
The Parliament of the Commonwealth of Australia

Advisory report
on the Commonwealth
Electoral Amendment
(Political Donations and
Other Measures) Bill 2008

Joint Standing Committee on Electoral Matters

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Canberra

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Chair's foreword

The committee believes that the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 will significantly improve the transparency of financial support given to, or received by, political parties and candidates as well as the political expenditure and income of other participants in the electoral process.

The committee has made two recommendations to amend the bill. The first is to expand the definition of 'electoral expenditure' to allow for reasonable administrative expenses related to campaigning. This will ensure that minor parties will not be disadvantaged by the proposed changes, which are designed to ensure that 'celebrity' candidates cannot profiteer from public funding.

The second recommendation relates to the proposal to ban receipt of anonymous donations. As currently provided, the bill may create an onerous burden in minor situations such as small-scale raffles and fund raising activities. The amendment proposed by the committee is that a cap of \$50 apply below which anonymous donations can be received.

It will be important that the Government allocates appropriate resources to the Australian Electoral Commission so that they are able to implement the proposed arrangements in a manner that minimises compliance costs on participants and ensures that compliance processes operate effectively.

The guiding principle for a funding and disclosure regime is that there must be a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties and other participants in the electoral process. This is an essential precondition if the disclosure system is to be effective. Timely public disclosure and publication of this funding is also important in bringing greater transparency to the flow of funds.

While some inquiry participants have argued that the proposals included in the bill should be deferred and considered as part of broader review processes underway – including a government green paper process and a separate inquiry by this committee – the incremental reforms proposed by this bill are based on

the overriding principle of openness and transparency in the financial transactions of participants in the electoral system.

This principle will remain notwithstanding any reforms which are progressed into the future.

Changes to financial disclosure arrangements by the previous government – in particular the lifting of the disclosure threshold from \$1,500 to more than \$10,000 (indexed to inflation) – have allowed significant funding to be provided to political parties and candidates without being disclosed. The lengthy delay in the publication of disclosures made above this higher threshold has meant that up to one year and three months may elapse after a donation has been made before it is made public.

These arrangements clearly do not allow information to be provided to the community about financial support for political parties and candidates in a timely manner. The proposals in the bill seek to lower the disclosure threshold to \$1,000, introduce biannual reporting in place of annual reporting, shorten the reporting timeframe from up to 20 weeks to 8 weeks and facilitate a reduction in the time taken to publish disclosure returns. The proposals included in the bill will result in significantly more information being available, and the publication of some disclosure returns in less than half the time as current arrangements.

While the proposed changes may lead to some additional compliance costs for participants in the political process, the committee believes that they achieve the appropriate balance between transparency and the freedom to participate in political process.

I would like to thank the Members and Senators of the committee for their contribution to the report and those that participated in the inquiry by making submissions or appearing at the public hearings. I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham MP
Chair



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Membership of the Committee

Chair Daryl Melham MP

Deputy Chair Mr Scott Morrison MP

Members Mr Michael Danby MP

 Hon Bruce Scott MP

 Mr Jon Sullivan MP

 Senator Simon Birmingham

 Senator Bob Brown

 Senator Carol Brown

 Senator Steve Hutchins

 Senator the Hon Michael Ronaldson

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr Kai Swoboda
Technical Advisor	Mr Terry Rushton
Administrative Officer	Ms Natasha Petrovic



Terms of reference

On 18 June 2008 the Senate agreed to the following resolution:

That the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be referred to the Joint Standing Committee on Electoral Matters for inquiry and report on 30 June 2009 in conjunction with the committee's inquiry into to the 2007 Federal Election.



Summary and recommendations

2 Public funding

The committee notes the history of public funding, which was originally introduced for the 1984 election and was designed to provide for the reimbursement of legitimate campaign expenses. Parliament sought to prevent the public from being required to fund frivolous election campaigns, by initially requiring that candidates achieve a threshold of 4 per cent of the formal vote, before being eligible to receive any public funding. This threshold has remained unchanged and generally serves to discourage frivolous candidates campaigning in order to receive public funding.

It is both unfortunate and undesirable that public funding has moved from providing a reimbursement of legitimate and verifiable campaign expenditure, to being a vehicle by which some candidates can use the public funding provisions to reap financial windfalls which far outweigh any legitimate campaign expenses.

While acknowledging that there will be an increase in the compliance costs associated with the proposed regime, the committee considers that these are not likely to be particularly onerous and are balanced by the benefits associated with greater transparency and confidence in the system of public funding.

Recommendation 1 (paragraph 2.47)

The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make the entitlement to public funding conditional on a candidate meeting the 4 per cent threshold and demonstrating that they have incurred genuine campaign expenditure (whichever is the lower amount).

The committee notes the Democratic Audit of Australia suggestion that the definition of 'electoral expenditure' is too narrow and believes that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration.

Recommendation 2 (paragraph 2.48)

The committee recommends that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration.

3 Thresholds and public disclosure

The proposals included in the bill to lower the disclosure threshold from \$10,900 (adjusted annually for inflation) to \$1,000 (not adjusted for inflation) will lead to a significant increase in the transparency of financial support and expenditure by participants in the political process. The committee supports the proposal to end the indexing of the disclosure threshold to the consumer price index.

While the proposal to lower disclosure threshold and implement biannual reporting arrangements for some types of disclosure returns may lead to additional compliance costs for participants in the political process, the committee believes that they achieve the right balance between making transparent the sources of support for political parties and candidates and the freedom to participate in political process.

Recommendation 3 (paragraph 3.93)

The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that enhance transparency of political funding by:

- lowering the disclosure threshold from the current level of \$10,900 (adjusted annually for inflation) to \$1,000 and removing indexation;
- improving the timeliness of reporting by replacing annual return requirements with a bi-annual reporting framework and shortening the requirement to report from 15 to 20 weeks after the end of a financial year to 8 weeks after the end of the reporting period;

- improving the timeliness of election returns by shortening the period for reporting from 15 weeks after polling day to 8 weeks after polling day;
- closing the loophole for donation splitting by treating related parties as a single entity thereby eliminating the possibility that separate donations totalling more than \$98,000 from a single donor can be given without disclosure; and
- facilitating earlier publication of disclosures by the Australian Electoral Commission.

Recommendation 4 (paragraph 3.94)

The committee recommends that the Government provide the Australian Electoral Commission with adequate funding so that the Commission can publish returns in a timely fashion and undertake public awareness activities that ensure participants understand their disclosure obligations and are able to minimise their compliance costs. In addition, clear targets for the Commission's administrative functions, that are consistent with the level of resourcing and the government's goals in this area, should be specified in the performance measures included in the agency's portfolio budget statements.

4 Foreign and anonymous donations

The committee believes that the current high disclosure threshold (\$10,900), which enables significant donations to be made anonymously, both domestically and from overseas, requires urgent action to enhance disclosure requirements and ensure that overseas interests are not able to use foreign property to unduly influence the Australian political system.

Recommendation 5 (paragraph 4.40)

The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use anonymous donations or to receive or use a donation of foreign property.

Recommendation 6 (paragraph 4.41)

The committee recommends that clause 40 (proposed section 306AE) of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be amended to allow for anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.

5 Offences, penalties and compliance

The committee supports moves to modernise the level of penalties in relation to breaches of the proposed disclosure arrangements. These will see the level of financial penalties rise from \$1,000 to more than \$13,000 for some offences and the introduction of the penalty of imprisonment for some types of offences.

Taken together with a strengthening of compliance processes, the proposed penalties should provide a significant deterrent to those who might consider circumventing measures designed to bring greater transparency to the flow of money in the electoral system.

Recommendation 7 (paragraph 5.40)

The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that:

- modernise the level of penalties for breaches of the proposed funding and disclosure provisions; and
- strengthen the Australian Electoral Commission's capacity to undertake compliance activities.

Notwithstanding the proposed improvements in regulatory arrangements, it will be necessary for the Government to provide appropriate resources to the Australian Electoral Commission and other relevant agencies to ensure that compliance processes operate effectively.

Recommendation 8 (paragraph 5.41)

The committee recommends that the government provide adequate resources to the Australian Electoral Commission and other Commonwealth agencies so that they are able to:

- conduct effective public education activities to promote the protections offered in section 327(2) of the *Commonwealth Electoral Act 1918* against harassment and intimidation as a result of making a political donation;
- provide for a dedicated unit within the Commission that:
 - ⇒ is responsible for promoting awareness of this section of the Act
 - ⇒ maintains a formal complaints register;
 - ⇒ is directly accessible by a separate website and an advertised telephone 'hotline' number; and
- take effective regulatory action to enforce the existing protections against these actions provided by the *Commonwealth Electoral Act 1918*.

Introduction

Background to the inquiry

- 1.1 On 18 June 2008 the Senate referred the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 ('the bill') to the Joint Standing Committee on Electoral Matters for 'inquiry and report on 30 June 2009 in conjunction with the committee's inquiry into the 2007 federal election'.¹
- 1.2 The committee's 2007 federal election inquiry was referred by the Special Minister of State on 27 February 2008. On 12 March 2008 a separate Senate resolution specified a number of matters that the committee give particular reference, which included some issues relating to funding and disclosure.²
- 1.3 While the committee considered the option of reporting on the bill as part of its broader 2007 election inquiry, the committee decided that a separate advisory report be presented to the Senate as soon as practicable.
- 1.4 The committee advertised for submissions to the inquiry into the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 in an advertisement in *The Australian* newspaper on 9 July 2008. All of the major parties were invited to appear at public hearings held in Canberra on Monday 22 September 2008 and Friday 26 September 2008. In addition, the committee has drawn on broader evidence collected as part of its 2007 federal election inquiry.

1 Senate, *Journals of the Senate*, No. 16, Wednesday 18 June 2008, p. 513.

2 Senate, *Journals of the Senate*, No. 5, Wednesday 12 March 2008, pp. 210-211.

- 1.5 Details of the submissions and hearings drawn on for this advisory report are listed in appendix A and B respectively. Full copies of the public hearing transcripts can be found at the committee's website at www.aph.gov.au/em.

Conduct of the inquiry

- 1.6 In addition to the committee's 2007 election review, funding and disclosure arrangements are being examined at a federal level through the development of a green paper process.

- 1.7 The federal government's green paper on funding and disclosure, originally scheduled for release in July 2008, has been delayed. Announcing the green paper, the Special Minister of State noted the broad range of funding and disclosure issues that it would cover:

.. a number of people - some in the states and territories, some in coalition political parties, some commentators, even journalists - have raised a range of suggestions about reform to funding, disclosure, expenditure, receipts.

Now obviously there is, you know, a critical relationship between receipts to political parties and expenditure, and some people have suggested limitations and bans on funding, and a range of people have also suggested limitations on expenditure, and in a range of other countries you see both of these approaches in practice.

So I don't want to have a situation where we go through a very thorough and exhaustive process with a green paper and don't look at all the options. So I think expenditure is important, as, clearly, are receipts, as is the disclosure and funding regime. There is a relationship between these things. It deserves and warrants proper consideration.³

- 1.8 The introduction of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 to the parliament in the midst of the committee's own inquiry, and prior to the conclusion of the green paper process, was seen by the Liberal Party of Australia and The Nationals in their submissions to the committee's 2007 election inquiry as

3 Senator the Hon John Faulkner, Media interview transcript, 28 March 2008, viewed on 23 September 2008 at http://www.smos.gov.au/transcripts/2008/tr_20080328_electoral_reform.html.

a reason to delay the consideration of parts of the overall funding and disclosure system until the system had been considered as a whole.⁴

1.9 The Liberal Party of Australia stated that:

The Government's decision to introduce bills to remove the tax deductibility of political donations and to amend several other aspects of political finance without waiting for this Committee to conduct its inquiry and to consider all aspects of the issues involved is piecemeal and knee-jerk. It is also confusing as the Government has also announced that it will release a Green Paper on electoral change, in two parts, later in the year. This of course does not sit readily with the deadline for submitting submissions to this Inquiry. It means that the Parliament, when considering the Bills currently before it, is doing so without a clear indication of the direction in which the Government intends to take the electoral framework.

... We believe the sensible approach is for the Government to withdraw the current bills and wait until the Green Paper appears, so that all issues are considered in a comprehensive way. The Liberal Party also points to the fact that no problems have been identified with the changes which were legislated in the last Parliament. The current system is working and the case for change has not been demonstrated. We caution against reversing reforms that have in our view improved the operation and effectiveness of the Act.⁵

1.10 This view was recently re-stated to the committee by the Liberal Party of Australia in a submission to this inquiry.⁶

1.11 The question of whether the parliament should, or should not, delay consideration of this bill until the finalisation of broader reviews was also raised by several inquiry participants. The Democratic Audit of Australia noted that:

The Government's desire to reduce the \$10,000 disclosure threshold before this financial year was understandable. But there is something to be said for rolling this bill into the legislation that emerges from the Green Paper process, and debating them as a whole. Campaign finance has been marred by ad hocery since

4 Liberal Party of Australia, submission 156 to the 2007 election inquiry, pp. 1-2; The Nationals, submission 145 to the 2007 election inquiry, pp.6-7.

5 Liberal Party of Australia, submission 156 to the 2007 election inquiry, pp. 1-2.

6 Liberal Party of Australia, submission 2, p. 1.

1983. A systematic approach is important to constructing a regime that, from ground up, balances the principled goals of campaign finance regulation - political equality, political participation, adequate party funding and openness/accountability.⁷

- 1.12 Professor Tham acknowledged both sides of the argument in balancing up the desire to await the outcomes of a broader process, while at the same time assessing different parts of the existing framework:

I suppose one could see two versions of taking a holistic view on this matter. One is that you consider a particular measure, having an eye towards whatever exists in the political funding regime. Secondly, you could take a more demanding view of what requires political assessment – that is, everything has to be on the table before you discuss it. My view is that you need to take the former view; you need to consider one measure in its context. But you do actually have to have everything on the table before you can have a meaningful discussion.⁸

- 1.13 The committee notes the broader green paper process and sees a clear role for its own 2007 election inquiry in progressing the debate on whole-of-system reform of funding and disclosure arrangements. However, the committee does not believe that change cannot be progressed while we await the conclusion of the green paper process and its own 2007 election review.

- 1.14 The incremental reforms proposed by this bill are based on the overriding principle of greater openness and transparency in the financial transactions of participants in the electoral system. These principles will remain notwithstanding of any reforms which are progressed into the future.

- 1.15 While the Senate resolution requires that the committee report on the bill 'on' 30 June 2009, there is no requirement that the committee delay its consideration until this time. Under its resolution of appointment, the committee is able to report 'from time to time'. The Clerk of the Senate has noted that:

The rationale of this provision is that, in order properly to carry out their function of informing the Senate, committees should be able to make reports whenever they consider that their advice may be helpful, without being restricted by reporting dates which may

7 Democratic Audit of Australia, submission 1, p. 1.

8 Tham J, transcript, 12 August 2008, p.3.

be overtaken by events or by information that committees discover.

If a committee chooses to report its substantive conclusions on a matter referred to it by means of a report under this explicit authorisation in the standing order, there is nothing to prevent it doing so. Its report on the specified date could then simply refer to the earlier report.⁹

- 1.16 The committee accepts the Clerk's advice in relation to its ability to report before 30 June 2009 and believes that there is no reason to delay its consideration until this time. A copy of the Clerk's advice is provided in appendix C.

Existing arrangements

- 1.17 Part XX of the *Commonwealth Electoral Act 1918* includes provisions that detail the operation of public funding arrangements for federal elections. This part of the Act also includes the requirements for, and administration of, the disclosure arrangements for selected revenue and expenditure items incurred by participants in the federal electoral process.
- 1.18 The legislation establishing a funding and disclosure scheme was introduced in the House of Representatives in November 1983. This followed an inquiry by the Joint Select Committee on Electoral Reform, which had recommended the establishment of public funding and a disclosure regime.¹⁰
- 1.19 Presenting the Commonwealth Electoral Legislation Amendment Bill 1983, the then Special Minister of State, the Hon Kim Beazley MP, stated that disclosure was an "essential corollary" of public funding: "they are two sides of the same coin."¹¹ Mr Beazley argued that public funding was a small price to pay as insurance against the possibility of corruption:

it is essential for public confidence in the political process that no suggestion of favours returned for large donations can be sustained.

9 Evan H, Clerk of the Senate, Advisory notes, no 59, 31 July 2008.

10 Joint Select Committee on Electoral Reform (1983), *First Report*, September, pp. 145–178.

11 The Hon K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, p. 2213.

The whole process of political funding needs to be out in the open so that there can be no doubt in the public mind. Australians deserve to know who is giving money to political parties and how much.¹²

1.20 Although there have been a number of changes to the operation of public funding and disclosure arrangements since 1983, the essential features are largely intact. Some key features of current arrangements include:

- Candidates and Senate groups are eligible for election funding if they receive at least 4 per cent of the formal first preference votes in the election they contested. Election funding is paid to the party where the candidate or Senate group is endorsed by a registered political party, and in other cases is paid direct to the candidate or Senate group (or their agent). Payments are calculated using an indexed sum per first preference vote. At the 2007 federal election, each first preference vote was worth 210.027 cents;
- The threshold for the disclosure of certain revenue and expenditure items is \$10,900 for 2008-09. The threshold is indexed to inflation;
- Selected participants in the electoral process (candidates, parties, associated entities, third parties) are required to complete returns to the Australian Electoral Commission on either an annual basis or after election events (or both) detailing certain transactions that are higher than the disclosure threshold;
- The disclosure returns are made available for public inspection by the Australian Electoral Commission some time after they are received. For example, returns for a financial year ending 30 June are available the following February; and
- Candidates and parties can accept donations from overseas. Anonymous donations less than the disclosure threshold may also be accepted.

1.21 While independent of existing state and territory public funding and disclosure arrangements, federal arrangements can impact on practices in these jurisdictions and vice versa. Two jurisdictions, NSW and Queensland, have recently moved to make disclosure arrangements more transparent, largely implementing some of the proposals included in the bill at a state level.

12 The Hon. K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, pp. 2213, 2215.

Proposed changes

1.22 In broad terms, the bill proposes a number of changes that will have the effect of increasing the transparency of financial transactions by participants in the political process by making more information available about the flow of money within a shorter timeframe. It also proposes to ban some types of donations and strengthen compliance and enforcement arrangements.

1.23 Introducing the bill, Senator the Hon Joe Ludwig (representing the Special Minister of State) noted that:

The Government is committed to restoring the integrity of our electoral processes and systems. I believe that the reforms contained in this Bill will significantly enhance the transparency and accountability of funding and donations to registered political parties, candidates and the other key political players in Australia. This is the first tranche of electoral reform measures that will restore the integrity of our electoral system and ensure that the health of our Australian democracy is maintained for future generations.¹³

1.24 The Explanatory Memorandum summarises the major changes to the Commonwealth Electoral Act to be:

- reducing the disclosure threshold from 'more than \$10,000' (indexed to the Consumer Price Index annually) to \$1,000 (non-indexed);
- requiring people who make gifts above the threshold to candidates and members of groups during the election disclosure period to furnish a return within 8 weeks after polling day. Agents of candidates and groups have a similar timeframe to furnish a return in relation to gifts received during the disclosure period;
- if they fall within the relevant provision, requiring people who make gifts, agents of registered political parties, the financial controller of an associated entity, or people who have incurred political expenditure to furnish a return within 8 weeks after 31 December and 30 June each year rather than following the end of each financial year;
- ensuring that for the purposes of the \$1,000 threshold and the disclosure of gifts, related political parties are treated as the one entity;

13 Senator the Hon Joe Ludwig, Minister for Human Services, Senate, *Hansard*, 15 May 2008, p. 1965.

- making unlawful the receipt of a gift of foreign property by political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive a gift of foreign property;
- extending the current prohibition on the receipt of anonymous gifts above the threshold to prohibit the receipt of all anonymous gifts by registered political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive an anonymous gift;
- providing that public funding of election campaigning is limited to declared expenditure incurred by the eligible political party, candidate or Senate group, or the sum payable calculated on the number of first preference votes received where they have satisfied the 4 per cent threshold, whichever is the lesser;
- providing for the recovery of gifts of foreign property that are not returned, anonymous gifts that are not returned and undisclosed gifts; and
- introducing new offences and penalties related to the new measures and increase the penalties for existing offence provisions.¹⁴

1.25 When the bill was introduced in the Senate on 15 May 2008, a commencement date of 1 July 2008 was provided for.¹⁵ This start date would apply if the bill were passed at some stage in the future, unless otherwise amended.

1.26 The committee notes that Senator Fielding has signalled an amendment to the bill in committee stage that would limit public funding to a political party whose members receive more than 4 per cent of the first preference vote and meet the requirements regarding electoral expenditure to a maximum of \$10 million.¹⁶ As this amendment is yet to be formally proposed, the committee has not examined this issue in this advisory report.

14 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, p. 2.

15 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 2.

16 Amendment to be moved by Senator Fielding on behalf of the Family First Party in committee of the whole, viewed on 3 October at http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislati on%2Famend%2Fs627_amend_074f29cb-22fd-4c12-a34f-6a25450a26fc%22;rec=0.

Report structure

- 1.27 This report is structured around the issues that are the subject of changes proposed by the bill:
- Public funding (chapter 2);
 - Disclosure thresholds and reporting (chapter 3);
 - Foreign and anonymous donations (chapter 4); and
 - Offences, penalties and compliance (chapter 5).
- 1.28 In each of these chapters, the committee reviews the historical background to the current proposals and examines the specific provisions in the bill in greater detail. The committee's analysis and conclusions in relation to each issue concludes each chapter.

Public funding

Background

- 2.1 Part XX of the *Commonwealth Electoral Act 1918* provides for public funding of election campaigns to be made available to candidates and political parties who receive at least 4 per cent of the formal first preference vote.
- 2.2 Legislation enabling the provision of public funding to candidates and political parties was passed by Parliament in 1983 and commenced on 21 February 1984. Public funding first applied for the federal election held on 1 December 1984.¹
- 2.3 Public funding is an important feature of a wider funding and disclosure scheme and was initially provided on the basis of a reimbursement of expenditure incurred for election campaigns up to the limit of entitlement.²
- 2.4 Public funding was implemented in order to ensure candidates were not disadvantaged in their appeal to electors or unduly influenced in their subsequent actions by lack of access to adequate funding. The value of funding was initially calculated on a formula which applied the cost of two postage stamps to each House of Representatives vote received (61.2 cents) and one postage stamp to each Senate vote received (30.6 cents).³

1 Australian Electoral Commission, submission 11 to the inquiry into funding and disclosure (26 April 2004), p. 5.

2 Australian Electoral Commission, submission 11 to the inquiry into funding and disclosure (26 April 2004), p. 5.

3 Australian Electoral Commission, submission 11 to the inquiry into funding and disclosure (26 April 2004), p. 5.

- 2.5 In order to qualify for election funding, a candidate or Senate group must obtain 4 per cent or more of the formal first preference vote in the electorate contested. The public funding rate is indexed to the Consumer Price Index (CPI) and is adjusted twice a year to reflect CPI changes. The 4 per cent threshold for funding has remained unchanged since public funding was introduced.⁴
- 2.6 Public funding is paid to registered candidates, or where registered political parties had endorsed those candidates, to the registered political parties.⁵
- 2.7 Up until, and including the 1993 election, public funding operated as a strict reimbursement of campaign expenses, with the Australian Electoral Commission examining the original documentation evidencing campaign expenditure incurred by candidates and political parties. Payments were based on the amount of proven expenditure or the full funding entitlement, whichever was the smaller.⁶
- 2.8 Amendments contained in the *Commonwealth Electoral Amendment Act 1995* saw the basis for election funding change to a system of direct payments, regardless of actual expenditure. As a result of these amendments, the rate per vote for House of Representatives and Senate votes was increased to 150 cents per vote, and parties and independent candidates were no longer required to submit detailed claims.⁷
- 2.9 Further, branches of registered political parties became entitled to enter into signed agreements to redirect the payment of their election funding to another party or branch or, as was the case for the Australian Democrats, to appoint a principal agent to whom the entitlements of all branches of the party were to be paid.⁸
- 2.10 The total amount of public funding has increased significantly over time, with rises in both the number of electors and the rate paid per House of Representatives and Senate votes (table 2.1).

4 Australian Electoral Commission, *AEC Electoral Pocketbook 2007*, p. 67.

5 Australian Electoral Commission, *AEC Electoral Pocketbook 2007*, p. 67.

6 Australian Electoral Commission (1997), *Australian Electoral Commission Funding and Disclosure Report following the Federal Election held on 2 March 1996*, p. 3.

7 Australian Electoral Commission (1997), *Australian Electoral Commission Funding and Disclosure Report following the Federal Election held on 2 March 1996*, p. 3.

8 Australian Electoral Commission (1997), *Australian Electoral Commission Funding and Disclosure Report following the Federal Election held on 2 March 1996*, p. 3.

Table 2.1 Public funding for federal elections, 1984 to 2007

Election	Threshold for Public Funding (per cent)	Rate per House of Representatives vote (cents)	Rate per Senate vote (cents)	Total public funding payments (\$)
1984	4%	61.2	30.6	\$7,806,778.00
1987	4%	76.296	38.148	\$10,298,657.00
1990	4%	91.223	45.611	\$12,878,920.00
1993	4%	100.787	50.393	\$14,898,807.00
1996	4%	157.594	157.594	\$32,154,800.55
1998	4%	162.210	162.210	\$33,920,787.43
2001	4%	179.026	179.026	\$38,559,409.33
2004	4%	194.397	194.397	\$41,926,158.91
2007	4%	210.027	210.027	\$49,002,638.51

Source Australian Electoral Commission, submission 3, pp. 10–12; Australian Electoral Commission (1997), *Australian Electoral Commission Funding and Disclosure Report following the Federal Election held on 2 March 1996*, p. 3.

- 2.11 Under current arrangements, election funding is paid in two stages. First, the Australian Electoral Commission calculates the amount of election funding due based on the number of votes counted at the 20th day after election day and pays at least 95 per cent of that amount. Second, once the vote counting is finalised, the Commission pays the remainder of the amount of election funding due.⁹
- 2.12 For candidates and Senate groups endorsed by registered political parties, payments are made directly to their parties. Unendorsed candidates and Senate groups receive their payments direct, unless they have appointed an agent who is to receive the payment.¹⁰
- 2.13 For the 2007 election, total public funding paid was \$49,002,638.51. An initial payment of \$46,536,277.23 was made on 17 December 2007. This represented 95 per cent of the amount due based on the votes counted by 24 November. The remaining 5 per cent of \$2,466,361.28 was paid on 9 January 2008.¹¹
- 2.14 While the major political parties receive the largest share of public funding, accounting for over 97 per cent of public funding for the 2007

9 Australian Electoral Commission (2008), *AEC Electoral Pocket Book 2007*, p. 67.

10 Australian Electoral Commission (2008), *AEC Electoral Pocket Book 2007*, p. 67.

11 Australian Electoral Commission, 2007 Federal Election Funding Payments, viewed on 1 October 2008 at http://www.aec.gov.au/Elections/federal_elections/2007/election_funding_payment.htm.

election, the remaining parties and independent candidates shared in almost \$1.3 million (table 2.2).¹²

Table 2.2 Distribution of election funding, 2004 and 2007 federal elections, by party

Party	2004 election		2007 election		% change 2004 to 2007
	\$'000	Share of total (%)	\$'000	Share of total (%)	
Australian Labor Party	16,710	39.86	22,030	44.96	+5.10
Liberal Party of Australia	17,956	42.83	18,134	37.01	-5.82
Australian Greens (all related parties)	3,317	7.91	4,371	8.92	+1.01
National Party of Australia	2,967	7.08	3,240	6.61	-0.47
Pauline's United Australia Party	-	-	213	0.43	+0.43
Northern Territory Country Liberal Party	159	0.38	169	0.34	-0.04
Family First	158	0.38	141	0.29	-0.09
One Nation	56	0.13	0	0	-0.13
Australian Democrats	8	0.02	0	0	-0.02
Others	595	1.41	705	1.44	+0.03
Total	41,926	100.00	49,003	100	

Source Australian Electoral Commission, submission 3, p. 11.

2.15 Over the past three elections it has been relatively rare that a candidate receives more public funding than they spend on their campaign (table 2.3). The major exception is the Hanson group of candidates in the 2004 election, who pocketed almost \$200,000 of public funding yet expended only \$35,427 on their campaign. Although rare, concerns remain about the potential for 'profiteering' and the effect this has on the integrity of the public funding system.¹³

12 Australian Electoral Commission, submission 3, p. 2.

13 See Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the Inquiry into the conduct of the 2004 federal election and matters related thereto*, pp. 325–327.

Table 2.3 Public funding, donations and electoral expenditure of selected independent candidates and Senate groups

	2001 election			2004 election			2007 election		
	Donations	Electoral expenditure	Election funding	Donations	Electoral expenditure	Election funding	Donations	Electoral expenditure	Election funding
Andren	2,200	40,761	73,018	950	27,105	79,413			
Haigh	43,505	62,000	8,301	200	1,161	7,381			
Katter	45,297	40,121	63,653	34,002	74,662	63,544	82,732	97,977	68,336
Windsor	91,900	115,519	64,435	56,121	76,828	89,563	123,850	136,044	110,756
Bryant				25,200	59,384	12,121	20,150	59,386	9,184
Bargshoon				116,822	76,536	7,346			
Deegan				11,585	26,082	24,449			
Hedberg				35,200	92,967	19,401			
King				119,184	138,356	25,730			
Menzel				102,030	89,773	10,978			
Power					26,596	9,980			
Hanson Group				5,000	35,427	199,887			
Pauline's United Australia Party							(a)	(a)	213,095
Xenophon							(b)	(b)	312,497
Priestley							15,500	72,520	39,979
Horan							73,930	85,581	35,910
Brunning							5,050	11,754	20,843

Note (a) A Senate Group that is endorsed by a registered Political party is not required to lodge an Election Return. Pauline's United Australia Party is required to lodge an Annual Return, which is due on 20 October 2008. The Party's Senate Group Members (for the Queensland Senate) were Pauline Hanson and David Saville and both members lodged a NIL Return. (b) Nick Xenophon, along with Roger Bryson, contested the Senate for South Australia as an Unendorsed Group (Independent). Nick Xenophon submitted a NIL Candidate Election Return and his Group lodged a separate Senate Group Return showing total donations of \$141,976.30 and total electoral expenditure of \$181,877.66.

Source Australian Electoral Commission (2005), *Funding and Disclosure Report Election 2004*, p. 11; submission 3, p. 18.

Proposed changes

- 2.16 The bill seeks to ensure that public funding of election campaigning is limited to declared 'electoral expenditure' incurred by the eligible political party, candidate or Senate group, or the sum payable calculated on the number of formal first preference votes received where they have satisfied the four per cent threshold, whichever is the lesser.¹⁴
- 2.17 This measure is consistent with the original intent of public funding. It is considered necessary because the current scheme has evolved in such a way that it provides an automatic entitlement to funds, limited in value only by the number of votes received above the threshold.
- 2.18 The measures in the bill will give effect to the Government's policy position of tying election funding to reported and verified electoral expenditure. This will stop any candidate, or any party from making a financial gain from the electoral public funding system.
- 2.19 The definition of 'electoral expenditure' already exists in the Commonwealth Electoral Act for disclosure purposes, and this definition is adopted to provide for re-imburement in relation to expenses incurred that fit within certain categories. Electoral expenditure is defined to cover:
- Electoral expenditure, in relation to an election, means expenditure incurred (whether or not incurred during the election period) on:
- (a) the broadcasting, during the election period, of an advertisement relating to the election; or
 - (b) the publishing in a journal, during the election period, of an advertisement relating to the election; or
 - (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election; or
 - (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
 - (e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 328, 328A or 332 to include the name and address of the author of the material or of the person authorizing the material and that is used during the election period; or

14 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, Outline, p. 2.

- (f) the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or
 - (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.¹⁵
- 2.20 Several Australian jurisdictions, including New South Wales, Queensland and Victoria, have public funding arrangements in place that provide for reimbursement for certain expenditures if a candidate receives more than 4 per cent of the vote up to a maximum entitlement per vote.¹⁶ While each of these jurisdictions uses its own definition of expenditure that qualifies for reimbursement, they are all broadly similar in what types of expenditure would be covered.
- 2.21 The Australian Electoral Commission explained that the proposed definition in the Commonwealth Electoral Act was also similar:
- With those state jurisdictions that currently have a reimbursement scheme, it is in effect identical to what used to operate federally – that is, there is no definition of or restriction on what the expenditure might be, just that the expenditure has to be related to the campaign. So it is far more wide ranging than this, but it is limited by the fact that it has to have been campaign expenditure, not administrative expenditure.¹⁷
- 2.22 All claims for election funding entitlement would need to be lodged at the principal office of the Australian Electoral Commission in Canberra. Claims lodged elsewhere would not satisfy the provisions of the Electoral Act.¹⁸
- 2.23 The bill also provides that expenditure which is incurred by or with the authority of a division of a State branch of a political party is to be treated as being incurred by that State branch, thereby facilitating the lodgement of a single claim from a State branch of a political party.¹⁹
- 2.24 In the case of joint Senate groups, the bill provides that an agent of one of the registered political parties which have endorsed the candidates in the group, must, before polling day, give the Australian Electoral Commission

15 *Commonwealth Electoral Act 1918*, s. 308.

16 NSW Legislative Council Select Committee on Electoral and Political Party Funding (2008), *Electoral and Political Party Funding in New South Wales*, June, p. 20.

17 Edgman B, Australian Electoral Commission, transcript, 26 September 2008, p. 10.

18 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 9, proposed s. 287 (2).

19 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 11, proposed s. 287 (4A).

a copy of the agreement, signed by each of the agents of the registered political parties which have endorsed the candidates in the group. That agreement must provide details of how the parties have agreed to divide the first preference votes received by the group. The agreement will be used by the Australian Electoral Commission to calculate the amount of any election funding that may be payable to the agent of the registered political party.²⁰

- 2.25 In the absence of such an agreement, the bill provides the Australian Electoral Commission with the discretion to determine the shares of electoral funding consistent with the existing provisions of the Commonwealth Electoral Act.²¹
- 2.26 The bill also provides that an agent of a party, candidate or group may make an interim claim, or both an interim and a final claim or a final claim but restricts the agent to the making of one interim and one final claim for electoral funding. The final claim must specify all of the electoral expenditure against which the claim is to be assessed, even if it has been included in an interim claim. The bill further specifies that expenditure that has been specified in both an interim and final claim will only result in the payment of a single entitlement.²²
- 2.27 Claims for election expenditure under the proposals must be made on the approved form.²³ The bill also specifies the timing for interim and final claims, the acceptance of interim and final claims and provides that the determination of claims by the Australian Electoral Commission must be made within 20 days of receipt.²⁴ The bill also provides for the Australian Electoral Commission to accept or refuse claims and provides for a review process where a decision has been made to refuse a claim.²⁵
- 2.28 The Australian Electoral Commission described some possible arrangements to support the proposed measures:

20 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 16, proposed ss. 296(1) to 296(4).

21 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 16, proposed s. 296(5).

22 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 16, proposed s. 297.

23 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 16, proposed s. 298(A).

24 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 16, proposed ss. 298(C) and 298(D).

25 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, para 16.

The proposed bill has a proposed section 298A. That is the key provision, because it indicates what has to be lodged as part of the claim. We are still doing work on designing the claim form to specify the information, but if they do not lodge a claim form on the approved form which is accompanied by the relevant documentary evidence then it is not a valid claim and we will not be processing it. In terms of the act, the onus is placed on the candidate, the political party, or the agent of the political party, in lodging the claim and that claim should have attached to it all the relevant information, invoices and documents in support of the amount that is claimed.

The proposed bill has been drafted in a way that does not require the claimants to lodge all documents in support of the amount of political expenditure they have incurred, only those which they wish the AEC to consider in working out which is the lesser of the actual electoral expenditure incurred, or the \$2.18c-odd of the four per cent first preference votes. We are hoping that, because of the way the bill has been drafted, our role will be fairly straightforward and fairly simple. That is why, contrary to what is currently in the act, we put in a deadline for the AEC to make a decision. If we get a valid claim, with the necessary information, we are required to determine within 20 days. If we have not done it within 20 days then the claimant will have review rights. The aim of that is to assist the parties and candidates and other stakeholders in, hopefully, being able to work out their cash flow following an election, so if they do have invoices et cetera that are outstanding then they can expect to receive a payment from the AEC within a set time frame.²⁶

- 2.29 To discourage claims by a candidate that are known to be false and misleading, the bill proposes that a penalty of imprisonment for 2 years or 240 penalty units (equivalent to \$26,400), or both apply.²⁷ The bill includes provisions to recover overpayments based on the results of compliance audits and monitoring activities in relation to claims for election funding.²⁸

26 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, pp. 21–22.

27 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 84, proposed s. 315(6A).

28 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 20, proposed s. 301.

Views about current and proposed arrangements

2.30 As previously noted, the issue of profiteering has been raised in previous inquiries by the Joint Standing Committee on Electoral Matters into the conduct of federal elections. In its reports on the 1998, 2001 and 2004 elections the committee examined the operation of public funding and noted concerns expressed by some inquiry participants over the opportunity for profiteering.²⁹ The committee's response in these reports was largely that the strict entitlement approach strikes an appropriate balance between competing principles including compliance costs and encouraging people to run for office.

2.31 A number of submissions to the 2007 election inquiry also canvassed the issue of profiteering from candidacy and the undesirability of this aspect of public funding. Mr Eric Lockett noted that:

While candidates and parties must lodge a return on their electoral spending, no attempt is made to ensure that the public funding is actually spent on the campaign – it is simply a gift from the public purse to the candidate or party. This is unacceptable and it is pleasing to see that the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* seeks to remedy this situation.³⁰

2.32 This view was also supported by Mr Don Willis, who argued that:

If the concept of public funding is to continue, then political parties and electoral candidates should be required to show that any public funding they receive is for reimbursement of relevant expenses actually incurred in running their election campaign. No party or candidate should be allowed to “make money” at the public expense from standing for public office.³¹

2.33 Mr David Kerslake told the committee that he considered that a public funding scheme should not allow profiteering:

In my view, any public funding scheme should guard against parties or individual candidates being able to make a profit from

29 Joint Standing Committee on Electoral Matters (2000), *The 1998 Federal Election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto*, pp. 125–126; Joint Standing Committee on Electoral Matters (2003), *The 2001 Federal Election: Report of the inquiry into the conduct of the 2001 federal election and matters related thereto*, p. 243; Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto*, pp. 325–328.

30 Lockett E, submission 175 to the 2007 election inquiry, p. 2.

31 Willis D, Submission 126 to the 2007 election inquiry, p. 1.

their candidacy. What I regard as one of the very strong points of the Queensland legislation is the fact that it is a straight reimbursement scheme. The amount of public funding a party or candidate receives must not exceed the amount they spent on their campaign.³²

- 2.34 The Democratic Audit of Australia acknowledged that the sight of a celebrity candidate earning funding without doing much campaigning was unattractive but argued that the definition of 'electoral expenditure' disadvantaged minor parties and independents:

A reimbursement only rule is doubly problematic given the restricted definition of claimable 'electoral expenditure' (item 5 of Bill). Few minor parties or independents are able to afford much advertising, let alone opinion polling: the item 5 definition leaves them only able to claim production of signs and leaflets (sub-paragraphs (e) and (f) in the definition). Yet such candidates may have considerable expenditure on office expenses, travel, web design and advocacy to the media: expenditure that MPs, ministers and party leaders may cover from their taxpayer funded offices and allowances.³³

- 2.35 This view about the limited nature of expenditure items covered was also noted by former Australian Democrats Senator, Mr Andrew Murray, in his submission to the 2007 election inquiry.³⁴

- 2.36 Additional reservations about the proposed changes expressed by the Democratic Audit of Australia related to the need to account for expenditure prior to receiving public funding and the inability to 'roll over' amounts to which a candidate was entitled to but did not have sufficient election expenditure to receive in full.³⁵

- 2.37 In relation to the requirement to demonstrate sufficient expenditure to claim a candidate's full entitlement, the Democratic Audit of Australia favoured a lower threshold, say 50 per cent, that full funding would be paid on proof of this percentage of expenditure.³⁶ Professor Costar told the committee that:

I know that this is aimed at profiteering, and it is quite true, but that is not what public funding was about. I wonder whether you

32 Kerslake D, transcript 6 August 2008, p. 56.

33 Democratic Audit of Australia, submission 1, pp. 2-3.

34 Australian Democrats, submission 56 to the 2007 election inquiry, p. 27.

35 Costar B, Democratic Audit of Australia, transcript, 22 September 2008, p. 24.

36 Democratic Audit of Australia, submission 1, p. 3.

should require all candidates and parties to be able to account for 100 per cent of their expenditure. The big parties can do that easily. Small parties, Independents and whatever, maybe not. Some of these people of course are not going to be able to. Let us assume that some are. Let us say you are owed \$10,000 of public funding. If you can account for \$9,000 of it through receipts or whatever, you get the rest on the ground that people drop coins into buckets. It is hard for small parties and Independents to keep track of all that.³⁷

2.38 In relation to the proposal to 'roll over' funding should a candidate not have sufficient expenses to claim their full entitlement, Mr Kelly argued that:

if your expenditure is less than your public funding entitlement, you should still get public funding only to match that expenditure, but that that additional entitlement can be held over. If you are campaigning at the next election, you can draw on that entitlement from the previous election. If you are a one-election wonder and then go by the wayside, that money is never received.

... The principle is that that public funding entitlement has been based on the level of electoral support, which the parliament has previously determined to be over the 4 per cent threshold. That party has been able to show that it has that level of public support.³⁸

2.39 As noted in chapter 1, the Liberal Party of Australia and The Nationals considered that the current arrangements were operating without problems and that any review of these arrangements should wait until the green paper process is established.³⁹

Committee conclusion

2.40 The committee notes the history of public funding, which was originally introduced for the 1984 election and was designed to provide for the reimbursement of legitimate campaign expenses.

37 Costar B, Democratic Audit of Australia, transcript, 22 September 2008, p. 24.

38 Kelly N, Democratic Audit of Australia, transcript, 22 September 2008, p. 24.

39 The Liberal Party of Australia, submission 156 to the 2007 election inquiry, p. 2; The Nationals, submission 145 to the 2007 election inquiry, p. 1.

- 2.41 The committee also notes that the Parliament sought to prevent the public from being required to fund frivolous election campaigns, by initially requiring that candidates achieve a threshold of 4 per cent of the formal vote, before being eligible to receive any public funding. This threshold has remained unchanged and generally serves to discourage frivolous candidates campaigning in order to receive public funding.
- 2.42 It is both unfortunate and undesirable that public funding has moved from providing a reimbursement of legitimate and verifiable campaign expenditure, to being a vehicle by which some candidates can use the public funding provisions to reap financial windfalls which far outweigh any legitimate campaign expenses.
- 2.43 While acknowledging that there will be an increase in the compliance costs associated with the proposed regime, the committee considers that these are not likely to be particularly onerous and are balanced by the benefits associated with greater transparency and confidence in the system of public funding.
- 2.44 The committee notes the Democratic Audit of Australia suggestion that the definition of 'electoral expenditure' is too narrow and believes that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration. The committee does not, however, consider that there should be any 'roll over' of unexpended entitlements from one election to the next.
- 2.45 The committee considers that the processes proposed in the bill for claiming expenditure will allow for timely payment of entitlements to candidates. The inclusion of review mechanisms should also provide for a transparent process for resolving issues relating to verifying expenditure claims.
- 2.46 Provisions that allow for strong penalties associated with lodging a claim or return about election expenditure that is known to be false or misleading and the ability for the Australian Electoral Commission to recover payments will also strengthen the regulation of the proposed payments system (see chapter 5). These measure place obligations on candidates and political parties which are in line with those applying to the expenditure of public monies in other areas.

Recommendation 1

- 2.47 The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make the entitlement to public funding conditional on a candidate meeting the 4 per cent threshold and demonstrating that they have incurred genuine campaign expenditure (whichever is the lower amount).

Recommendation 2

- 2.48 The committee recommends that the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration.

Thresholds and public disclosure

Background

- 3.1 When the introduction of a disclosure system was being considered by the Joint Select Committee on Electoral Reform in 1983, the majority of the committee accepted the view that:

[T]he receipt of significant donations provides the potential to influence a candidate or party and that to preserve the integrity of the system the public need to be aware of the major sources of party and candidate funds of any possible influence.¹

- 3.2 The level at which the threshold is set for a requirement to make a public disclosure about financial transactions relating to election campaigns, political activity and donations is an important determinant of the breadth of information available to the public about how finances flow between key actors in the political system.
- 3.3 Changes to the disclosure threshold, which was increased from \$1,500 to 'more than \$10,000' in December 2005, has significantly increased the opportunities for participants in the political process to make large contributions to parties and others without any public knowledge.
- 3.4 The timeliness of disclosure to the public is also important. The earlier that the community can be informed about the flow of a significant sum of money the better position they are in to make judgements about how these financial flows may, or may not, have influenced decision makers.

1 Joint Select Committee on Electoral Reform (1983), *First Report*, p. 164.

- 3.5 Part XX of the *Commonwealth Electoral Act 1918* includes requirements for selected participants in the political process to disclose to the Australian Electoral Commission certain contributions such as donations and expenditures.
- 3.6 Although 'donation' is the expression commonly used to describe money given to candidates and political parties, the Commonwealth Electoral Act uses the term 'gift'. Section 287 of the Act defines a 'gift' as:
- any disposition of property made by a person to another person ...
being a disposition made without adequate consideration in
money or money's worth.
- 3.7 This means that cash and non-cash (gifts-in-kind) may count as donations, but commercial transactions (such as returns on investments) do not. Section 287 notes that an 'annual subscription' to a party (for example, a membership fee) is *not* a donation. The Australian Electoral Commission indicated that some types of 'discounts' were not considered to be gifts-in-kind:
- Discounts given in the normal course of commercial trading are not considered gifts under the act. It is the normal price that anyone else would be paying if they were advertising the same volumes, or whatever. So no, they are not considered donations.
- 3.8 Donations are disclosed to the Australian Electoral Commission through election returns or annual returns (tables 3.1 and 3.2). Candidates, Senate groups and third parties must file *election* returns. Registered political parties, State and Territory branches of political parties, associated entities, and those individuals or organisations who donate \$10,900 or more to a political party in financial year must file *annual* returns.

Table 3.1 Post-election disclosure returns

Participant	Type of return	Time frame for return to AEC	Due date (2007 election)
Candidates	donations received and electoral expenditure	within 15 weeks of polling day	By Tuesday 11 March 2008
Senate groups	donations received and electoral expenditure	within 15 weeks of polling day	By Tuesday 11 March 2008
Donors	donations totalling more than \$10,900 made to an individual candidate, and donations received totalling more than \$10,900 from a single source that were used in turn to fund donations to an individual candidate must be reported.	within 15 weeks of polling day	By Tuesday 11 March 2008

Source Australian Electoral Commission (2008), *Electoral Pocketbook 2007*, p.69

Table 3.2 Annual disclosure returns

Participant	Type of return	Time frame for return to AEC
Registered political parties	all amounts received and total amount paid in financial year total debts outstanding as at 30 June	within 16 weeks of the end of the financial year
State/territory branches of registered political parties	all amounts received and total amount paid in financial year total debts outstanding as at 30 June	within 16 weeks of the end of the financial year
Associated entities	all amounts received and total amount paid in financial year total debts outstanding as at 30 June may also have to disclose sources of capital deposits	within 16 weeks of the end of the financial year
Third parties	details of electoral expenditure, certain donations received, and donations made to candidates and others	within 20 weeks of the end of the financial year
Persons or organisations donating \$10,900 or more in a financial year	details of each donation	within 20 weeks of the end of the financial year

Source Australian Electoral Commission (2008), *Electoral Pocketbook 2007*, pp.69–70.

- 3.9 Party-endorsed candidates do not need to disclose donations accepted or expenditure incurred on behalf of the party as these transactions are disclosed in the party's return. Similarly, donations received or expenditure incurred by a party-endorsed candidate's campaign committee are also incorporated into and disclosed in the party's annual return.
- 3.10 Under current disclosure arrangements, different divisions of a political party are treated as separate entities. As a result, the threshold for disclosure (\$10,900 for 2008-2009) applies separately for the national branch of a major political party and its state and territory divisions. This can give rise to the practice of donation splitting, whereby multiple donations under the threshold can be made to each of the separate divisions without being disclosed – even though the combined total may well exceed the threshold.
- 3.11 Election returns are available for public inspection 24 weeks after polling day. For the 2007 election, they were available from Monday 12 May 2008.
- 3.12 Annual returns are released for public inspection on the first working day in February the following year. The returns for the 2007-08 financial year (which covers the period the 2007 election was held) will be available on Monday 2 February 2009.
- 3.13 Several participants were critical of the long delay between the receipt of funds by a political party or candidate and the time that the amount would be disclosed and be publicly available.² GetUp! told the committee that:

Political donations are only conducive to transparency and accountability if they can be analysed in a meaningful and timely fashion. ... Australia can do a lot better than reducing the disclosure gap from nineteen to nine months (six month periods plus three months for processing) ...

The United States maintains an online register of donations disclosed on a quarterly basis, with additional requirements before and after elections. The United Kingdom requires parties to submit weekly reports during the election period detailing any donations over £5,000. The Internet has made it possible to process and disseminate information quickly and efficiently. If Australia is to have a cutting edge, world leading democracy, we mustn't be

2 Tham J, submission 133 to the 2007 election inquiry, p. 37; Young S, submission 77 to the 2007 election inquiry, p. 3; Democratic Audit of Australia, submission Democratic Audit of Australia, submission 45 to the 2007 election inquiry, p. 8.

satisfied with a delay of up to nine months for publicising donations.³

Impact of 2006 amendments

- 3.14 The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* included measures to increase the disclosure threshold for political donations ('gifts' in the Commonwealth Electoral Act) from \$1,500 (non-indexed) to 'more than \$10,000'. This higher threshold was to be adjusted in line with changes in the consumer price index.
- 3.15 The disclosure threshold of \$1,500 for donors and annual returns had been in place since 1991, when it was raised from the initial threshold of \$1,000, introduced in 1984.⁴
- 3.16 Proposals to increase the threshold were made by Joint Standing Committee on Electoral Matters in its reports on the 1996 election (to \$5,000), 1998 election (\$3,000) and 2004 election ('amounts over \$10,000'). Moreover, bills seeking to raise the thresholds to \$5,000 and \$3,000 were passed in the House of Representatives in 1999 and 2004 respectively, but did not get sufficient support in the Senate.⁵
- 3.17 With the change in threshold to 'more than \$10,000' taking effect from 8 December 2005, rises in the consumer price index have increased the threshold from \$10,000 for 8 December 2005 to 30 June 2006 to \$10,300 for 2006-07, \$10,500 for 2007-08 to \$10,900 for the reporting period 2008-09 (figure 3.1).⁶
- 3.18 The practice of donation splitting was able to continue when the threshold was raised – meaning that it was possible to donate up to \$98,091 to a major political party via individuals donations of \$10,899 to its separate national, state and territory branches. This compares with a possible combined contribution of almost \$13,500 under the previous \$1,500 threshold.

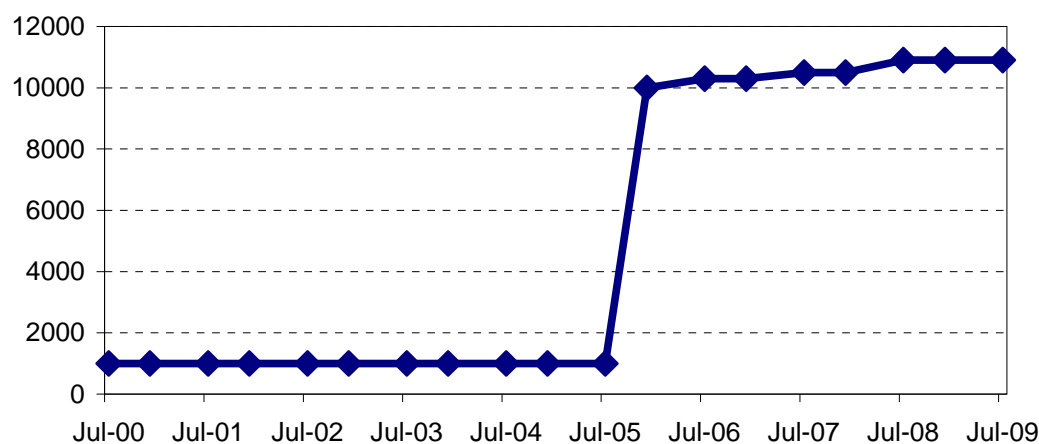
3 GetUp!, submission 155 to the 2007 election inquiry, p. 6.

4 Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto*, p. 328.

5 Parliamentary Library (2006), 'Political finance disclosure under current and proposed thresholds, Research Note, no. 27, March, p. 1.

6 Australian Electoral Commission, Political Disclosures: Disclosure Threshold, viewed on 26 September 2008 at http://www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/threshold.htm.

Figure 3.1 Donation disclosure thresholds, July 2000 to July 2009 (Nominal dollars)



Source Australian Electoral Commission, *Political disclosures, Disclosure thresholds*, viewed on 10 September 2008 at http://www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/threshold.htm and Australian Electoral Commission (2005), *Funding and Disclosure Report: Election 2004*, p. 12.

3.19 In addition to raising the disclosure threshold, the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* made a number of changes that affected the quantity and timeliness of disclosures for some entities including:

- Third parties (persons other than parties, candidates and groups, members of Parliament and Commonwealth departments and agencies) that incur expenditure for a political purpose in excess of the disclosure threshold, or if they receive gifts that are used for such expenditure, were required to complete annual disclosure returns. Previously, they were required to do so only for election periods;
- The definition of 'associated entity' was extended to include entities with financial membership of, or voting rights in, a registered political party, and entities on whose behalf a person exercises such membership or voting rights; and
- Broadcasters and publishers were no longer required to lodge disclosure returns on electoral advertisements broadcast or published during election periods.⁷

3.20 The Australian Electoral Commission noted that the expanded definition of associated entity had a small effect on the number of associated entity annual returns made public in February 2007, which increased from 70 in

⁷ Australian Electoral Commission (2007), 'Changes to the Commonwealth Electoral Act 1918 since the 2004 election', *Electoral Newsfile*, no 132, September.

2005-06 to 105 in 2006-07. However, a further 100 returns were expected to be made public in February 2008.⁸

- 3.21 There was considerable debate when the threshold was proposed to be raised to \$10,000 and its impact on the number and amount of donations disclosed. The negative impact on the transparency of financial contributions with the increase in disclosure thresholds is apparent when looking at various returns provided to the Australian Electoral Commission over the past few years.

Returns lodged

- 3.22 Information provided to the committee by the Australian Electoral Commission on the number of disclosure returns processed over the past few years provides an overview of the changes in overall administrative effort associated with the increase in the disclosure threshold to more than \$10,000 and other changes (tables 3.3 and 3.4).

Table 3.3 Annual disclosure returns lodged with the AEC, 2003-04 to 2006-07

	2003-04	2004-05	2005-06	2006-07
Political Party – original	83	79	89	51
Political Party - amended	67	69	34	15
Associated Entity – original	78	75	121	254
Associated Entity – amended	17	15	3	7
Donor – original	947	1,442	395	229
Donor – amended	33	38	11	17
Political expenditure – original	na	na	na	65
Political expenditure – amended	na	na	na	1

Note na - Not applicable.

Source Australian Electoral Commission, submission 3, pp. 12 and 19.

8 Australian Electoral Commission (2007), *Annual Report 2006-07*, p. 69.

Table 3.4 Election returns received, 2004 and 2007 elections

	2004 election	2007 election
Candidate	1,369	1,399
Senate group	17	23
Return of donations made and received	371	5
Return of donations received	34	na
Third party return of electoral expenditure	161	na
Broadcasters	467	na
Publishers	543	na
Total election returns	2,962	1,428

Note na - Not applicable.

Source Australian Electoral Commission, submission 3, p. 13.

- 3.23 It is important to bear in mind that the number of returns can vary from period to period for reasons other than the change in disclosure threshold including whether or not a federal (or state) election falls within the period. Other changes may also have an effect such as the broadening of the definition of associated entity and discontinuation of requirements for publishers and broadcasters to provide returns in 2006.
- 3.24 The impact of the increasing threshold to more than \$10,000 in December 1995 can be clearly seen with the decline in the number of donor annual returns from 1,442 in 2004-05 to only 229 in 2006-07 (table 3.3) and the number of election returns of donations made and received from 371 at the 2004 election to only 5 for the 2007 election (table 3.4).

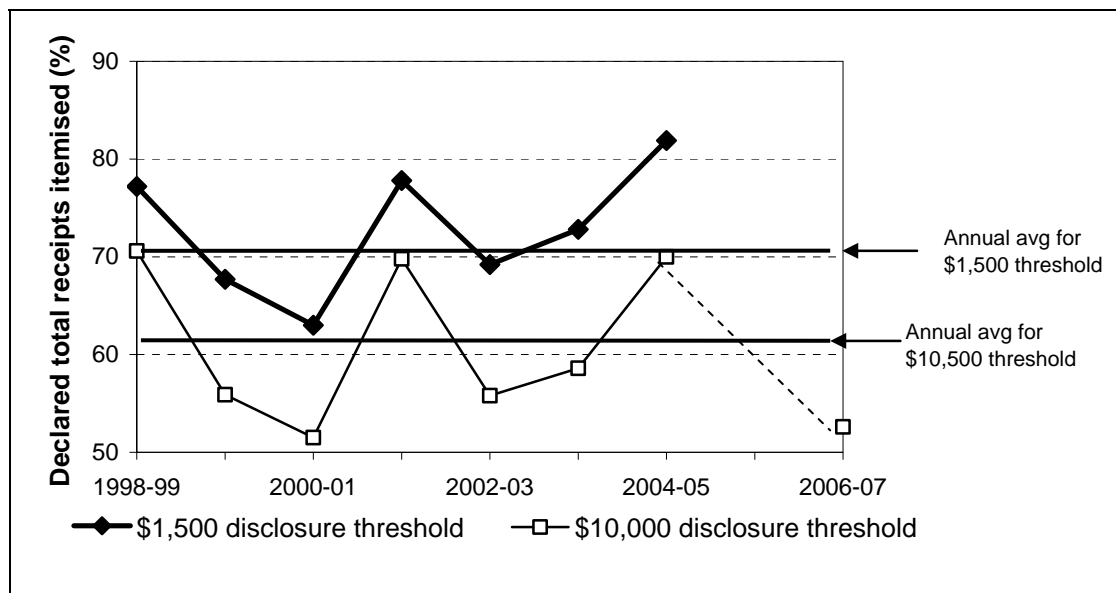
Party returns

- 3.25 While the absolute numbers provide an overall picture of the reduction in returns provided with the increase in the disclosure threshold to more than \$10,000, it is also important to look at the value of disclosures above the disclosure threshold.
- 3.26 In terms of the information that is available from annual returns furnished by political parties, a 2006 research study prepared by the Parliamentary Library found that the percentage of declared total receipts which are itemised (ie: above the disclosure threshold) averaged around 74.7 per cent of declared total receipts over the period 1998-99 to 2004-05 under the \$1,500 threshold. Under the higher disclosure threshold of \$10,000 the average percentage of declared total receipts which are itemised fell to

64.1 per cent, with an average of more than \$10 million per annum not disclosed.⁹

- 3.27 The committee updated the Parliamentary Library's study for the latest available year (2006-07), when the disclosure threshold was \$10,300. This analysis reveals that the percentage of declared total receipts which are itemised was only 52.6 per cent of the combined \$122 million received by the Australian Labor Party, Liberal Party of Australia and The Nationals in that year (figure 3.2). This is far below the average of declared total receipts that are itemised over the period 1998-99 to 2006-07.

Figure 3.2 Disclosures by the major parties, 1998-99 to 2006-07



Source Parliamentary Library (2006), 'Political finance disclosure under current and proposed thresholds, Research Note, no. 27, March, p. 3 for 1998-99 to 2004-05; Committee estimates for 2007-08 based on Parliamentary Library methodology using data from the AEC's database <http://fadar.aec.gov.au/arwdefault.asp?submissionid=9>.

- 3.28 While the percentage of declared receipts can vary from year to year in response to the timing of federal and state elections, comparing disclosure in the financial year leading up to the last two federal elections (2003-04 and 2006-07) reveals that 72.8 per cent of total receipts fell above the \$1,500 threshold in 2003-04 compared to only 52.6 per cent above the \$10,300 threshold in 2006-07.

9 Parliamentary Library (2006), Political finance disclosure under current and proposed thresholds, Research note, 24 March, p. 3.

- 3.29 The weakening of transparency in political party returns resulting from raising the disclosure threshold to more than \$10,000 is clearly evident in the number of pages and items included in political party returns for 2006-07 compared to 2003-04:
- The Australian Labor Party (NSW Branch) return for 2006-07 consisted of 14 pages detailing 333 separate receipts and 17 outstanding debts that were greater than \$10,300. In contrast the return for 2003-04 consisted of 30 pages detailing around 700 separate receipts and over 100 outstanding debts that were more than \$1,500;
 - The Liberal Party of Australia (Victorian Division) return for 2006-07 consisted of 4 pages detailing 47 receipts and 6 outstanding debts that were greater than \$10,300. In contrast, the return for 2003-04 consisted of 11 pages detailing 137 receipts and 11 outstanding debts that were more than \$1,500; and
 - The Nationals (Queensland) return for 2006-07 consisted of 6 pages detailing 21 receipts and 2 outstanding debts that were greater than \$10,300. In contrast, the return for 2003-04 consisted of 6 pages detailing 54 receipts and 7 outstanding debts that were more than \$1,500.

Donor returns

- 3.30 Information provided to the committee by the Australian Electoral Commission on the number and value of donations disclosed by donors also revealed a significant decline between 2004-05 and 2006-07 in the number of returns required to be furnished (table 3.5).
- 3.31 A significant number of individuals and organisations made voluntary disclosures below the threshold. However, it is important to concentrate on the number and value of donations above the relevant threshold. For example, in 2006-07, 1,780 of the 2,192 returns lodged fell below the disclosure threshold of \$10,300.
- 3.32 Comparing the number and value of disclosures above the threshold in 2004-05 and 2006-07, the share of total donations disclosed above the threshold is heavily weighted to donations above \$25,000, with around 70 per cent of the value of total donations disclosed above the disclosure threshold.

Table 3.5 Donor return summary, 2004-05 and 2006-07

	Donations		Value of donations	
	No.	%	\$m	%
2004-05 (election year)				
Voluntary disclosure below threshold	2,073	42	1.01	4
\$1,500 to \$10,000	2,102	43	7.63	25
\$10,001 to \$24,999	529	11	6.77	23
\$25,000 or more	211	4	14.52	48
Total	4,915	100	30.01	100
2006-07 (non-election year)				
Voluntary disclosure below threshold	1,780	81	4.79	27
\$10,301 to \$24,999	235	11	3.76	22
\$25,000 or more	177	8	8.97	51
Total	2,192	100	17.52	100

Source Australian Electoral Commission, submission 3, p. 14.

3.33 It is clear that the higher disclosure threshold of more than \$10,000 has significantly reduced the information available about who is making donations to political parties and other participants.

Candidate returns

3.34 The weakened transparency associated with the higher threshold of \$10,000 or more can also be seen in information provided by the Australian Electoral Commission to the committee about the number and value of donations reported by candidates at the 2004 and 2007 elections (table 3.6). For example, at the 2004 election (when the disclosure threshold was \$1,500), the percentage of amounts donated that were individually above the threshold was 89 per cent, more than double the 41 per cent individually declared at the 2007 election (when the disclosure threshold was \$10,500).

Table 3.6 Donations received by candidates, 2004 and 2007 elections

	2004 election	2007 election
<i>Candidate returns</i>		
Total number of donations reported	2,498	3,073
Total amount of donations reported	\$957,954	\$1,488,050
Number of individually declared donations	623	36
Percentage of number of donations individually declared	25.0%	1.2%
Total of individually declared donations	\$850,704	\$606,425
Percentage of amount of donations individually declared	88.8%	40.7%
<i>Senate group returns</i>		
Total number of donations reported	55	537
Total amount of donations reported	\$82,715	\$236,831
Number of individually declared donations	15	1
Percentage of number of donations individually declared	23.3%	0.0%
Total of individually declared donations	\$76,995	\$40,000
Percentage of amount of donations individually declared	93.1	16.9%

Source Australian Electoral Commission, submission 3, p. 16.

Proposed changes

- 3.35 The bill proposes a number of changes that will lower the disclosure threshold and shorten reporting timeframes. Administrative timeframes for the Australian Electoral Commission to publish returns will also be shortened. The proposed lower disclosure threshold of \$1,000 also reduces the opportunity to 'split' donations between related party branches without disclosure.

Thresholds and donation splitting

- 3.36 The bill proposes to reduce the disclosure threshold from the current \$10,900 (CPI indexed) for the full range of returns provided for under the Act and remove the indexation provisions so that the threshold will be set at \$1,000.¹⁰

¹⁰ Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clauses 23, 24, 26, 27, 30, 32, 34, 41, 43, 45, 50, 57, 60, 67, 67, 76, 78 and 102.

- 3.37 The threshold of \$1,000 would apply to all types of returns that are required to be provided to the Australian Electoral Commission under current arrangements.
- 3.38 In relation to annual returns, the bill proposes to amend the Act to provide for 6 monthly reporting periods, although the threshold applies for the full financial year.¹¹ The \$1,000 threshold for disclosure proposed by the bill is broadly in line with that used in other Australian jurisdictions (table 3.7).

Table 3.7 Disclosure thresholds, selected Australian jurisdictions

Jurisdiction	Donations to political parties
NSW	\$1,000
Qld	\$1,000
WA	\$1,800 (indexed to CPI)
ACT	\$1,000
NT	\$1,500

Source *NSW Election Funding Authority, Funding and disclosure guide: Political parties and agents, p. 5, viewed on 16 September 2008 at http://www.efa.nsw.gov.au/_data/assets/pdf_file/0007/48877/Guide_for_Parties_and_Party_Agents.pdf; Electoral Act 1992 (Qld), s. 305B; Western Australian Electoral Commission, Funding and Disclosure in Western Australia: Guidelines, p. 17, viewed on 16 September 2008 at http://www.waec.wa.gov.au/pp_candidate/documents/Funding%20and%20Disclosure%20in%20WA%20Guidelines.pdf; ACT Electoral Commission, Funding and financial disclosure handbook: 2008 / 2009 registered political parties, p. 1 viewed on 16 September 2008 at http://www.elections.act.gov.au/pdfs/fadhandbooks/partiesfadhandbook2008_2009.pdf; Northern Territory Electoral Office, Disclosure Handbook for Registered Political Parties, p. 2, viewed on 16 September 2008 at <http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase>.*

- 3.39 To introduce further transparency in political donations, the practice of donation splitting is to be restricted by treating all branches of a political party as one entity. This is to be achieved by inserting the existing definition of 'related' political parties in the interpretation section of the Act – thereby making it applicable to the finance and disclosure part of the Act (Part XX). This same definition previously only applied to the registration of political parties (Part XI).¹²
- 3.40 The Australian Electoral Commission told the committee that political party returns would not be affected by the changes, with the onus on the donor to disclose donations to related political parties.¹³

11 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 2, proposed s. 4(1).

12 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 1, proposed s. 4(1).

13 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 10.

3.41 The impact of limiting donation splitting at the current threshold can be demonstrated by reviewing donor returns for 2006-07. For example, the Coles Group disclosed 17 separate donations to political party branches, only four of which fell above the \$10,500 threshold for that year (table 3.8). Had it not been for the voluntary disclosure by the Coles Group of amounts lower than the threshold, \$40,000 of donations would not have been required to be disclosed under the existing provisions that provide for donation splitting as the individual amounts paid fell under the \$10,500 threshold.

Table 3.8 Example of the impact of limiting donation splitting – Donations disclosed by the Coles Group, 2006-07

Branch	The Nationals	Liberal Party of Australia	Australian Labor Party
National	\$17,500	\$50,000	\$50,000
Qld	\$2,000	\$2,000	\$5,000
Vic	\$1,200	\$11,000	\$9,000
SA	\$1,000	\$3,000	\$3,000
NSW	\$1,000	-	-
WA	\$800	\$3,000	\$3,000
Tas	-	\$3,000	\$3,000
Total required to be disclosed without donation splitting limit	\$17,500	\$61,000	\$50,000
Total required to be disclosed with donation splitting limit	\$23,500	\$72,000	\$73,000

Source Australian Electoral Commission, *Funding and disclosure: Annual Returns Locator Services, Analysis results – Donor returns*, viewed on 12 September 2008 at <http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=9>.

3.42 The limitations on donation splitting are strengthened by provisions in the Act that aim to prevent the use of intermediaries to avoid disclosure obligations. Clause 39 of the bill requires a donor to include in a return, details of gifts which enable a person to make a gift to a political party. The intention of this new subsection is to ensure that donors are not able to use intermediaries to circumvent the operation of the new reporting obligations.¹⁴

3.43 The Democratic Audit of Australia supported this proposal but noted that it could be difficult to effectively enforce:

Proposed new sections 305B(2) and (3A) ostensibly require a donor who intends to benefit a party, to disclose that contribution, regardless of whether it passes through intermediar/ies. The

14 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, p. 17.

intention behind this reform is welcome, given the ease through which trust funds, corporate vehicles or even lawyers' accounts (as in New Zealand) can and have been used to channel and disguise donations. However on its own, placing an obligation of honesty on donors and intermediaries may not be enough. There will need to be strong auditing and enforcement/prosecution of the provision.

From a legislative point of view, there should also be a positive obligation on party and candidate agents to inquire into and be satisfied as to the true source of donations. Absent this, sections 305B(2) and (3A) may be no more than a vain hope for self regulation.¹⁵

3.44 Under the proposed lower disclosure threshold of \$1,000 and a requirement that the threshold apply to all donations in a reporting period to related party branches the ability to split donations between branches and avoid disclosure becomes limited. Taken together, the new requirements would reduce the ability to avoid disclosure from the current level of \$98,099.91 to \$999.99.

3.45 The thrust of proposals to reduce the disclosure threshold was supported in a number of submissions to the 2007 election inquiry.¹⁶ The Public Interest Advocacy Centre told the committee that:

The Electoral and Referendum Amendment Act, which increased disclosure thresholds from \$1,000 to more than \$10,000 for anonymous donations and loans, and from \$1,500 to \$10,000 for other donations has seriously diminished transparency and accountability at a Federal level. PIAC believes it is in the public interest that these increases in thresholds be repealed and replaced with stringent regular pre-election reporting requirements using the previous lower thresholds.¹⁷

15 Democratic Audit of Australia, submission 1, p. 2.

16 See Democratic Audit of Australia, submission 45 to the 2007 election inquiry, p. 9; Eurobodalla Greens, submission 54 to the 2007 election inquiry, p. 2; Australian Democrats, submission 56 to the 2007 election inquiry, p. 20; Electoral Reform Society of South Australia, submission 94 to the 2007 election inquiry, p. 6; Public Interest Advocacy Centre, submission 103 to the 2007 election inquiry, p. 13; Bowe W, submission 106 to the 2007 election inquiry, p. 1; Willis D, submission 126 to the 2007 election inquiry, p. 1; Tham J, submission 133 to the 2007 election inquiry, p. 37; Lockett E, submission 175 to the 2007 election inquiry, p. 1.

17 Public Interest Advocacy Centre, submission 103 to the 2007 election inquiry, p. 13.

- 3.46 Mr David Kerslake supported a reduction of the current threshold of more than \$10,000 based on the conclusions of the Queensland Electoral and Administrative Review Commission set up in the wake of the Fitzgerald inquiry:

The whole idea is that the public can see who is receiving gifts or donations and make their own judgment about the influence that such donations might wield. A donation of \$10,000 seems to me to be well above the level at which the public would prefer to be in a position to make such a judgment. Take, for example, a series of donations of \$10,000 made by, say, four different members of the same family to a political party that has separately registered branches in each state and territory, and a national branch on top of that. That would amount to a total donation by that family of four of \$360,000 – a significant sum by Australian standards – without the source of the donation being publicly known.¹⁸

- 3.47 The importance of proceeding with some urgency to reduce the threshold was supported by Mr Norm Kelly from the Democratic Audit of Australia, who considered that the threshold should be applied from the 1 July 2008 starting point:

One of the main things is the provision in the bill to reduce the threshold of disclosure back to \$1,000. That is quite important. We are agreed that that is a good democratic improvement. For that to be delayed is a danger. I personally would like to see is the government, without what some people may call retrospectivity, making an announcement that it will support disclosure at that \$1,000 threshold to be effective from the date of an announcement. I would prefer that rather than wait for the actual legislation to go through so that people are forewarned that the reduced threshold level hopefully will be introduced or passed. A lot of the provisions are probably more relevant to the next election whereas the disclosure threshold is ongoing and current. I would like to see that enacted as a matter of haste.¹⁹

- 3.48 Support for the existing disclosure threshold of more than \$10,000 was received in submissions to the 2007 election inquiry by The Nationals and the Liberal Party of Australia, who argued that the current system is working and that the case for change has not been demonstrated.²⁰

18 Kerslake D, transcript, 6 August 2008, p. 56.

19 Kelly N, Democratic Audit of Australia, transcript, 22 September 2008, p. 20.

20 Liberal Party of Australia, submission 156 to the 2007 election inquiry, p. 1.

- 3.49 Other views on the disclosure threshold expressed to the committee included:
- Maintaining current arrangements for donation splitting but the annual threshold for disclosure of political donations should be set based on the previous year's returns so as to ensure that a fixed percentage, between 90 per cent and 95 per cent, of total donation are disclosed;²¹ and
 - Indexation of the \$1,000 threshold or regular review of its appropriateness.²²
- 3.50 Removing indexation was seen by the Democratic Audit of Australia to have the educational benefit of keeping the figure at a memorably round number, which would likely be kept under regular review into the future.²³
- 3.51 While lowering the disclosure threshold is likely to lead to an increase in the transactions disclosed by people and entities that already make disclosures, it is also likely to lead to an expansion in the number of people and entities required to provide returns. The Australian Electoral Commission estimated that the proposed measures were likely to lead to at least a three-fold increase in their workload.²⁴
- 3.52 Under the current threshold of more than \$10,000, 63 organisations provided annual political expenditure returns, with the value of expenditure ranging from over \$10 million (Australian Council of Trade Unions) to \$6,200 (Qld Services Industrial Union of Employees - Rail Division).²⁵
- 3.53 The Democratic Audit of Australia considered that the lower threshold may be problematic for third parties:
- It is reasonable to put large scale political spenders such as lobby and business groups and major activist groups like GetUp! on the same six month reporting timetable as parties. But lowering the threshold from \$10,000 expenditure in a financial year, to just

21 Festival of Light Australia, submission 67 to the 2007 election inquiry, p. 6.

22 Kerslake D, transcript, 6 August 2008, p. 56; Myers P, submission 172 to the 2007 election inquiry, p. 1.

23 Democratic Audit of Australia, submission 1, p. 1.

24 Dacey P, Australian Electoral Commission, transcript, 26 September 2008, p. 2.

25 Australian Electoral Commission, Funding and disclosure, Annual returns locator service, Summary of all Political Expenditure Returns, viewed on 23 September 2008 at <http://fadar.aec.gov.au/arwdefault.asp?submissionid=9>.

\$1000 in the (six month) reporting period, potentially catches a lot of small-scale groups in a net with enhanced penalties.²⁶

- 3.54 This view has also been expressed by others, who argue that ‘thousands’ of small groups with only an incidental interest in elections or election issues could be caught up in the net.²⁷
- 3.55 The committee is mindful that this is likely to lead to a need for a number of people and entities making disclosures for the first time. When formulating an appropriate disclosure threshold, it is important to balance these compliance costs with the additional public benefit of increased transparency.

Reporting and disclosure timeframes

- 3.56 Public knowledge of financial transactions of political actors requires that the disclosure returns be provided to the Australian Electoral Commission and then collated, data entered and then published on the Commission’s website (<http://fadar.aec.gov.au/>).
- 3.57 The collection of information by party organisations and candidates can involve a complex paper trail that relies on party officials, who are often volunteers, collecting appropriate information about contributions to their branch, and then forwarding this information to head office for aggregation and reporting to the Australian Electoral Commission.
- 3.58 Once received by the Australian Electoral Commission, the data from the returns is entered into the commission’s database, appropriate cross checking and matching performed and then copies of the returns are scanned for publication on the Commission’s website.
- 3.59 Timely processing of this information by parties, candidates and donors and the public availability of this information through the Australian Electoral Commission is essential in making more transparent the source of funding for candidates and parties.
- 3.60 The bill proposes to shorten these timelines significantly, thereby providing the community with more timely information.

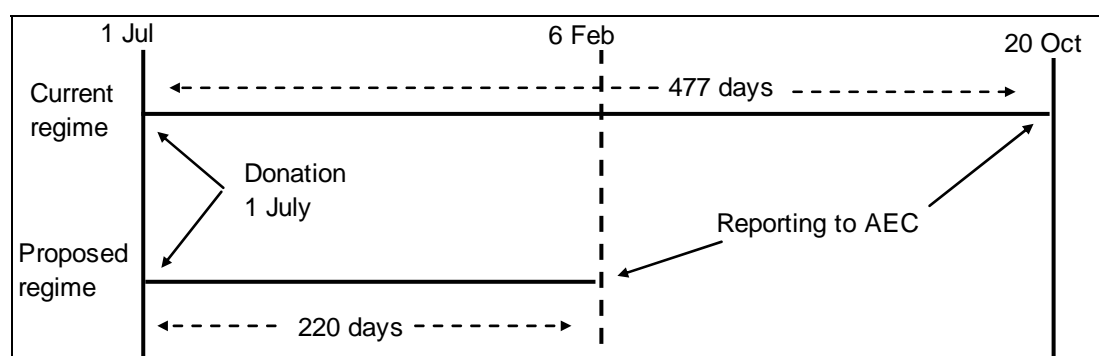
26 Democratic Audit of Australia, submission 1, p. 2.

27 Norton A (2008), ‘The chilling effect of political expenditure laws’, *Policy*, vol 24 no 1, p. 5.

Reporting timeframes

- 3.61 For election returns, the bill proposes to shorten the disclosure timeframe from the existing 15 weeks after polling day to within 8 weeks of polling day.²⁸
- 3.62 Using the 2007 election as an example, election returns were required to be provided to the Australian Electoral Commission by 11 March 2008.²⁹ Under the proposed 8 week reporting requirement returns would have been required to be provided to the Commission by 21 January 2008.
- 3.63 For annual returns, the bill proposes that a definition of 'reporting period' include the first six months of a financial year or a full financial year.³⁰ This definition facilitates a requirement that returns formerly provided on an annual basis be furnished on a six monthly basis. Furthermore, whereas annual returns were previously required to be provided to the Australian Electoral Commission within 16 or 20 weeks of the end of the financial year (ie: by around 20 October), the bill proposes that the biannual returns be provided to the Commission within 8 weeks of the end of a six-monthly reporting period.³¹
- 3.64 Figure 3.2 illustrates the impact of implementing a biannual reporting requirement and an 8 week timeframe for the receipt of returns compared to existing arrangements. For a donation to a political party made on 1 July, the proposed reporting regime will cut down the time that a return needs to be furnished from 477 days to 220 days, an improvement of 257 days or 54 per cent.

Figure 3.2 Impact of a biannual reporting framework on the timeliness of reporting



28 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 22 and 36.

29 Australian Electoral Commission (2008), *Electoral Pocketbook 2007*, p.69

30 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 2.

31 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 37.

- 3.65 While the bill does not change the requirement that parties are not required to furnish election returns, the biannual reporting requirement will significantly bring forward the timeframes for public reporting of this information. For example, had the proposed biannual reporting been in place currently, returns covering the 2007 federal election, held on 24 November, would have been required to be furnished to the Australian Electoral Commission by 6 February 2008 rather than 20 October 2008.
- 3.66 The bill includes provisions to avoid duplication in reporting. For example, if a return has already been furnished in the first six months of a financial year and there are no further donations for the remainder of the financial, a second return will not be required. In addition, if a person making a gift furnishes a return for the second reporting period that ends at the end of the full financial year, the person does not have to disclose any gift made by the person that has been disclosed in a return for the first six months of that financial year.³²
- 3.67 The dual definition of reporting period (which includes a full financial year and the first six months of a financial year) enables the application of the \$1000 threshold across a full financial year. The effect of this is that, for example, a single \$500 donation made in the first six months of the financial year followed by a second \$500 donation in the second part of the financial year would be required to be disclosed a return furnished within 8 weeks of the end of the financial year.
- 3.68 The timeframes for returns by political parties proposed by the bill are consistent with two Australian jurisdictions that have recently moved to change disclosure arrangements, New South Wales and Queensland (table 3.9). There are some differences within jurisdictions depending on the type of returns. For example, in the ACT, third party annual returns must be furnished within 20 weeks of the end of the financial year, and within 24 weeks when an election is held following the end of the financial year.³³

32 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 37.

33 ACT Electoral Commission, Funding and financial disclosure handbook: Third parties, p. 3, viewed on 16 September 2008 at www.elections.act.gov.au/pdfs/fadhandbooks/thirdpartiesfadhandbook2008_2009.pdf.

Table 3.9 Timeframes for political party disclosure returns, selected Australian jurisdictions

Jurisdiction	Due date for annual return – reporting period financial year to 30 June	Due date for election return following polling day
NSW	Biannual reporting – 25 February and 25 August for 6 month periods ending December and July respectively	na
Qld	Biannual reporting - 8 weeks after end of six monthly reporting periods ending December and July respectively (25 February and 25 August)	na
WA	30 November	15 weeks
ACT	16 weeks (20 October)	15 weeks
NT	16 weeks (20 October)	na

Note na – Not applicable.

Source NSW Election Funding Authority, *Funding and disclosure guide: Political parties and agents*, p. 25, viewed on 16 September 2008 at http://www.efa.nsw.gov.au/_data/assets/pdf_file/0007/48877/Guide_for_Parties_and_Party_Agents.pdf; *Electoral Amendment Bill 2008 (Qld)*, clause 19, 28 and 32; s. 110A; *Electoral Act 1992 (Qld)*, s. 319B; *Western Australian Electoral Commission, Funding and Disclosure in Western Australia: Guidelines*, pp. 18, 19, 22, and 23 viewed on 16 September 2008 at http://www.waec.wa.gov.au/pp_candidate/documents/Funding%20and%20Disclosure%20in%20WA%20Guidelines.pdf; *ACT Electoral Commission, Funding and financial disclosure handbook: 2008 / 2009 registered political parties*, pp. 6, 10, viewed on 16 September 2008 at http://www.elections.act.gov.au/pdfs/fadhandbooks/partiesfadhandbook2008_2009.pdf; *Northern Territory Electoral Office, Disclosure Handbook for Registered Political Parties*, p. 17, viewed on 16 September 2008 at <http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase>.

3.69 While the Democratic Audit of Australia supported a move to biannual reporting, the absence of even more regular disclosures was questioned:

Moving to bi-annual rather than annual reporting periods for party and associated entity donations is commendable. And the reduction in the time allowed to file post-election and post-reporting period returns, from 15 weeks to 8 weeks, is superficially attractive. But neither of these measures addresses a key failing of the disclosure regime since its inception: the absence of regular disclosure, especially automatic disclosure of large donations. This is particularly galling in the internet age.³⁴

3.70 Although these new timeframes for furnishing returns represent a significant improvement in timeliness, adherence to the proposed timeframes may represent a challenge to parties and others providing disclosure returns.

34 Democratic Audit of Australia, submission 1, p. 1.

- 3.71 Under the existing timeframes it is not uncommon for a number of returns to be received after their due date, a situation that has persisted for a number of years for both election returns and annual returns (tables 3.10 and 3.11).
- 3.72 The regularity with which returns are received by the Australian Electoral Commission beyond their due date highlights the difficult task that it may face in educating and encouraging participants to complete their returns in the proposed 8 week timeframe.

Table 3.10 Timeliness of election returns, 2004 election and 2007 election

	Returns received by the due date		Returns received after the due date		Total returns received	
	2004	2007	2004	2007	2004	2007
<i>Candidate and Senate Group returns</i>						
Candidates	1,264	1,054	105	345	1369	1399
Senate Groups	15	19	2	4	17	23
<i>Donor and third party returns</i>						
Donations made	192	1	179	4	371	5
Electoral expenditure	128	na	33	na	161	na
Donations received	29	na	5	na	34	na

Note na – Not applicable.

Source Australian Electoral Commission, submission 3, p. 20.

Table 3.11 Timeliness of annual returns, 2005-06 and 2006-07

	Returns received by the due date		Returns received after the due date		Total returns received	
	2005-06	2006-07	2005-06	2006-07	2005-06	2006-07
Political parties	58	26	31	11	89	51
Associated entities	58	126	63	128	121	254
Donors	229	82	166	147	395	229
Third party political expenditure	na	14	na	51	na	65

Note na – Not applicable.

Source Australian Electoral Commission, submission 3, p. 20.

- 3.73 When asked about the need to provide support to organisations and people who are likely to have a disclosure obligation, the Australian Electoral Commission acknowledged that significant effort would need to be put into education resources and the design of the returns system:

We are certainly very mindful of that. Our understanding, without looking in detail but we will look in detail at the system that operates at the New York City Campaign Finance Board, is that there is a software package provided to the participants in the process which they load on whatever systems they have and it allows them direct entry into the return system. We will be looking at whatever we can to make that as less a burden as we can for the participants, subject to resources.³⁵

- 3.74 The shortening of reporting timeframes proposed by the bill represent a significant improvement on current arrangements. The committee is concerned that the implementation of the proposed arrangements would need to be accompanied by a significant effort on the part of the Australian Electoral Commission with its stakeholders in the provision of educational information and other resources to assist them to fulfil their reporting requirements.

Publication timeframes

- 3.75 By itself, the shortening of the period for returns to be lodged will make publication more timely than current arrangements. However, a further key element of the financial disclosure system requires timely *publication* by electoral authorities of returns furnished by participants in the political system. The Australian Electoral Commission told the committee that:

From the AEC's perspective and the overall policy's perspective we would see there being little point in having shortened reporting time frames if we were unable to publish that and have it in the public domain in an equally short time frame.³⁶

- 3.76 A comparison of current arrangements for the publication of annual returns and election returns for selected Australian jurisdictions is set out in table 3.12. Differences in publication timeframes can relate to the quality of publication, including whether there is any cross referencing between different types of returns, whether summary information is available electronically for searching or whether a copy of the original return is provided.

35 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 23.

36 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 23.

Table 3.12 Timeframes for publication of disclosure returns, selected Australian jurisdictions

Jurisdiction	Annual returns – Elapsed time between receipt and publication/availability for public inspection	Election returns – Elapsed time between receipt and publication/availability for public inspection
Cwlth	Returns received 16 weeks after end of financial year for parties and associated entities and 20 after the end of the financial year for donors and third parties are available in early February of the following year	Returns received 16 weeks after polling day for associated entities, candidates and donors and 20 weeks for third parties are available 24 weeks after polling day for donors and 26 weeks after polling day for associated entities and 3 rd parties
NSW	Biannual returns – returns lodged 25 August for January to June reporting period are to be published on website on 1 September	na
Qld	Biannual returns – returns lodged 25 February and 25 September are to be published within 6 weeks	na
WA	Returns received by 30 November and available first working day after 28 December	Returns received 15 weeks after polling day are available 4 weeks later (within 19 weeks of polling day)
ACT	Returns received 16 weeks (20 October) after the end of the financial year are available in early February the following year.	Returns received 15 weeks after polling day are available 10 weeks later (within 25 weeks of polling day)
NT	Returns received 16 weeks (20 October) after the end of the financial year are available on 1 March the following year.	na

Note na – Not applicable.

Source NSW Election Funding Authority, *Funding and disclosure guide: Political parties and agents*, p. 8, viewed on 16 September 2008 at http://www.efa.nsw.gov.au/_data/assets/pdf_file/0007/48877/Guide_for_Parties_and_Party_Agents.pdf; ; Electoral Act 1992 (Qld), s. 319B; Western Australian Electoral Commission, *Funding and Disclosure in Western Australia: Guidelines*, pp. 18, 19, 22, and 23 viewed on 16 September 2008 at http://www.waec.wa.gov.au/pp_candidate/documents/Funding%20and%20Disclosure%20in%20WA%20Guidelines.pdf; ACT Electoral Commission, *Funding and financial disclosure handbook: 2008 / 2009 registered political parties*, pp. 6, 10, viewed on 16 September 2008 at http://www.elections.act.gov.au/pdfs/fadhandbooks/partiesfadhandbook2008_2009.pdf; Northern Territory Electoral Office, *Disclosure Handbook for Registered Political Parties*, p. 17, viewed on 16 September 2008 at <http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase>.

- 3.77 The bill proposes to facilitate an improvement in the publication of disclosure returns by the Australian Electoral Commission. Clause 99 proposes to repeal the requirement for the Commission to have returns available for public inspection until after a specified timeframe (February for annual returns and 24 weeks after polling day for election returns).
- 3.78 In its place, the bill proposes to insert an enabling provision for the Australian Electoral Commission 'to make a copy of a claim or return available for inspection or perusal, or to provide a copy of a claim or

return, sooner after lodgement of the claim or return than is reasonably practicable'.³⁷

3.79 The Explanatory Memorandum suggests that the administrative timeframes following the 8 week requirements for lodgements will be shortened into the future, anticipating that 'advances in technology might enable claims or returns to be available sooner than the fixed time of 24 weeks after polling day for [election returns] or February in the calendar year [for annual returns]'.³⁸

3.80 The Special Minister of State stated that the timeframe for processing and publication by the Australian Electoral Commission would be significantly shorter:

There will be a slight lag time and on the best advice I have available to me, that will certainly be no longer than three months by the end of the six month reporting period.

It'll be in the public arena within, definitely within three months and I hope within two months. I mean, I think everyone appreciates there needs a short period of time for parties and candidates to - the political parties mainly in this instance to report and be talking about a few weeks, possibly four weeks, four weeks for the AEC to do all the administrative work.³⁹

3.81 In its evidence to the committee, the Australian Electoral Commission indicated that the timeframes would largely depend on appropriate resourcing for ongoing administrative staff and an associated information technology platform to support a reporting system:

It depends on discussions with our colleagues in the budget process. It is mainly a resource issue and an IT issue. Currently, in the Act there are time frames – within a 15-, 16-, 20-week period – for the annual returns to be lodged. Eight weeks is proposed in the bill. Currently, we then have until the following February to put information on the website, and that is because of all the manual work we are required to do in dealing with hard copy returns that are lodged with us. As an outcome and as part of the transparency and accountability process, clearly the AEC would be seeking, and

37 Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, clause 99.

38 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures Bill 2008, p. 31.

39 Senator the Hon John Faulkner, Special Minister of State, transcript of media conference, 28 March 2008, viewed on 23 September at http://www.smos.gov.au/transcripts/2008/tr_20080328_electoral_reform.html.

indeed we have undertaken negotiations with our colleagues in Finance, to have an IT solution that will enable this to be up in the public domain as soon as practicable.⁴⁰

3.82 While a significant improvement in publication timeframes appears to be achievable, the Democratic Audit of Australia considered that further improvements were necessary as disclosure would still take place after an election.⁴¹

3.83 The Democratic Audit of Australia and Dr Sally Young raised the suggestion that the disclosure regime should provide for an Internet-based system that would provide for disclosure of donations as they are received and more timely publication, modelled on a system operated by the New York City Campaign Finance Board.⁴² The Democratic Audit told the committee:

The system has been operating in New York for a long time. It had a very clunky start technically, but as the papers will note, once the internet became reasonably sophisticated, it became quite simple.

The way it works is that the campaign board has software which it gives to candidates. ... Then the candidate or their agent enters donations as they arrive onto this software, and that is transmitted to the campaign board's web page where it is instantly displayed.

As I said, at the beginning of a four-year cycle, the reporting is twice a year, then it becomes three times a year, and then it shortens. The big advantage of the system is, setting aside all the arguments about whether money buys influence or whatever, voters have a reasonable expectation of knowing who's funding whom before they cast the vote. It is a bit like knowing the policies of parties.⁴³

3.84 The Australian Electoral Commission told the committee that it is aware of the New York Campaign Finance Board model and could consider its use. However, the Commission pointed out that the adoption of such a system was not without its complexities:

the adoption of such a model is not just as simple as obtaining the software used by that board for use by the AEC and those with

40 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 23.

41 Democratic Audit of Australia, submission 1, p. 1.

42 Democratic Audit of Australia, submission 45 to the 2007 election inquiry, p. 8; Young S, submission 77 to the 2007 election inquiry, p. 4.

43 Costar B, Democratic Audit of Australia, transcript, 22 September 2008, p. 16.

reporting obligations. What is important is the interaction with other AEC systems and secure internet gateways to enable communications to be received by the AEC. They would all require significant development and associated costs.

Committee conclusion

- 3.85 The proposals included in the bill to lower the disclosure threshold from \$10,900 (adjusted annually for inflation) to \$1,000 (not adjusted for inflation) will lead to a significant increase in the transparency of financial support and expenditure by participants in the political process. The committee supports the proposal to end the indexing of the disclosure threshold to the consumer price index. Such a move will end confusion about what the disclosure level is.
- 3.86 The proposal to close the existing loophole that allows for donation splitting – which treats state and territory branches as separate entities and allows donors to contribute up to \$10,899.99 to nine separate branches of the same political party (almost \$98,100 in total) – will further improve transparency by limiting the opportunity to contribute large amounts of money to political parties and candidates and avoid disclosure.
- 3.87 Transparency will be further enhanced by the proposal to bring forward reporting on disclosure from up to 20 weeks for annual returns and 15 weeks from polling day for election returns to 8 weeks for both types of returns. Further, those making annual returns will need to do so on a bi-annual basis.
- 3.88 Combined with a shortened administrative timeframe for processing returns by the Australian Electoral Commission, which is likely to be about half of the current timeframe, the public will be able to know about the level of support and expenditure by participants in the political process in a significantly shorter period than is provided for under current arrangements.
- 3.89 It is important that clear public targets are included in the suite of performance measures included in the Australian Electoral Commission budget portfolio statements. These targets should include performance measures that are appropriate to the level of resourcing provided and the government's goals in this area.

- 3.90 The proposed disclosure arrangements are also more closely aligned with those recently implemented in two jurisdictions and provide a sound basis for progressing harmonisation with other jurisdictions.
- 3.91 While further improvements are possible over time, including moving towards on-line reporting and more regular reporting, the proposed arrangements offer a good starting point towards achieving improvements in the future in the timeliness of disclosure.
- 3.92 While the proposal to lower disclosure threshold and implement biannual reporting arrangements for some types of disclosure returns may lead to additional compliance costs for participants in the political process, the committee believes that they achieve the right balance between making transparent the sources of support for political parties and candidates and the freedom to participate in political process.

Recommendation 3

- 3.93 **The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that enhance transparency of political funding by:**
- **lowering the disclosure threshold from the current level of \$10,900 (adjusted annually for inflation) to \$1,000 and removing indexation;**
 - **improving the timeliness of reporting by replacing annual return requirements with a bi-annual reporting framework and shortening the requirement to report from 15 to 20 weeks after the end of a financial year to 8 weeks after the end of the reporting period;**
 - **improving the timeliness of election returns by shortening the period for reporting from 15 weeks after polling day to 8 weeks after polling day;**
 - **closing the loophole for donation splitting by treating related parties as a single entity thereby eliminating the possibility that separate donations totalling more than \$98,000 from a single donor can be given without disclosure; and**
 - **facilitating earlier publication of disclosures by the Australian Electoral Commission.**

Recommendation 4

- 3.94 **The committee recommends that the Government provide the Australian Electoral Commission with adequate funding so that the Commission can publish returns in a timely fashion and undertake public awareness activities that ensure participants understand their disclosure obligations and are able to minimise their compliance costs . In addition, clear targets for the Commission’s administrative functions, that are consistent with the level of resourcing and the government’s goals in this area, should be specified in the performance measures included in the agency’s portfolio budget statements.**

Foreign and anonymous donations

Background

- 4.1 The desirability of allowing foreign donations to be made to, or received by candidates, political parties or Senate groups has been raised on a number of occasions in the past.
- 4.2 Despite concerns about the ability of those making such donations to exert influence on domestic politics, no restrictions have yet been placed on the ability of candidates, political parties or Senate groups to receive or use foreign donations.
- 4.3 The *Commonwealth Electoral Act 1918* currently enables donations of up to \$10,900 to be received from anonymous sources.¹
- 4.4 This has not always been the case. In its 1983 report, the then Joint Select Committee on Electoral Reform noted that, even then, there were differing views about the desirability of allowing anonymous donations to be made.
- 4.5 Some members of that committee believed that substantial anonymous donations should be allowed, whilst others argued against their desirability. Those against argued:
 - ... evasion of the requirements of law under the cloak of anonymity should be prevented. The desire for anonymity on the part of some donors should not be allowed to outweigh the rights of the general public to know the source of finance for political

1 *Commonwealth Electoral Act 1918*, ss. 304, 305A, 305B and 306.

activity which because they were anonymous, could not be said to influence decisions.²

4.6 Ultimately, that committee recommended as follows:

That anonymous donations for election campaign purposes above the set limits including those received via solicitors' trust funds not be accepted or where they have been received and cannot be returned they be forwarded to the proposed Electoral Commission and be used to defray the costs of the public funding process.³

4.7 The government of the day agreed and the Commonwealth Electoral Act was amended to provide that the limit above which anonymous donations could not be accepted was \$200 for an individual candidate, \$1,000 for a political party and \$1,000 for a Senate Group.

4.8 These limits on anonymous donations applied for all federal elections up to and including the 2004 federal election.

4.9 It is difficult to ascertain how often political parties and candidates receive anonymous gifts. A report by the Australian Electoral Commission following the 2001 federal election noted that no such gifts came to the attention of the Commission.⁴ In a similar report following the 2004 election, the Commission noted that a number of candidates reported donations in excess of \$200 (the threshold applying at the time) without giving details of the donor involved. Follow-up action by the Commission resulted in amended returns being lodged that show donor details.⁵

4.10 With respect to foreign donations, the Australian Electoral Commission has previously highlighted receipts shown in political party returns with an overseas address.⁶ Table 4.1 provides an example of some of these returns over the period 1998-99 to 2002-03.

2 Joint Select Committee on Electoral Reform, *First Report*, September 1983 p. 165.

3 Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 165.

4 Australian Electoral Commission (2005), *Funding and Disclosure Report Election 2001*, p. 12.

5 Australian Electoral Commission (2005), *Funding and Disclosure Report Election 2004*, p.29.

6 Australian Electoral Commission, submission 11 to the 2005 inquiry into disclosure of donations to political parties and candidates, pp. 25-26.

Table 4.1 Party receipts with an overseas address, 1998-99 to 2002-03

Year	Party	Amount	Name	City/Country
1998-99	Liberal Party of Australia - Federal Secretariat	\$5,000	M J Dwyer	PORT MORESBY
1998-99	Citizens Electoral Council of Australia	\$5,250	Michael Esdaile	WEST AUCKLAND
1998-99	Liberal Party of Australia (WA Division) Inc	\$5,000	W S Cairns	GUERNSEY ISLAND
1999-00	Australian Labor Party (NSW Branch)	\$25,000	B Salizar	MANILLA, PHILLIPINES
1999-00	Australian Greens	\$19,438	Green Forum Foundation	SWEDEN
2000-01	Liberal Party of Australia - NATIONAL	\$3,301	International Democrat Union	WESTMINISTER
2001-02	Australian Labor Party - SA	\$10,000	Alastair Walton	HONG KONG
2001-02	Australian Labor Party (State of Queensland)	\$9,586	Chen Kang	HONG KONG
2001-02	Liberal Party of Australia - Queensland Division	\$2,000	David Argyle	CHINA
2001-02	Liberal Party of Australia - Queensland Division	\$2,000	Flextronics	SAN JOSE, 95131
2001-02	Australian Greens - NATIONAL	\$7,724	French Greens (Les Verts)	PARIS, FRANCE
2001-02	Australian Greens - NATIONAL	\$1,553	French Greens (Les Verts)	PARIS, FRANCE
2001-02	Liberal Party of Australia (Victorian Division) -VIC	\$1,948	J Mackay Gill	NEW YORK NY USA
2001-02	Australian Democrats - NATIONAL	\$2,200	Lucent Technology	HONG KONG
2001-02	Australian Labor Party – WA	\$5,000	Potain Pty Ltd	SINGAPORE
2001-02	Australian Labor Party (State of Queensland)	\$9,769	Zhang Ziaojing	HONG KONG
2002-03	Liberal Party of Australia (Victorian Division)	\$14,000	Dr Kazumasa Ikoma MD	KAWABE, HYOGO, JAPAN
2002-03	Australian Labor Party (N.S.W. Branch)	\$17,674	Hatco Corporation	FORDS, NJ, 98568
2002-03	Liberal Party of Australia, NSW Division	\$8,360	Icon Productions LLC	SANTA MONICA
2002-03	Australian Labor Party - SA	\$5,500	SkyCity Entertainment Group	AUCKLAND NZ

Source Australian Electoral Commission, Australian Electoral Commission, submission 11 to the 2005 inquiry into disclosure of donations to political parties and candidates, p. 26.

- 4.11 More recently, there have been instances where more significant funds have been received from overseas sources. For example, in 2004-05 the Liberal Party of Australia received a \$1 million donation from British citizen Lord Michael Ashcroft.⁷ In 2006-07, the Australian Labor Party (NSW Branch) received \$100,000 from Hong Kong Kingson Investments, whose return address was listed as being in Hong Kong.⁸

Impact of 2006 amendments

- 4.12 Following the 2004 federal election, the Joint Standing Committee on Electoral Matters considered the issue of disclosure thresholds (above which donations must be declared) and recommended that the threshold be substantially increased so that disclosure applied to amounts over \$10,000 and that the threshold be indexed to the Consumer Price Index (CPI).⁹
- 4.13 As noted in chapter 3, the Government then acted by implementing this change, amongst others, with the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, which received royal assent on 22 June 2006.
- 4.14 The current level of \$10,900, which applied from 1 July 2008, will continue until 30 June 2009, after which time it will increase again, unless changes are made to the relevant provisions of the Commonwealth Electoral Act.
- 4.15 Donations below this threshold are not required to be disclosed by the donor, nor the receiver. Therefore, the relevant provisions of the Commonwealth Electoral Act effectively now enable any number of individual donations below the \$10,900 threshold to be made to any political candidate, party or senate group, without the public knowing the source of those funds, providing the donor does not disclose their identity.
- 4.16 This anonymity also currently extends to those who make foreign donations of amounts below the threshold.

7 Australian Electoral Commission, Funding and Disclosure: Annual Returns Locator Service, viewed on 30 September 2008 at <http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=7>.

8 Australian Electoral Commission, Funding and Disclosure: Annual Returns Locator Service, viewed on 30 September 2008 at <http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=9>.

9 Joint Standing Committee on Electoral Matters (2005), *Report of the Inquiry into the Conduct of the 2004 Federal Election and matters related thereto*. p. 333.

Proposed changes

- 4.17 The bill seeks to make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use foreign or anonymous donations. 'Foreign property' is defined to be money in an account outside Australia, other money outside Australia, or property other than money that is located outside Australia.¹⁰
- 4.18 The Australian Electoral Commission told the committee about why the legislation was framed around the movement of foreign property in or out of Australia:
- The issue became our limited power to enforce things offshore. The way that the legislation had to be drafted, therefore, was to do with foreign property coming into Australia that was being donated to a political party or used for a political purpose. That is what the new controls are proposing the bill regulate.
- ... If there was no movement of property from offshore to Australia – and that is how the amendments have been drafted – then it would not be caught. There has to be an actual movement of foreign property from offshore to onshore.¹¹
- 4.19 Under the proposed changes, it will be unlawful for a registered political party, State branch of a political party, a candidate or a member of a group, or a person acting for any such party or person to receive a donation of foreign property, The prohibition will only apply to candidates and members of groups during the candidacy or group period (the period from when they announce their nomination for election or when they request to have their names grouped on the ballot paper and ending 30 days after polling day).¹²
- 4.20 Further, the bill seeks to make it unlawful for foreign or anonymous donations to be used to incur political expenditure by specified persons, groups or entities, where the donor's main purpose on making the

10 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40.

11 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 19.

12 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed s. 306AC.

donation was, either directly or through the use of intermediaries to enable the recipient to incur that expenditure.¹³

4.21 The bill specifies that the proposed provisions would not apply where the foreign or anonymous donation was returned to the donor within 6 weeks of its receipt.¹⁴ Where the donation is not returned, the bill seeks to make the amount of the donation payable to the Commonwealth and provides for liability and debt recovery arrangements to apply. The bill seeks to ensure that the value of any such donation is recoverable only once.¹⁵

4.22 The Democratic Audit of Australia supported the ban on anonymous donations but considered that it may be impractical for small donations made in the course of fundraising events:

It seems odd that the ban applies to all 'gifts', however small. A scrupulous party fund-raiser, shaking a tin or selling raffle tickets, will be required to demand and record the names and addresses of every contributor, or refuse or forfeit the contribution to the Commonwealth. It may be sensible to legislate a low threshold, say \$50. If so, regular contributions under the threshold would still have to be covered by the anti-anonymity rule (eg direct debits, cheques or other financial transfers) since such contributions could otherwise be used to make cumulatively substantial donations.¹⁶

4.23 At a public hearing, the Australian Electoral Commission was asked about whether the bill intended to ban all anonymous donations as the Democratic Audit suggested or whether only amounts below the proposed threshold (\$1,000) would be prohibited.

4.24 The Commission confirmed that the bill, as drafted, would ban all anonymous donations. In its response to the committee the Commission noted that:

The amendments contained in Item 40 of Schedule I to the Bill seek to repeal the existing section 306 and to introduce new sections 306 to 306AI. The effect of these new provisions is to ban all anonymous donations to those involved in the political process. The Second Reading Speech that accompanied the introduction of

13 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed ss. 306AD, 306AG and 306AI.

14 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clause 40, proposed ss. 306AA and 306AF.

15 Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008, clauses 14 and 21.

16 Democratic Audit of Australia, submission 1, p. 4.

this Bill into the Senate stated (Senate Hansard 15 May 2008 page 1965):

The Bill includes measures that extend the current prohibition on accepting anonymous donations to all anonymous gifts

Accordingly, the Bill contains a complete prohibition on the receipt by political parties and candidates of any anonymous gifts irrespective of the amount involved. This prohibition also applies to others involved in the electoral processes where those anonymous funds are used for electoral expenditure. This was a deliberate policy decision based on the concern that setting a threshold below which anonymous donations could be lawfully received has the potential to create a loophole that could be exploited to undermine the accountability and transparency of other measures designed to inform the Australian community of the sources of donations that are accepted and expended by the main players in the electoral process.

However, since the AEC's evidence on Friday, the Minister has indicated that Government amendments to the Bill will be considered that introduce a low threshold (of say \$50) below which anonymous donations can be lawfully received by the key players in the electoral process. This will facilitate the collection of donations in the circumstances outlined in the further submission from the Democratic Audit of Australia that was provided to the AEC at the Committee's hearing.¹⁷

- 4.25 The committee agrees that it would be difficult for the organisers of small-scale fundraising activities to comply with a complete ban on anonymous donations. The approach suggested by the Democratic Audit of implementing a low threshold of \$50 appears to provide a workable solution.
- 4.26 The committee therefore recommends that clause 40 of the bill (proposed section 306AE) be amended to provide for anonymous donations of less than \$50 to be received without imposing a requirement that the receiver of the gift obtain personal details of the person or organisation providing the gift.

17 Australian Electoral Commission, submission 3, p. 2.

Views about current and proposed arrangements

4.27 The committee received a number of submissions for its 2007 election inquiry that canvassed issues relating to foreign or anonymous donations.

4.28 Mr Andrew Murray, on behalf of the Australian Democrats, welcomed the changes proposed by the bill, noting that:

The Democrats applaud the Labor Government's proposal (by press release on March 28 2008) to ban foreign political donations from overseas. It is long overdue. The AEC on-line disclosure returns show that between 1998/99 to 2006/07, Australian political parties received \$2 319 220 from overseas sources. Of this amount, \$1 664 279 went to the Liberal Party, \$475 067 to Labor, \$170,564 to the Greens, \$7,110 to the Citizens Electoral Council and \$2,200 to the Democrats.

Within those figures was a startling \$1,000,000 for the Liberal Party from British citizen, Lord Michael Ashcroft for the 2004 federal election. Interestingly, this donation would have been illegal in Britain because of that country's ban on foreign donations. Under British law, a donation of more than £200 sterling or \$A470 is allowed only if it comes from a person eligible to enrol to vote in Britain or from registered corporations operating in Britain.¹⁸

4.29 Support for a ban on foreign and anonymous donations was also given by the Australian Labor Party, Dr Tham and the Eurobodalla Greens.¹⁹ The Democratic Audit of Australia also supported the proposals, noting that:

Some parties may be ideologically or organisationally linked to global movements eg socialist and environmental parties. But as long as Australia forms a single, sovereign electoral system and is not part of a supra-national electoral system like the ED, the principle that foreign interests should have no say is valid.²⁰

4.30 As noted in chapter 1, the Liberal Party of Australia and The Nationals viewed the current arrangements as operating without problems and

18 Australian Democrats, submission 56 to the 2007 election inquiry, p. 27

19 Australian Labor Party (National Secretariat), submission 159 to the 2007 election inquiry, p. 1; Tham J, submission 133 to the 2007 election inquiry, p. 37; The Eurobodalla Greens, submission 54 to the 2007 election inquiry, p. 2.

20 Democratic Audit of Australia, submission 1, p. 3

considered that any reviews of these arrangements should wait until the green paper process is established.²¹

Committee conclusion

- 4.31 The committee believes that the current high disclosure threshold (\$10,900), which enables significant donations to be made anonymously, both domestically and from overseas, requires urgent action to enhance disclosure requirements and ensure that overseas interests are not able to use foreign property to unduly influence the Australian political system.
- 4.32 The committee notes with alarm the potential for large sums of money to flow to political participants in Australia from overseas, such as the significant donation of \$1 million from British citizen, Lord Michael Ashcroft.
- 4.33 The committee believes that the time has come for a ban on foreign donations so that the domestic political environment is not influenced by overseas persons or corporations, who should not be entitled to participate in Australian elections by secret means or otherwise.
- 4.34 The committee agrees with Dr Tham, who describes the increase to the disclosure threshold as 'regressive'²². The committee believes the current situation has resulted in reduced transparency and has increased the potential for influence to be exerted on the making of public policy in such a way that the Australian public may be unaware of where such influence has its origins.
- 4.35 This situation appears to be untenable and in conflict with the original aims of the funding and disclosure scheme as it was implemented for the 1984 election, and as applied up to and including the 2004 election.
- 4.36 Lifting of disclosure thresholds to the unprecedented high levels that currently exist has indeed made it possible for significant donations to be made in secret.
- 4.37 However, the committee shares the concern raised by the Democratic Audit of Australia in its submission to this inquiry, that the changes proposed in the bill may create some difficulty for fundraisers, where persons who make minor purchases of raffle tickets, or contribute

21 The Liberal Party of Australia, submission 156 to the 2007 election inquiry, p. 2; The Nationals, submission 145 to the 2007 election inquiry, p. 1.

22 Tham J, submission 133 to the 2007 election inquiry, p. 37

relatively small sums of money by donation may be required to disclose their details, otherwise those amounts would be subject to forfeit to the Commonwealth.

- 4.38 The committee believes that in attempting to restrict the potential for anonymous donations, the proposals in the bill might create an onerous burden in such minor situations. The committee believes that there should be a small threshold of \$50 below which anonymous donations would be allowable.
- 4.39 Accordingly, the committee recommends that the bill be amended to allow for anonymous donations to be made and received below a threshold of \$50 without incurring a disclosure obligation for the donor or the recipient.

Recommendation 5

- 4.40 **The committee recommends that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that make it unlawful for registered political parties, state or territory branches of registered political parties, or persons acting on behalf of a party or branch, to receive or use anonymous donations or to receive or use a donation of foreign property.**

Recommendation 6

- 4.41 **The committee recommends that clause 40 (proposed section 306AE) of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be amended to allow for anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.**

Offences, penalties and compliance

Background

- 5.1 To bring greater integrity to any regulatory system it is important that there be an appropriate enforcement and compliance regime. As part of such as regime, it is important to define offences, set appropriate penalties and ensure that there are workable processes for regulatory authorities to investigate and enforce breaches of the law.
- 5.2 To be effective, strategic regulation should serve two functions:
- Impose punishments against persons committing contraventions of the law (the enforcement function); and
 - Deter people from contravening the law (the preventative function).¹
- 5.3 The importance of compliance and enforcement activity was noted by the Public Interest Advocacy Centre, who told the committee in their submission to the 2007 election inquiry that:
- Accountability is dependent not only on disclosure requirements but the capacity to have them effectively enforced, including a penalty regime that can act as a deterrent.²
- 5.4 The bill proposes to introduce new offences associated with the proposal to ban overseas and anonymous donations. In addition, the level of existing penalties for breaches of funding and disclosure provisions will

1 Gilligan G, Bird H and Ramsay I (1999), 'The Efficacy of Civil Penalty Sanctions under the Australian Corporations Law', Australian Institute of Criminology trends and issues in crime and criminal justice, no 136, November, p. 3.

2 Public Interest Advocacy Centre, submission 103 to the 2007 election inquiry, p. 13.

be increased significantly – a number of existing penalties have remained largely unchanged since their introduction in 1984.

- 5.5 The bill also includes provisions that will strengthen the powers of the Australian Electoral Commission to undertake compliance activities relating to funding and disclosure parts of the *Commonwealth Electoral Act 1918*. Effective enforcement of the funding and disclosure arrangements will also depend on appropriate resourcing of these activities by the Government.

Proposed changes

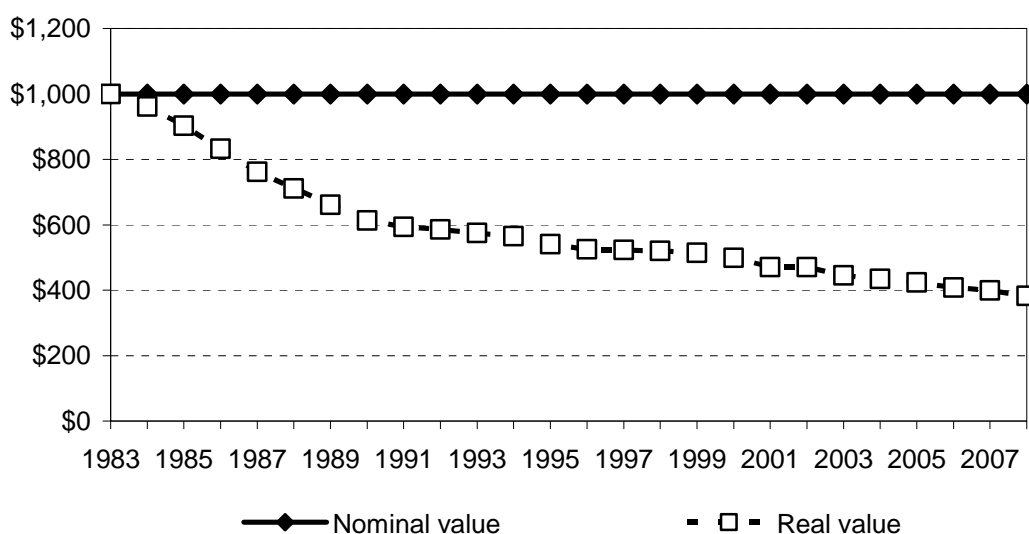
- 5.6 The bill proposes a series of changes to existing penalties and introduces new offences associated with the proposed ban on receiving overseas donations and anonymous donations. In addition, a range of proposals are made to strengthen the Australian Electoral Commission's capacity to undertake compliance activities.

Strengthening existing penalties

- 5.7 The level of monetary penalties specified in the *Commonwealth Electoral Act* in relation to funding and disclosure have remained largely unchanged since their introduction in 1983.³
- 5.8 Since 1983, the real value of a number of financial penalties has declined over time, to a level that is less than 40 per cent of its value in 1983. For example, the penalty attached to the failure to furnish a return has remained at \$1,000 in nominal terms but has declined to only \$382 in real terms in 2008 (figure 5.1).

3 *Commonwealth Electoral Legislation Amendment Act 1983*, s.113.

Figure 5.1 Value of penalty for the failure to furnish a return, 1983 to 2008 (dollars) (a)



Note (a) in the case of a return required to be furnished by the agent of a political party or of a State branch of a political party the penalty is a fine not exceeding \$5,000. In any other case the fine does not exceed \$1,000 (Commonwealth Electoral Act 1918, s. 315(1)).

Source Committee estimates based on the nominal value of the penalty for failing to furnish a return. Nominal amounts were deflated using the June quarter values of the all groups consumer price index from ABS cat no 6410.0, time series spreadsheets tables 1 and 2, viewed on 15 September 2008 at [http://www.ausstats.abs.gov.au/Ausstats/ABS@Archive.nsf/0/B30A20A7A8A4F783CA25748E0012B5D6/\\$File/640101.xls#A2325846C](http://www.ausstats.abs.gov.au/Ausstats/ABS@Archive.nsf/0/B30A20A7A8A4F783CA25748E0012B5D6/$File/640101.xls#A2325846C).

5.9 The bill proposes to increase the penalties for a number of existing offences including:

- failure to furnish a return – 120 penalty units (equivalent to \$13,200). Under current arrangements a fine cannot exceed \$5,000 for an agent of a political party or of a State branch of a political party or \$1,000 in other cases;
- furnishing an incomplete return – 120 penalty units (equivalent to \$13,200). Under current arrangements a fine cannot exceed \$1,000;
- failure to retain records – 120 penalty units (equivalent to \$13,200). Under current arrangements a fine cannot exceed \$1,000;
- lodging a claim or return about election expenditure that is known to be false or misleading in a material particular – Imprisonment for 2 years or 240 penalty units (equivalent to \$26,400), or both. Under current arrangements an agent of a political party or of a State branch of a political party may be fined up to \$10,000, other persons may be fined up to \$5,000;

- providing information to another that is false or misleading in a material particular in relation to the making a claim or the furnishing of other types of returns – Imprisonment for 12 months or 120 penalty units (equivalent to \$13,200), or both. Under current arrangements an agent of a political party or of a State branch of a political party may be fined up to \$10,000, other persons may be fined up to \$5,000; and
- failure or refusal to comply with notices relating to Australian Electoral Commission-authorized investigations and knowingly giving false or misleading evidence required for such investigations – imprisonment for 12 months or 60 penalty units (equivalent to \$6,600). Under current arrangements the penalties for a range of offences relating to refusing to comply with notices is \$1,000. A person who knowingly provides false or misleading information during a compliance audit or investigation by the Commission is punishable by a fine of \$1,000, or imprisonment for six months, or both.⁴

5.10 The proposed penalties appear to provide a significantly greater deterrent, particularly the inclusion of imprisonment as a penalty for several offences. The change proposed by the bill to specify penalty levels in terms of ‘penalty units’ rather than nominal amounts also provides a simpler mechanism to maintain penalty levels by linking them to a benchmark specified in the *Crimes Act 1914* (s. 4AA) – a benchmark widely used in Commonwealth law and used in other parts of the Commonwealth Electoral Act.

5.11 The committee notes that since the introduction of the concept of penalty unit into Commonwealth law in 1992, when it carried a nominal value of \$100, the level has changed only once, when it was increased to \$110 in 1997. Since then, it has declined by over 25 per cent in real terms.⁵ It will be important that attention is paid in the future to ensuring that the level of a penalty unit in the *Crimes Act* is reviewed on a regular basis to ensure its ongoing appropriateness.

4 See *Commonwealth Electoral Act 1918*, s. 315 and s. 316 for existing penalties and Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 82, for proposed penalties.

5 Committee estimates based on the nominal value of penalty units in the *Crimes Act 1914*, s. 4AA. Nominal amounts were deflated using the June quarter values of the all groups consumer price index from ABS cat no 6410.0, time series spreadsheets tables 1 and 2, viewed on 15 September 2008 at [http://www.ausstats.abs.gov.au/Ausstats/ABS@Archive.nsf/0/B30A20A7A8A4F783CA25748E0012B5D6/\\$File/640101.xls#A2325846C](http://www.ausstats.abs.gov.au/Ausstats/ABS@Archive.nsf/0/B30A20A7A8A4F783CA25748E0012B5D6/$File/640101.xls#A2325846C).

5.12 The penalties proposed in the bill are generally comparable with those for similar offences in other Australian jurisdictions (table 5.1). Care needs to be taken when making such comparisons because of differences in the regulatory frameworks across jurisdictions.

Table 5.1 Penalties for funding and disclosure offences, selected Australian jurisdictions

Jurisdiction	Failing to lodge a return by the due date	Knowingly lodging false or misleading information in a return or claim for funding	Failure to retain records	Failure to produce documents or evidence when required
NSW	\$22,000	\$22,000 or 12 months imprisonment or both	\$22,000 (party) \$11,000 (party agent and others) (a)	\$11,000
Qld	\$7,500 (party) \$1,500 (others)	\$15,000 (party agent) \$7,500 (agent of a candidate) \$3,750 (other than an agent)	\$1,500 (a)	\$3,000
WA	\$7,500 (party agent) \$1,500 (others)	\$15,000 (part agent) \$7,500 (others) (b)	\$3,000 (party agent and financial controller of an associated entity) \$1,500 (others) (c)	\$1,500
ACT	\$5,000 (party) \$2,000 (individual) \$25,000 (corporation)	\$5,000 or six months imprisonment or both	\$2,000 (d)	\$5,000 or six months imprisonment or both
NT	\$22,00 or 12 months imprisonment (natural person) \$110,000 (body corporate)	\$22,00 or 12 months imprisonment (natural person) \$110,000 (body corporate)	\$22,00 or 12 months imprisonment (natural person) \$110,000 (body corporate) (a)	\$22,00 or 12 months imprisonment (natural person) \$110,000 (body corporate)

Notes (a) records to be retained for 3 years. (b) A separate offence for knowingly giving evidence that is false or misleading is also defined, with a penalty of \$1,500. (c) records to be retained for 6 years. (d) records to be retained for 4 years.

Source NSW Election Funding Authority, *Funding and disclosure guide: Political parties and agents*, pp. 33 and 40, viewed on 16 September 2008 at http://www.efa.nsw.gov.au/_data/assets/pdf_file/0007/48877/Guide_for_Parties_and_Party_Agents.pdf; *Election Funding and Disclosures Act 1981 (NSW)*, s. 110A; *Electoral Act 1992 (Qld)*, ss. 315 to 333; *Western Australian Electoral Commission, Funding and Disclosure in Western Australia: Guidelines*, pp. 31–32, viewed on 16 September 2008 at http://www.waec.wa.gov.au/pp_candidate/documents/Funding%20and%20Disclosure%20in%20WA%20Guidelines.pdf; *ACT Electoral Commission, Funding and financial disclosure handbook: 2008 / 2009 registered political parties*, p. 13 viewed on 16 September 2008 at http://www.elections.act.gov.au/pdfs/fadhandbooks/partiesfadhandbook2008_2009.pdf; *Northern Territory Electoral Office, Disclosure Handbook for Registered Political Parties*, p. 24, viewed on 16 September 2008 at <http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase>.

5.13 While the increase in penalties can have a deterrent effect, the increase will also affect the relative seriousness of offences when they are presented by the Australian Electoral Commission to the Australian Federal Police (AFP) and Commonwealth Director of Public Prosecutions (CDPP) for enforcement action. In its submission to the 2007 election inquiry, the Australian Electoral Commission told the committee that:

The existing process for dealing with serious breaches of the Act is that the first step is to identify prima facie evidence of the breach, including the identity of any persons involved. The matter is then referred to the AFP for investigation and the preparation of a brief of evidence to be given to the CDPP.

The above processes are also subject to the guidelines issues by both the AFP and the CDPP for the referral and handling of alleged criminal offences. Both of these sets of guidelines refer to an assessment of the seriousness of the alleged offence, the resources available for dealing with these matters and the public interest involved. It is noted that with the exception of the bribery offence in section 326 of the Act, almost all of the penalties for a breach of the Act are fines of up to \$1,000 that under the criminal law they are summary offences (see section 4H of the Crimes Act 1914).

Accordingly, the evaluation undertaken by the AFP of the available resources and the relatively low penalties in the CEA, almost always results in the AFP deciding not to accept the referral and therefore it is unable to investigate breaches of the CEA.⁶

5.14 While penalties have been significantly increased, this has been balanced by removing requirements that 'strict liability' apply.⁷ For an offence of strict liability there is no requirement to prove intention as an element of the offence, but the accused will not be guilty if he or she acted under an honest and reasonable mistake of fact.⁸

6 Australian Electoral Commission, submission 169 to 2007 election inquiry, pp. 68-69.

7 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, paras 178, 180, 183 and 207.

8 Halsbury's Laws of Australia, Classification as strict or absolute liability, p. 130-7955.

New offences

- 5.15 The bill proposes to introduce a number of new offences that are primarily associated with proposals to ban donations from overseas and anonymous sources.⁹ These include offences to cover:
- situations other than when political party, State branch or associated entity is not a body corporate, or when a gift is received by person on behalf of group;
 - registered political parties, State branches and associated entities that are not bodies corporate;
 - person acting on behalf of group; and
 - unlawful incurring of expenditure.
- 5.16 The bill includes provisions that would allow a responsible person working for a registered political party, State branch or associated entity, to receive such a gift if they do not know of the circumstances because of which the receipt of the gift is unlawful or they take all reasonable steps to avoid those circumstances occurring. The bill further provides that any defendant in this situation bears an evidential burden of proof in relation to these matters.¹⁰
- 5.17 The penalties proposed in the bill for breaches of these new offences provide for imprisonment for 12 months or 240 penalty units (equivalent to \$26,400).¹¹ This level of penalty is consistent with the higher levels proposed for other offences in the Act.

Strengthening compliance and enforcement

- 5.18 Penalties are an important part of encouraging compliance with regulatory arrangements. To be an effective deterrent, it is important that regulators are able to effectively investigate and, when appropriate, take action for breaches.

9 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 86.

10 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 86.

11 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 86.

5.19 The Democratic Audit of Australia supported the proposed strengthening of penalties but noted that there are potential limits on enforcement action:

We welcome the strengthening of penalties, which were originally set low and had become risible over the decades. However, setting higher maximum fines may on its own do little, given:

- the absence of strict liability for most offences (indeed reference to 'strict liability' has been removed from the s 315 offences of 'failing to furnish a return' and 'furnishing a .. return that is incomplete').
- the historical lack of prosecutions.
- the absence of civil and political penalties. For example, Corporations Act style provisions for a party agent or candidate to be disbarred from holding office in a registered party, or nominating for Parliament, if found to have been involved in serious offences or those involving mens rea. Currently the burden is placed almost solely on party and candidate agents - people who in minor parties and independent candidatures will be volunteers. What is lacking is any liability reaching up to the party leaderships and candidates, who after all are the beneficiaries of political donations.¹²

5.20 The bill proposes to broaden the investigatory scope of Australian Electoral Commission-authorized officers by extending the list of persons who may be required to produce documents or other evidence.¹³ While not changing the approach that the Commission would take in its compliance reviews, the benefits of this proposed change were explained by the Australian Electoral Commission:

the current powers in section 316 do limit the investigative powers of the AEC particularly in relation to associated entities, third parties et cetera. The aim of the proposed provision is to enable the AEC to have a standard process of compliance audits that can be applied to political parties, candidates, Senate groups, associated entities and third parties.¹⁴

5.21 To ensure that the Australian Electoral Commission can effectively use these stronger compliance powers it will be important that it is adequately resourced.

12 Democratic Audit of Australia, submission 1, p. 4.

13 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 89.

14 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 23.

Other issues

- 5.22 Two issues were raised with the committee that, although not covered by the bill, were potentially related to its implementation.

Interference with political liberty

- 5.23 The proposed lowering of the disclosure threshold from more than \$10,000 to \$1,000 seeks to balance the transparency of political funding and the privacy of those participating in the electoral process who give financial support to political parties and candidates.
- 5.24 Concerns over the potential discrimination, harassment or intimidation of a donor on the basis of published information about their financial support for a candidate or party have been raised over a number of years.¹⁵
- 5.25 The Commonwealth Electoral Act (s. 327(2)) already provides deterrence for these types of activities, with the inclusion of a criminal offence provision:

A person must not discriminate against another person on the ground of the making by the other person of a donation to a political party, to a State branch or a division of a State branch of a political party, to a candidate in an election or by-election or to a group:

- (a) by denying him or her access to membership of any trade union, club or other body;
- (b) by not allowing him or her to work or to continue to work;
- (c) by subjecting him or her to any form of intimidation or coercion;
- (d) by subjecting him or her to any other detriment.

Penalty:

- (a) if the offender is a natural person – \$5,000 or imprisonment for 2 years, or both; or
- (b) if the offender is a body corporate – \$20,000.

15 See for example, Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the Inquiry into the conduct of the 2004 federal election and related matters*, p. 332 and Metherall M (2005), 'Political donations plan raises corruption fears', *Sydney Morning Herald*, 21 May, p. 10.

5.26 The Australian Electoral Commission advised that it had received over 400 complaints which involved allegations of criminal breaches of the Commonwealth Electoral Act during the 2007 election campaign period. Of these, 10 were referred to the Australian Federal Police for further investigation.¹⁶ During evidence, the Commission was unable to advise whether any of these complaints involved breaches of s. 327(2), but undertook to provide further advice to the committee.

5.27 The Australian Electoral Commission subsequently advised:

The evidence provided by the AEC referred to the existing complaints mechanism for dealing with electoral offences under Part XXI of the Electoral Act. This includes the offence contained in section 327 of the Electoral Act which covers unlawful discrimination against a person who makes a donation to a political party. The AEC is aware of general allegations having been made of such unlawful conduct in breach of this section. However, in the past 3 years, the AEC has not been provided with any evidence that would indicate that such discrimination has actually taken place.

Neither has the AEC been provided with any details of allegations that could be referred to the Australian Federal Police for investigation.

The AEC also notes that the Human Rights and Equal Opportunity Commission Act 1986 contains the International Covenant on Civil and Political Rights in Schedule 2. Articles 2 and 26 prohibit discrimination on the grounds of 'political or other opinion'. As to whether this provides an alternative existing mechanism to deal with the types of concerns raised by the Committee would be a matter on which the Committee would need to seek the views of the HREOC or the Attorney-General's Department. This legislation is not administered by the AEC.¹⁷

5.28 While the committee is aware of the potential for the information associated with the public disclosure of donations to political parties to be related to attempts to intimidate or harass individuals and others, the current provisions in the Commonwealth Electoral Act appear to provide an appropriate deterrent to such action.

16 Pirani P, Australian Electoral Commission, transcript, 26 September 2008, p. 8..

17 Australian Electoral Commission, submission 3, p. 2.

- 5.29 The committee considers that the government should provide adequate resources to the Australian Electoral Commission so that it is able to conduct public awareness activities in relation to the protections provided by section 327(2) of the Commonwealth Electoral Act. This should include appropriate resources to establish a dedicated unit within the Commission that is responsible for promoting awareness of this section of the Act, maintaining a formal complaints register and direct access by a separate website and an advertised telephone 'hotline' number. In addition, sufficient resources should be provided to ensure that the Commission, the Australian Federal Police and the Commonwealth Director of Public Prosecutions can investigate any substantive allegations of harassment and intimidation which are related to the making of a political donation.

Electoral and disclosure administration structure

- 5.30 Currently the Australian Electoral Commission undertakes a full range of functions associated with the administration of the electoral roll, the management of federal elections and referenda (including the counting of votes) and the administration of the funding and disclosure scheme. It also provides services for industrial elections and protected action ballots, fee-for-service elections and advice and assistance in overseas elections.¹⁸
- 5.31 The Democratic Audit of Australia noted in their submission to the 2007 election inquiry that these tasks required different skills and that some jurisdictions, such as New Zealand, had three electoral agencies – one to maintain the electoral roll, one to conduct elections and a third to deal with party/campaign finance matters, regulation of advertising, logos and electoral education.¹⁹
- 5.32 In New South Wales, there already is some structural separation in electoral administration. The NSW Electoral Commission is responsible for the administration of the electoral roll (working with the Australian Electoral Commission under the joint roll arrangements) and the conduct of elections. A separate agency (albeit with an overlap in terms of some personnel and services) – the Election Funding Authority – is responsible for overseeing public funding for state elections and expenditure on political education by political parties and the administration of the disclosure scheme.²⁰

18 Australian Electoral Commission (2007), *Annual Report 2006-07*, p. 12.

19 Democratic Audit of Australia, submission 45 to the 2007 election inquiry, pp. 12-13.

20 NSW Electoral Commission, About us, viewed on 29 September 2008 at http://www.elections.nsw.gov.au/about_nswec; NSW Election Funding Authority, About us, viewed on 29 September 2008 at http://www.efa.nsw.gov.au/efa_information.

- 5.33 Mr Norm Kelly from the Democratic Audit saw such a structural separation as providing for a concentration of expertise which could also be included as part of a move to harmonisation:

The advantages are that you would develop specific expertise in each of those three areas. For it to work effectively you would want to coordinate that with state and territory jurisdictions. That is a particular issue relating to electoral finance, campaign finance and also to enrolment.

... Because of the nine jurisdictions in the Australian environment you have the danger of getting excessive administrative split ups. That is why I recommend that it should come together so that you can coordinate it. New South Wales already has a separate election funding authority. Perhaps with some changes that could be used as a model that could be incorporated across Australia, including the Commonwealth.²¹

- 5.34 Responding to these suggestions, the Acting Australian Electoral Commissioner told the committee that:

the current funding and disclosure unit is within the AEC and they are not really involved in our other core business. So if we were resourced to establish such a unit that would be quite possible from within the AEC.²²

- 5.35 While there appear to be some benefits to a structural separation of the funding and disclosure unit to a new entity, the committee considers that this issue is one that needs to be explored as part of either the green paper process or the committee's own 2007 election inquiry. Any moves to harmonise the administration of funding and disclosure arrangements between the Commonwealth and the jurisdictions should also strongly consider the costs and benefits that such a model presents.

21 Kelly N, Democratic Audit of Australia, transcript, 22 September 2008, p. 3.

22 Dacey P, Australian Electoral Commission, transcript, 26 September 2008, p. 4.

Committee conclusion

- 5.36 The committee supports moves to modernise the level of penalties in relation to breaches of the proposed disclosure arrangements. These will see the level of financial penalties rise from \$1,000 to more than \$13,000 for some offences and the introduction of the penalty of imprisonment for some types of offences.
- 5.37 These higher penalties will be balanced by requiring that a more stringent threshold for prosecution applies, with strict liability for an offence to be proved removed.
- 5.38 Taken together with a strengthening of compliance processes, the proposed penalties should provide a significant deterrent to those who might consider circumventing measures designed to bring greater transparency to the flow of money in the electoral system.
- 5.39 Notwithstanding these improvements, it will be necessary for the Government to provide appropriate resources to the Australian Electoral Commission and other relevant agencies to ensure that compliance processes operate effectively.

Recommendation 7

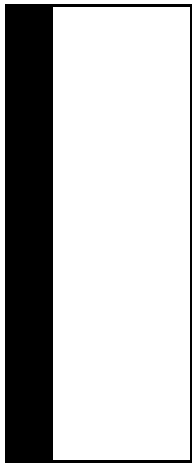
- 5.40 **The committee recommends that the Senate should support without amendment the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 that:**
- **modernise the level of penalties for breaches of the proposed funding and disclosure provisions; and**
 - **strengthen the Australian Electoral Commission's capacity to undertake compliance activities.**

(continued over)

Recommendation 8

- 5.41 The committee recommends that the government provide adequate resources to the Australian Electoral Commission and other Commonwealth agencies so that they are able to:
- conduct effective public education activities to promote the protections offered in section 327(2) of the *Commonwealth Electoral Act 1918* against harassment and intimidation as a result of making a political donation;
 - provide for a dedicated unit within the Commission that:
 - ⇒ is responsible for promoting awareness of this section of the Act
 - ⇒ maintains a formal complaints register;
 - ⇒ is directly accessible by a separate website and an advertised telephone 'hotline' number; and
 - take effective regulatory action to enforce the existing protections against these actions provided by the *Commonwealth Electoral Act 1918*.

Daryl Melham MP
Chair
13 October 2008



Dissenting Report—Mr Scott Morrison MP, Senator the Hon Michael Ronaldson, Senator Simon Birmingham, Liberal Party of Australia, Hon Bruce Scott MP, The Nationals

The view of the Coalition members of the Committee is that campaign finance reform is a complex issue that requires integrated reform, with no one measure considered in isolation to another.

The Rudd Government is currently working on a Green Paper regarding campaign finance reform.

Coalition Members accept that this is a complex issue and that lengthy delays in the preparation of the Green Paper are therefore understandable.

Coalition Members believe, however, that the introduction of this Bill prior to the release of the Green Paper, significantly diminishes the Government's claims that it is seeking comprehensive campaign finance reform.

Rather Coalition Members believe that the Government is proceeding in a piecemeal fashion, cherry-picking as a matter of priority those measures that address their own partisan political interests, without considering the impacts of these changes on the broader system.

A responsible government would adopt a holistic, broad, bi-partisan view of the issue and most importantly, consider what is in the best interests of the community and our democracy.

Recommendation 1

Coalition Members believe that further debate in the Senate on this Bill should be deferred until proper public scrutiny and discussion of the Green Paper and the report of the Joint Standing Committee into Electoral Matters into the reference made by the Senate on 11 March 2008.

Anonymous Donations

This Bill advocates increases in sanctions regarding reporting issues associated with political donations. It is important that in putting forward such measures that at the same time you do not design a system that places an unreasonable compliance burden on those who may be subject to these penalties.

Penalties are intended to act as a disincentive to negative behaviour. Coalition members are concerned that removal of the provision for anonymous donations creates an unreasonable administrative burden, especially for local party volunteers, where the majority of small scale amounts are received.

Furthermore Coalition members believe that the proposal to establish a \$50 limit for anonymous donations as proposed in the report is insufficient to address the issue of this administrative burden and that a higher threshold of \$250 be established.

Recommendation 2

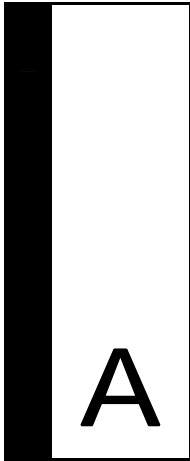
Coalition Members believe that Clause 40 (proposed section 306AE) of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 be amended to allow for anonymous donations below a threshold of \$250 to be received without disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.

Mr Scott Morrison MP

Senator the Hon Michael Ronaldson

Hon Bruce Scott MP

Senator Simon Birmingham



Submissions

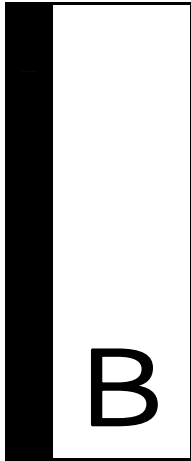
Inquiry into the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008

1. Democratic Audit of Australia
2. Liberal Party of Australia
3. Australian Electoral Commission

Inquiry into the 2007 election

45. Democratic Audit of Australia
54. Eurobodalla Greens
56. Australian Democrats
67. Festival of Light Australia
77. Dr Sally Young
94. Electoral Reform Society of South Australia
103. Public Interest Advocacy Centre
106. Mr William Bowe

- 126. Mr Don Willis
- 133. Dr Joo-Cheong Tham
- 145. The Nationals
- 155. Getup!
- 156. Liberal Party of Australia
- 159. Australian Labor Party (National Secretariat)
- 169. Australian Electoral Commission
- 172. Mr Paul Myers
- 175. Mr Eric Lockett



Public hearings

**Inquiry into the Commonwealth Electoral Amendment
(Political Donations and other Measures) Bill 2008**

Monday, 22 September 2008 – Canberra

Democratic Audit of Australia

Professor Brian Costar, Swinburne University of Technology,
Coordinator

Mr Norm Kelly, Australian National University, Member

Mr Peter Brent, Australian National University, Member

Friday, 26 September 2008 – Canberra

**Australian Electoral Commission & Department of Finance and
Deregulation**

Mr Paul Dacey, Acting Electoral Commissioner

Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission

Mr Brad Edgman, Director, Australian Electoral Commission

Mr John Kalokerinos, Acting Assistant Secretary, Department of Finance
and Deregulation

Inquiry into the 2007 election

Wednesday, 6 August 2008 – Brisbane

Mr David Kerlake

Tuesday, 12 August 2008 – Melbourne

Dr Joo-Cheong Tham



Clerk of the Senate's advice

Extract from Office of the Clerk of the Senate, Advisory Note 59, 31 July 2008

“On several occasions in recent times motions have been passed for references to committees which indicate that they are to report "on" or "not before" particular dates. These words were included in the motions with the apparent intention of ensuring that the committees would not present their reports earlier than the dates specified. Such language in motions for references, however, cannot negate the power explicitly conferred on the committees to report when they choose to do so by standing order 25(18):

A committee may report from time to time its proceedings and evidence taken and any recommendations, and shall make regular reports on the progress of its proceedings.

The rationale of this provision is that, in order properly to carry out their function of informing the Senate, committees should be able to make reports whenever they consider that their advice may be helpful, without being restricted by reporting dates which may be overtaken by events or by information that committees discover.

If a committee chooses to report its substantive conclusions on a matter referred to it by means of a report under this explicit authorisation in the standing order, there is nothing to prevent it doing so. Its report on the specified date could then simply refer to the earlier report.

Some motions for references have also specified that committees should hold hearings in specific places. These provisions in references do not prevent committees deciding not to hear evidence in the specified places if the committees believe that there is no evidence to be heard there. For example, if a committee has received no submissions from a specified place, it may

choose not to hold hearings there on the basis that there is no evidence to be heard.

Also, the inclusion of these kinds of provisions in references do not negate the explicit authorisation of committees to hear evidence by electronic means contained in standing order 30(3). By holding a hearing under that standing order where the witnesses are in a specified place, a committee would be fulfilling the requirement to hear evidence in that specified place.”