



*Submission to the Senate Finance and
Public Administration Legislation Committee
inquiry into the Commonwealth Electoral
Amendment (Banning Dirty Donations) Bill
2020*

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

Dear Committee Secretary,

Thank you for the opportunity to contribute to the discussion concerning this Bill.

The Pirate Party is based around principles of openness, transparency and direct participation in democratic processes. Unlimited contributions from industries with interests that are arguably at odds with the well-being of Australians leads to decision-making by elected officials that are opaque, corrupt and unrepresentative. As such, the Pirate Party is broadly supportive of this Bill, with some considerations around the administrative elements.

1 Banning donations from certain industries

1.1 Corrupting nature of political donations from certain industries

Direct political donations from companies are a form of purchasing influence with elected officials, despite predictable protestations to the contrary. Companies act in the interest of their shareholders and are expected to behave rationally in how they spend their capital. The well demonstrated fact that participants in industries contribute to multiple and opposing sides of politics strongly implies that these entities believe it is in their rational self-interest to contribute, and that they stand to receive some benefit, indirect as it may be. If some positive result from these donations was not expected, shareholders would reject the behaviour of any company making such donations. This is most evidently not the case.

It is not necessary for an entity to receive a benefit in a fashion that would give rise to an obvious quid-pro-quo. Subsidies given to the industries proposed for banning in the Bill indicate that an 'investment' in donations to political parties is in fact a reasonable and salient decision for the industry members to make. Allowing participants in industries whose interests would not otherwise align with the natural persons that make up the Australian electorate allows the purchasing of influence in ways that lead to predictable harms to Australians, for example, tobacco consumption, anti-social or damaging behaviours like problem gambling, and the creation of negative externalities like environmental damage. Banning

donations from industries identified in this Bill as causing these problems, or having interests not aligned with those of the broader electorate, reduce the capacity for real or perceived corruption of the electoral process stemming from the donations.

1.2 Regulatory and policy capture and reciprocity

When there is a revolving door of public servants and politicians serving in industries that have both massively donated to the parties and also been involved with decision making at the legislative level, this corrodes faith that the decision makers have been acting strictly in the best interests of their electorate. The issues of regulatory capture have been well documented in Australia, and outlined extensively in submissions to this Committee on the Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020.

It is well established fact that senses of 'owing' and reciprocity are built into humans at the biological level. It is a fundamental element of our neurological architecture. Both reciprocal altruism and cyclical feelings of obligation are mechanically predictable. Politicians are, despite some claims to the contrary, human. Even when made explicitly aware of the ways that feelings of obligation and reciprocity influence decision-making, we are still subject to them.

In order to allow our elected representatives to be able to make decisions clear and free from implicit and explicit bias, it behoves us to free them from the burden of reciprocal feelings to powerful commercial interests, so they may consider arguments put forth to them on their merits alone. Banning untoward levels of donations is a step in the right direction in achieving this aim.

1.3 Speech rights

The balancing of speech rights has been considered by High Court and found subject to balancing against other rights and responsibilities. The Pirate Party notes that the industries banned from political donations through this Bill would remain free to lobby and advertise – and would no doubt do so, given their massive investments into political discourse within Australia so far. They must, however, seek to persuade individual Australians in an open manner, and have politicians be responsive to their electorate, rather than using their money to bypass the democratic processes of argument and persuasion by influencing elected officials directly. The Pirate Party considers the ban on donations to be a reasonable limitation to be a reasonable limitation on speech when counterbalanced against the corrupting influence of direct political donations in the current legislative environment.

2 Administrative elements of the Bill

2.1 314AN

We note that proposed subsection 314AN provides for the Electoral Commission to be able to make determinations relating to whether persons are prohibited donors, but there are no grounds for an appeal on merits on any decision.

In line with our philosophies of openness and transparency, and to generally align the decisions of the Electoral Commission with other decision-making processes of the Australian Public Service, the Pirate Party believes that there should be appeal rights on merits for a decision and that the reasoning of decisions, both accepted and appealed, should be published by the appropriate body in order to increase confidence in the decision-making process of the Commission.

2.2 Timing of exemptions under 314AN

The proposed determinations by the Electoral Commission under subsection 314AN are proposed to remain in force for 12 months unless revoked earlier. The Pirate Party suggests that consideration be given to allow the exemption to apply for a full donation period as defined in 314AP, or a period of time correspondingly determined by the Electoral Commission, in order to reduce the administrative burden on both the applicant and the Commission.

The Pirate Party further suggests that a clause be added to 314AN creating a positive obligation for a person who has had an exemption granted under 314AN(1) if the nature of that person's activities or circumstances change during the period of their exemption such that 314AN(1)(b) may no longer apply to them. This would close a loophole where a person may apply for and be granted an exemption and subsequently become a prohibited person within a donation period.

3 Summary

Other than the above suggested changes to 314AN, the Pirate Party commends the Bill to the Committee.

About Pirate Party Australia

Pirate Party Australia is a political party based around the core tenets of freedom of information and culture, civil and digital liberties, privacy and anonymity, government transparency, and participatory democracy. It formed in 2008, and is part of an international movement that began in Sweden in 2006. Pirate Parties have been elected to all levels of government worldwide.