranted.

Separate from the current Bill, but in the section of the *Commonwealth Electoral Act*, we believe that legal entities with greater than 5% cumulative foreign shareholding or beneficial ownership should not be allowed to make political donations, given that foreign individuals cannot make donations. Individual Australian shareholders or beneficial owners could still make political donations. Such a measure would be in line with addressing concerns about foreign interference in our democracy that would be counter to the public interest. The city of Seattle in the US has in place legislation making it illegal for a company that is owned 5% by multiple foreign owners, or 1% by a single foreign owner, from spending money directly or give it to a super PAC to spend in state or local elections.⁷

A provision to prohibit corporate political spending by foreign-influenced corporations in Minnesota elections was included in *The Democracy for the People Act* (HF3 and SF3), an omnibus democracy bill designed to strengthen voting rights, protect voters and the elections system, and modernise the campaign finance system.⁸

The House version of the bill, HF 3, passed the legislature on 13 April 2023. The Senate version of the bill, SF 3, passed the legislature on 26 April 2023. The Minnesota Governor signed the bill into law on 5 May 2023.

In June 2023, the Minnesota Chamber of Commerce challenged the law in federal court.

There are five additional US states considering similar legislation.⁹

Dr Mark Zirnsak
Senior Social Justice Advocate
Justice and International Mission Cluster
Uniting Church in Australia
Synod of Victoria and Tasmania
Centre for Theology and Ministry

Ray Yoshida
Democracy Campaigner
Australian Democracy Network

⁷ <https://freespeechforpeople.org/seattle-legislation/>

⁸ <https://freespeechforpeople.org/minnesota-legislation/>

⁹ <https://freespeechforpeople.org/foreign-influence/>