

## Funding and disclosure

- 13.1 In this chapter the Committee examines the background to the existing arrangements for funding and disclosure, and the issues raised in connection with them during the Committee's review of the 2004 election.

### History

- 13.2 Australia's funding and disclosure scheme arose from the recommendations of the Joint Select Committee on Electoral Reform in its first report in September 1983. The Committee was established in May 1983 and its terms of reference were to inquire into and report on all aspects of the conduct of elections and matters related thereto, including "(a) public funding and disclosure of funds". Thus, the Committee's report included separate chapters on the "public funding of political parties" (chapter 9) and the "disclosure of income and expenditure" (chapter 10).
- 13.3 In its chapter on public funding, the Committee noted that the majority of its members considered that the arguments in support of public funding outweighed the arguments against such a scheme.<sup>1</sup> The majority found that, in particular, public funding would:

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<sup>1</sup> Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 152, para. 9.20.

- remove the necessity or temptation to seek funds that may come with conditions imposed or implied;
- help parties to meet the increasing cost of election campaigning;
- help new parties or interest groups compete effectively in elections;
- relieve parties from the “constant round of fund raising” so that they could concentrate on policy problems and solutions; and
- ensure that no participant in the political process was “hindered in its appeal to electors nor influence in its subsequent actions by lack of access to adequate funds”.<sup>2</sup>

13.4 In its chapter on disclosure, the Committee noted that the majority of its members accepted that “significant” donations had 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.<sup>3</sup>

13.5 Outlining its proposals for the disclosure of donations, the Committee commented that, although its members did not agree on the basic principle of disclosure, there was “general agreement as to the details of disclosure once the majority decision was taken on the philosophical position”.<sup>4</sup>

13.6 The legislation establishing the funding and disclosure scheme was introduced in the House of Representatives in November 1983. 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.”<sup>5</sup> He 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.

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2 Joint Select Committee on Electoral Reform, *First Report*, September 1983, pp. 153–155.

3 Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 164, para 10.9.

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

5 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.<sup>6</sup>

- 13.7 Mr Beazley observed that public funding addressed the “serious imbalance in campaign funding” that threatened the health of Australia’s democracy; it ensured that the different parties offering themselves for election had an equal opportunity to present their policies to the electorate, and it also contributed to the development of an informed electorate.<sup>7</sup>

## Public funding

- 13.8 The public funding scheme pays a specified amount per vote to registered candidates (independent or party endorsed) or Senate groups that obtain at least 4% of the formal first-preference vote in the division or the state or territory they contested. The entitlements of party endorsed candidates and Senate groups are paid direct to the relevant registered political party. There is no maximum limit to the entitlement.
- 13.9 When the scheme was established in 1983, the amount of public funding per formal first-preference vote was based on the annual primary postage rate (30c in 1983), or 90c every three years. The payment was allocated on a two-thirds/one-third division between House of Representatives and Senate votes, with 60c to be paid per House of Representatives vote and 30c per Senate vote.<sup>8</sup>
- 13.10 The public funding rate is indexed to the Consumer Price Index (CPI) and is adjusted twice a year to reflect CPI changes. Thus, the rate paid per formal first-preference vote at the 1984 election (a few months after the scheme was introduced), was 61c per House vote and 31c per Senate vote.

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

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

8 This Senate figure applied when the election was held on the same polling day as the House of Representatives election. For a separate Senate election, the amount was 45c per formal first-preference vote.

- 13.11 In 1995, the public funding rate was equalised for the House and Senate and increased to a new base rate of \$1.50. In percentage terms, the amount per House vote rose 50% and the amount per Senate vote (in a simultaneous election) rose 200%. As a result of inflation, the indexed rate applicable for House and Senate votes at the 1996 election was \$1.58 per vote.
- 13.12 The 1995 changes arose out of an interim report from the JSCEM *Financial Reporting by Political Parties*.<sup>9</sup> Presenting the Commonwealth Electoral Amendment Bill (No. 2) 1994 in the House of Representatives, the then Minister for Administrative Services, the Hon. Frank Walker, noted the Committee's view that it took "as much effort to win a Senate vote as one for the House of Representatives" and the "illogical distinction" should be abolished.<sup>10</sup> He added:
- the increasing emphasis on disclosure has meant that donors are far more reluctant to contribute, given that the Australian public will now be aware of their commitment. The government and the committee take the view that the increase in funding is reasonable in the circumstances and a fair price to pay for a more transparent political process.<sup>11</sup>
- 13.13 The following graphs show the amounts that have been paid per House and Senate vote in each election since the funding and disclosure scheme was introduced:

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9 JSCEM, *Financial Reporting by Political Parties: Interim report from the Joint Standing Committee on Electoral Matters on the Inquiry into the Conduct of the 1993 Election and Matters Related Thereto*, June 1994.

10 The Hon. F Walker, Minister for Administrative Services, House of Representatives, *Hansard*, 9 March 1995, p. 1950.

11 The Hon. F Walker, Minister for Administrative Services, House of Representatives, *Hansard*, 9 March 1995, p. 1950.

Figure 13.1 Public funding payments per vote (House of Representatives)

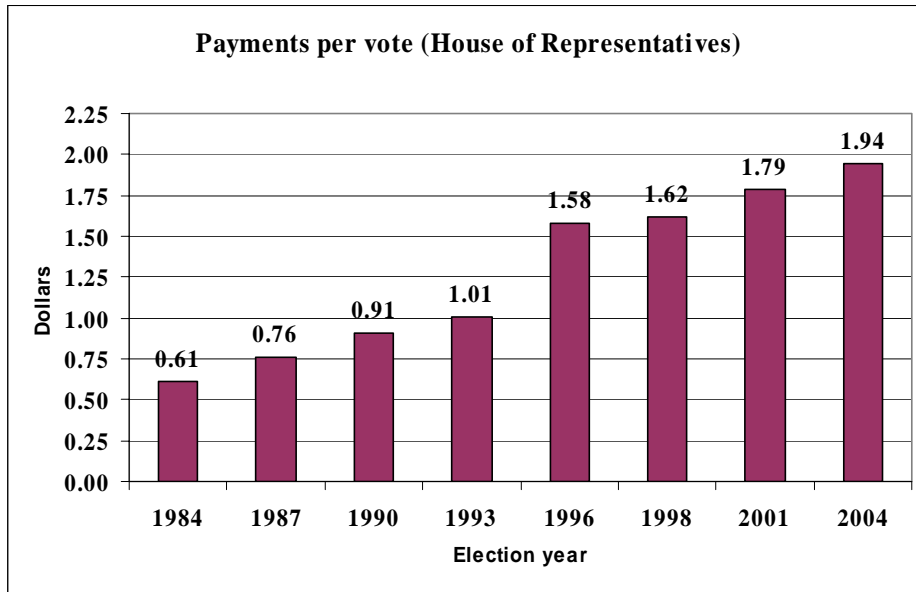
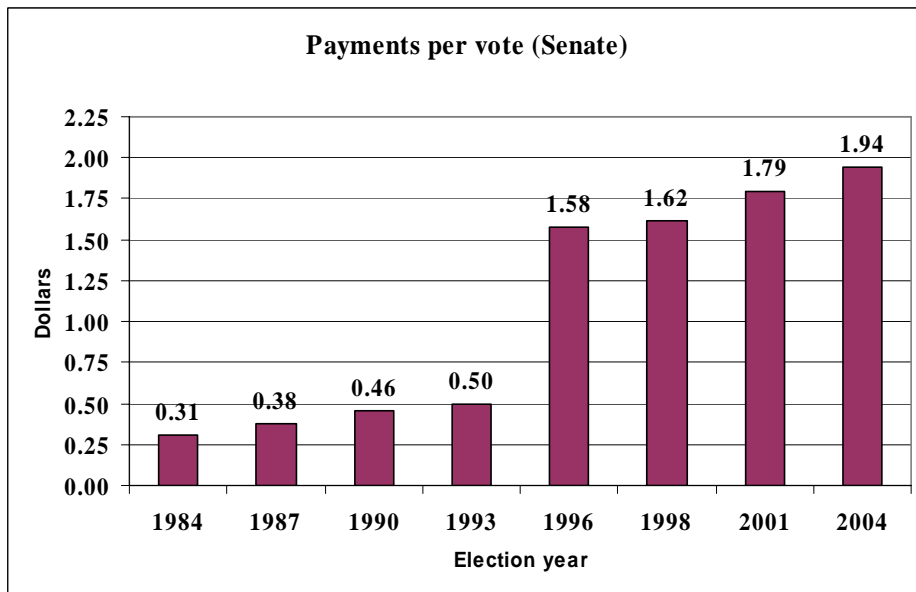


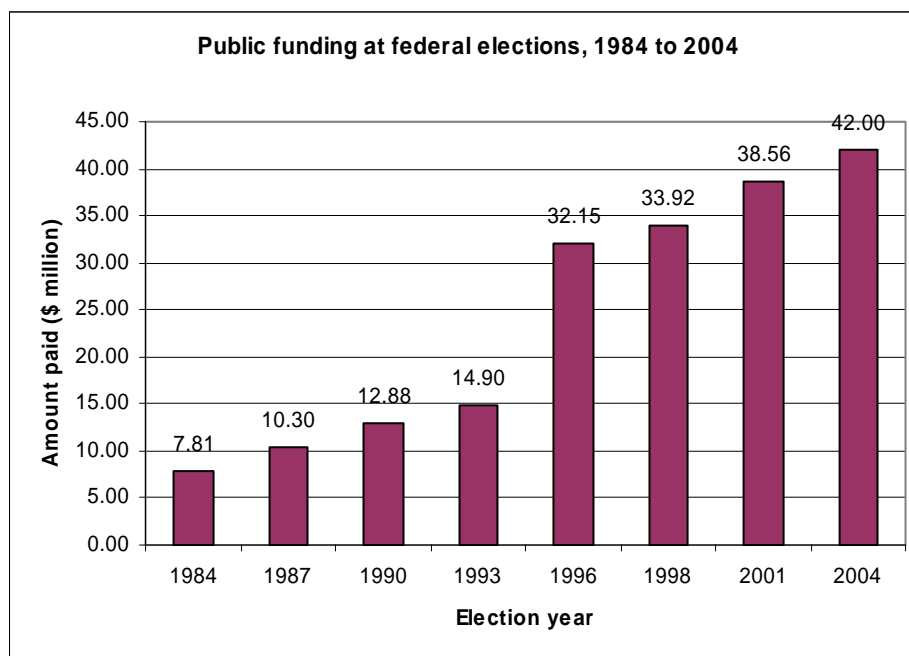
Figure 13.2 Public funding payments per vote (Senate)



13.14 The equalisation and increase in the base public funding rate resulted in a dramatic increase in the amount of public funding paid for the 1996 election over the 1993 election. However, the candidate and party election returns for the 1996 election show that the amount paid (\$32.15 million) was still less than the amount that candidates and

parties spent on the election (\$33.4 million).<sup>12</sup> The following graph shows the amounts of public funding paid for elections since 1984.

Figure 13.3 Total public funding payments for Federal Elections, 1984–2004



13.15 In its early years, the public funding scheme functioned as a reimbursement scheme. As the AEC summarised:

election funding entitlements were initially calculated according to the number of votes received, but parties and independent candidates were also required to submit evidence of campaign expenditure and the final payment of public funding could not exceed expenditure actually incurred.<sup>13</sup>

13.16 The link between payment and proof of expenditure resulted in a shortfall between payments and entitlements when eligible candidates and parties failed to supply sufficient proof for all of their campaign expenditure or the AEC ruled that some of the expenses claimed were not legitimate expenditures.<sup>14</sup> The details of many of

12 See the tables in AEC, *Funding and Disclosure Report: Election 96, 1997*, Appendix 1 and Appendix 2, pp. 31–38.

13 AEC, *Funding and Disclosure Report: Election 96, 1997*, p. 3.

14 For example, in its funding and disclosure report for the 1990 election, the AEC noted that it had rejected claims for (among other things): expenditure before the campaign period; drinks and food for polling booth workers; laundry costs and ‘personal accoutrements’; media monitoring services provided outside the campaign period, and wages payments not supported by a formal agreement showing that the employment

these discrepancies are contained in the AEC's funding and disclosure reports for the 1984, 1987, 1990, and 1993 elections.

- 13.17 In 1995 the legislation was amended so that eligible candidates and parties received their full entitlement, regardless of election expenditure. It was argued that the change would both speed the payments process for the AEC and reduce the administrative burden on participants. The following table shows the public funding payments for Federal Elections from 1984 to 2004 and the shortfall between the payments and the entitlements.

Table 13.1 Public funding payments and shortfalls, Federal Elections 1984–2004

Year	Payment	Shortfall between entitlement and payment
1984	\$7,806,778	\$14,010
1987	\$10,298,657	\$11,742
1990	\$12,878,920	\$116,520
1993	\$14,898,807	\$27,365
1996	\$32,154,800	n/a
1998	\$33,920,787	n/a
2001	\$38,559,409	n/a
2004	\$41,926,159	n/a

Source AEC, *Election Funding and Financial Disclosure Report: Election 1990, 1991*, p. 9, and AEC, *Election Funding and Financial Disclosure Report: Election 1993, 1995*, p.10.

- 13.18 As outlined above, an underlying aim of the public funding scheme was to help candidates and parties defray the direct costs of an election campaign. It was not intended to fund on-going administrative costs or to provide a financial base from which to fight future elections. As the AEC noted in its funding and disclosure report on the 1998 election, the funding scheme:

was introduced as a strict reimbursement scheme with the Act limiting the amount of funding payable to the lesser of the funding entitlement or expenditure proven to have been incurred directly on that campaign. In administering this scheme the AEC demanded original vouchers in support of

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was for the campaign. See AEC, *Election Funding and Financial Disclosure Report: Election 1990, 1991*, pp. 10–11. Claims rejected for the 1993 election included those for a post-election evaluation camp and those for repairs to an uninsured vehicle damaged during the campaign. See AEC, *Election Funding and Financial Disclosure Report: Election 1993, 1995*, p. 11.

claimed expenditure and, for example, would only accept claims for what were considered to be expenditures additional to the ongoing costs of maintaining and running a political party.<sup>15</sup>

13.19 The AEC went on to note that the changes in 1995:

did not alter the underlying principle that funding was provided to parties and candidates as a subsidy to their costs of contesting a particular federal election campaign, although that principle is not spelled out in the Act.

13.20 The debates in the House and the Senate in 1995 suggest that the AEC's interpretation may be correct: the tenor of much of the debate suggests that the changes were seen – at least by the major parties – simply as a means to alleviate the administrative and bureaucratic burden on volunteers in party branches who had been required to:

keep an account of the number of Iced Vo Vos they bought for meetings over a year [and] count the number of tea bags [the branch] had in stock.<sup>16</sup>

13.21 Although some have argued for a return to the reimbursement nature of the scheme (see the “public funding and alleged ‘profiteering’” section below), the JSCEM has noted in an earlier report that a return to a reimbursement scheme is unlikely to save any money:

the Committee believes that it would be a rare occurrence indeed if returning to a funding system based on reimbursement of campaign expenses resulted in payments being anything less than the full entitlements. Therefore, as the AEC has made clear, such a move would realise little if any savings but would simply reimpose another layer of administration and cost and also delay the payment of funding entitlements compared to the present system.<sup>17</sup>

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15 AEC, *Funding and Disclosure Report: Election 96*, 1997, p. 5.

16 Mr D Connolly, House of Representatives, *Hansard*, 9 March 1995, p. 1951; and M P Slipper, House of Representatives, *Hansard*, 9 March 1995, p. 1954.

In the Senate, some complained about the time taken for public funding to be paid, arguing that parties ‘often had to pay election expenses and rely on bank drafts’ while waiting for public funding to come through, which meant parties were incurring additional costs. See Senator R Kemp, Senate, *Hansard*, 11 May 1995, p. 282.

Greens Senator Christabel Chamarette and National Party Senator William O’Chee argued against the changes, as a ‘windfall’ and a ‘government subsidy’ for parties, which would ‘become fatter and lazier and less responsive to voters and members’. Senate, *Hansard*, 11 May 1995, p. 285; and Senate, *Hansard*, 7 June 1995, p. 953, respectively.

17 JSCEM, *The 1998 Federal Election*, June 2000, p. 126.



- 13.22 Table 13.1 above shows that, even when those eligible for public funding had to provide receipts for their expenditure, the amounts paid were very close to the level of entitlements.
- 13.23 As a result of legislative changes in the 1990s, it is no longer possible to compare total campaign expenditure against the amount paid in public funding. When the public funding and disclosure scheme was introduced in 1984, all election participants were required to file election returns. In 1992, the legislation was amended so that registered political parties were required to file annual returns, rather than election returns, but it was amended again in 1995 to reinstate the requirement for parties to furnish an election expenditure return. A further amendment in 1998 once again abolished the requirement, so that parties now file only annual returns.

## Disclosure of donations

- 13.24 Although “donation” is the expression commonly used to describe money given to candidates and political parties, the CEA 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.
- 13.25 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.
- 13.26 Donations are disclosed to the AEC through election returns or annual returns. Candidates, Senate groups, third parties, broadcasters and publishers must file *election* returns. Registered political parties, State and Territory branches of political parties, associated entities, and those individuals or corporations who donate \$1500 or more to a political party in financial year must file *annual* returns.
- 13.27 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.

13.28 The various disclosure requirements are set out in the following tables:

Table 13.2 Post-election disclosure returns

<b>Participant</b>	<b>Type of return</b>	<b>Time frame</b>	<b>Due date (2004 election)</b>
Candidates	donations received and electoral expenditure	within 15 weeks of polling day	24 January 2005
Senate groups	donations received and electoral expenditure	within 15 weeks of polling day	24 January 2005
Third parties	details of electoral expenditure, certain donations received, and donations made to candidates and others	within 15 weeks of polling day	24 January 2005
Broadcasters	electoral advertisements broadcast	within 8 weeks of polling day	6 December 2004
Publishers	electoral advertisements published	within 8 weeks of polling day	6 December 2004

Source AEC, *Electoral Pocketbook*, 2005, p. 86.

Table 13.3 Annual disclosure returns

<b>Participant</b>	<b>Type of return</b>	<b>Time frame</b>
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
Persons or organisations donating \$1500 or more in a financial year	details of each donation	within 20 weeks of the end of the financial year

Source AEC, *Electoral Pocketbook*, 2005, pp. 86-87.

- 13.29 Election returns are available for public inspection 24 weeks after polling day. For the 2004 election, they were available from Monday, 28 March 2005.
- 13.30 Annual returns are released for public inspection on the first working day in February the following year. The returns for the 2004–05 financial year (the year in which the 2004 election took place) will be available on Wednesday, 1 February 2006.

## Overseas funding and disclosure schemes

- 13.31 When introducing the public funding and disclosure legislation in 1983, then Special Minister of State, the Hon. Kim Beazley, noted that Australia was simply “catching up with the rest of the democratic world in this important area of reform”:

Austria, West Germany, France, Finland, Denmark, Israel, Italy, Japan, the Netherlands, Norway, Sweden, Canada and the United States of America have all embraced this so-called radical step.<sup>18</sup>

- 13.32 According to an International Institute for Democracy and Electoral Assistance (IDEA) study published in 2003 and subsequently updated on the Internet, 71 of the 111 countries that it surveyed (that is, 64%) had a system of regulation for the financing of political parties.<sup>19</sup>

- 13.33 The IDEA study revealed some general trends in international funding and disclosure schemes:
- just over 50% of those countries in the sample have provisions for the disclosure of contributions to political parties, but most (96 countries or 86% of the sample), do not require donors to disclose contributions;
  - most countries do not have ceilings on contributions to political parties, how much donors can contribute or how much parties can raise;
  - most countries do not ban either corporate or union donations, and most do not ban foreign donations; and

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18 The Hon. Kim Beazley MP, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, p. 2215.

19 Reginald Austin and Maja Tjernstrom, *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance, Stockholm, 2003, pp. 185-88.

- 65 countries (59% of the sample) have direct public funding for political parties; 79 countries (71%) have some form of indirect public funding.<sup>20</sup>
- 13.34 Since 2000, several countries have reviewed their political funding and disclosure schemes, notably the United Kingdom (Political Parties Referendums and Reforms Act 2000), the United States (the Bipartisan Campaign Reform Act of 2002), and Canada (Canada Elections Act).
- 13.35 In December 2004, the United Kingdom Electoral Commission published a major report, *The funding of political parties*, which made several recommendations regarding the future financing of political parties in the United Kingdom.<sup>21</sup> This report noted the importance of adequate funding for political parties, because they:
- are essential to the functioning of a sustainable, representative democracy. In order to carry out their core activities political parties require adequate levels of funding. Political parties need resources to fund their campaigns, conduct research and develop policies and manifestos to represent the electorate. They also require resources to meet the day-to-day administrative and other costs associated with running a political party.<sup>22</sup>
- 13.36 The following table outline some of the major funding and disclosure provisions applicable in the United Kingdom, Canada, New Zealand, and the United States:

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20 See the matrices on pp. 189–223 of Austin R and Tjernstrom M, *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance, Stockholm, 2003. IDEA periodically updates this database, which can be found online at: [www.idea.int/parties/finance/db/comparison\\_view.cfm](http://www.idea.int/parties/finance/db/comparison_view.cfm).

21 United Kingdom Electoral Commission, *The funding of political parties*, December 2004.

22 United Kingdom Electoral Commission, *The funding of political parties*, December 2004, p. 103, para. 7.1.

Table 13.4 Public funding and disclosure provisions

Country	Direct public funding	Disclosure thresholds	
		Donor	Political party
United Kingdom	yes	over £5,000	over £5,000
Canada	yes	—	all contributions received
New Zealand	no	—	over \$NZ10,000
United States	no <sup>23</sup>	—	over \$US200

Source: *United Kingdom Electoral Commission, www.electoralcommission.gov.uk/, Elections Canada, http://www.elections.ca, Elections New Zealand, www.elections.org.nz/, United States Federal Election Commission, www.fec.gov/.*

- 13.37 Neither the United Kingdom nor New Zealand imposes limits on donations to candidates and political parties. Canada and the United States impose inflation-adjusted limits.<sup>24</sup>
- 13.38 In evidence, Liberal Party federal secretary Mr Brian Loughnane observed that, in two countries with Labour governments – the United Kingdom and New Zealand – the donation disclosure threshold was approximately \$10,000, being £5,000 or some \$12,000 in the United Kingdom and \$NZ10,000 or some \$9,350 in New Zealand.<sup>25</sup>
- 13.39 The United Kingdom, New Zealand and Canada place complete bans on foreign donations. Senator Murray maintains that Australia should follow this lead, or that amendments should be made controlling these donations. In particular, he recommended that overseas entities making donations to Australian political parties and candidates should be required to comply with the regulations governing donations in their country of residence, and should certify that they have complied with these.<sup>26</sup>

23 Public funding is available for presidential elections.

24 Details are available at Elections Canada: [www.elections.ca](http://www.elections.ca) and the United States Federal Election Commission: [www.fec.gov](http://www.fec.gov)

25 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

26 JSCEM, *Report on the 2001 Federal Election*, Supplementary Remarks

## 2004 Federal Election public funding

- 13.40 As noted above, public funding was first introduced for the 1984 election and the rate paid is indexed every six months to increases in the consumer price index.
- 13.41 Payment at the 2004 Federal Election was 194.387 cents per vote. A total of \$41,926,159 was paid to 25 parties, independent candidates and Senate groups (see table below).

Table 13.4 Public funding payments, 2004 Federal Election <sup>27</sup>

<b>Name</b>	<b>Amount</b>
Liberal Party of Australia	\$17,956,326.48
Australian Labor Party	\$16,710,043.43
Australian Greens	\$3,316,702.48
National Party of Australia	\$2,966,531.27
Northern Territory Country Liberal Party	\$158,973.97
Family First Party	\$158,451.04
Pauline Hanson's One Nation	\$56,215.73
Australian Democrats	\$8,491.26
Christian Democratic Party (Fred Nile Group)	\$6,572.56
No Goods and Services Tax Party	\$5,995.20
Pauline Hanson	\$199,886.77
Antony (Tony) Windsor	\$89,562.59
Peter Andren	\$79,413.12
Robert (Bob) Katter	\$63,544.49
Peter King	\$25,730.39
Brian Deegan	\$24,449.31
Lars Hedberg	\$19,400.82
Graeme Campbell	\$12,935.18
Robert (Rob) Bryant	\$12,120.65
Robert Dunn	\$11,761.02
Margaret F Menzel	\$10,977.60
Darren Power	\$9,980.34
Bruce Haigh	\$7,381.25
Jeanette (Jen) Sackley	\$7,365.70
Samir (Sam) Bargshoon	\$7,346.26
<b>Total</b>	<b>\$41,926,158.91</b>

<sup>27</sup> AEC, *Electoral Pocketbook*, 2005, p. 85.

- 13.42 The inquiry received few submissions on public funding, and those submissions that addressed the issue offered opposing views.
- 13.43 Festival of Light Australia stated that the practice of public funding was “inappropriate” and should be discontinued:
- any group of people should be able to set themselves up as a political party, but they should be required to support themselves. If a sufficient number of people believe in what they are doing, they will not find support difficult, but it will place the duty on all political parties to create that goodwill with the community.<sup>28</sup>
- 13.44 The organisation’s national president, Dr David Phillips, acknowledged in evidence to the Committee that it was difficult for any group to raise funds, but, he argued, a party that had a genuine base of support with the Australian public should be able to turn that into financial support.<sup>29</sup>
- 13.45 In contrast, Mr Joo-Cheong Tham and Dr Graeme Orr supported public funding; noting that one of the scheme’s primary aims was to ensure that political participants who might otherwise not be able to afford to do so had an “equal opportunity to present their policies to the electorate”.<sup>30</sup>

#### The Committee’s view

- 13.46 The small number of submissions canvassing public funding suggests that there is a general level of satisfaction with the public funding scheme.
- 13.47 The Committee is satisfied that the scheme continues to meet its original objectives as outlined in the opening sections of this chapter.

### Public funding and alleged “profiteering”

- 13.48 The Australian Labor Party criticised the current “guidelines” for public funding, which it said allowed candidates to profit from the scheme. It alleged “blatant profiteering for personal benefit” on the

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28 Submission No. 125, (Festival of Light Australia), p. 5.

29 Dr D Phillips, *Evidence*, Tuesday, 26 July 2005, p. 15.

30 Submission No. 160 (Mr J Tham & Dr G Orr), citing Submission No. 5 (Mr J Tham & Dr G Orr) to the JSCEM inquiry into disclosure of donations to political parties and candidates, p. 5. Mr Tham and Dr Orr quote the Hon. Kim Beazley’s comments when introducing the legislation establishing the funding and disclosure scheme.

part of Ms Pauline Hanson, who was paid \$199,886 in public funding, but “spent only \$35,426 on her campaign”.<sup>31</sup>

- 13.49 In his submission, Mr Trevor Khan queried the public funding payments to independent candidates, arguing that the current scheme had the “unintended consequence” of providing such candidates with “a unique opportunity to potentially profit personally from the electoral public funding initiatives”.<sup>32</sup> Whereas the election process was a “very expensive and exhausting exercise” for party candidates, whose public funding was paid to the party, it could provide a “significant windfall” to independent candidates, such as Ms Pauline Hanson, for “simply standing (unsuccessfully) for election”:

I contend that the intention of the Parliament was to lessen the dependence of candidates, and particularly the Parties, on political donations from interest groups.

I do not believe it was ever the intention of the Parliament to see a personal benefit to [an] individual candidate or member.<sup>33</sup>

- 13.50 Mr Khan recommended that independent candidates and members of Parliament be limited to receiving public funding only up to the amount required to cover their campaign costs.

- 13.51 Former Electoral Commissioner, Professor Colin Hughes, suggested in evidence to the Committee that candidates and parties should be required to produce a receipts for “an appropriate part of their expenditure” (“80% or 90%”) in order to receive their full public funding entitlement.<sup>34</sup> He noted that such a requirement was not without difficulties:

I appreciate the problem of smaller, non-professional parties who have complete novices who have never run anything in their lives suddenly running a Senate campaign or a House campaign. I can recall the first wave or so of the old system having to be applied. The poor devils out there were having to reimburse the commission for money that they could not prove having spent for months and years after the event. I think that is unfortunate and unhappy. That is not intended.<sup>35</sup>

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31 Submission No. 136 (Australian Labor Party), p. 15.

32 Submission No. 114 (Mr Trevor Khan), p. 4.

33 Submission No. 114 (Mr Trevor Khan), p. 6.

34 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, pp. 13, 4

35 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 4.



- 13.52 Professor Hughes said that there would need to be “flexibility” in such a scheme, but, generally, if someone was claiming \$100,000, “they ought to be able to come up with a plausible story for \$90,000”.<sup>36</sup>

#### The Committee’s view

- 13.53 The Committee acknowledges the concern that the current scheme may give rise to alleged “profiteering” on the part of some participants in the political process. However, it believes that changing the scheme to require a proven balance between a candidate’s public funding entitlement and a candidate’s campaign expenditure is fraught with difficulty, not least of which is undermining the level playing field between independent candidates and party-endorsed candidates that the scheme aims to promote.
- 13.54 The Committee appreciates that a return to a receipts-based reimbursement scheme appears to offer an easy solution to the perceived problem of candidates “profiting” from the difference between their campaign expenditure and the amount they receive in public funding. However, in the Committee’s view, a receipts-based scheme of itself is not a viable option. Given that, in order to be fair, the demand for receipts would have to apply to all candidates and parties, the result would be a system that was cumbersome to both electoral participants and the administrative body, the AEC. In addition, as noted above, the demand for receipts is not necessarily in itself a solution in that it does not mean that the expenditures claimed are justified.
- 13.55 While the Committee did not want to return to a full receipts-based system which was bureaucratic, costly and onerous, it nevertheless believes that there should be a minimum threshold of expenditure, which a candidate had to account for before a candidate or party became eligible for public funding.
- 13.56 The Committee suggests that a potential solution that is worth further consideration by the Government is raising the threshold at which public funding would be paid from the current 4% of the formal first-preference vote to, say, 5% of the formal first-preference vote. It notes that a 5% threshold is about the current level of the informal vote. Another option could be to differentiate between the threshold applicable to the Senate and the House of Representatives, given that

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36 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 13.

Senate contests are State-wide and thereby result in higher public funding payments because the calculation is based on a larger number of voters than in a House of Representatives electorate.

- 13.57 If a separate Senate threshold was used, one possibility would be to relate eligibility to receive public funding for a Senate election to a proportion (possibly 50%) of a quota at a half-Senate election.
- 13.58 Because these measures are aimed at combating “profiteering” by some participants, they would not apply to sitting Members or Senators who were recontesting their seats at the election.

## Disclosure

- 13.59 In Chapter 12, *Campaigning in the New Millennium*, the Committee briefly reviewed overseas practices and noted that there had been recent changes. In Australia, the basic provisions of the CEA with regard to the disclosure of donations have not altered fundamentally since the scheme was introduced.
- 13.60 The current disclosure threshold was set in 1991, when the initial threshold of \$1,000, which had been in place since 1984, was raised to \$1,500. Although the public funding rate rose 50% for a House vote and 200% for a Senate vote in 1995, the disclosure threshold remained unchanged.
- 13.61 Since 1991, there have been several attempts to increase the donor and party disclosure thresholds, with proponents arguing that:
- when these amounts were set, it was thought that there were obvious levels below which there should not be any disclosure and that, over time, these levels naturally would increase with the CPI [Consumer Price Index], inflation and other things.<sup>37</sup>
- 13.62 The JSCEM has argued strongly in previous reports that the donation disclosure threshold should be increased.
- 13.63 Recommending an increase to \$5,000 in 1996, the majority of the Committee observed that the “disclosure thresholds should more accurately reflect current financial values”.<sup>38</sup> Recommending an

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37 Senator the Hon. C Ellison, Special Minister of State, Senate, *Hansard*, 17 February 1999, p. 2129.

38 JSCEM, *The 1998 Federal Election*: June 2000, p. 101.

increase to \$3,000 in 1998, the majority commented that such an increase was “appropriate”.<sup>39</sup>

- 13.64 In its submission to the 2004 Federal Election inquiry, the Liberal Party repeated its recommendation to earlier election inquiries that it would be “reasonable” to lift the thresholds to \$10,000. The Liberal Party stated:

it is not realistic in 2005 to think that donations below this level could raise any question of undue influence.<sup>40</sup>

- 13.65 In evidence to the Committee, Liberal Party Federal Director, Mr Brian Loughnane, refuted the supposition that donations bought political outcomes, noting:

donations do not buy policy outcomes as asserted by some. Rather, political donations are a way for individuals or organisations to support the party of their choice. A higher donation threshold will protect individuals’ or organisations’ legitimate right to privacy and reduce the administrative burden on political parties and the taxpayer funded AEC while still providing a strong level of transparency.<sup>41</sup>

- 13.66 The Federal Director of The Nationals, Mr Andrew Hall, told the Committee that his party, which “traditionally sourced its revenue from small business” was concerned at the administrative demands of the current thresholds on those wanting to make “fairly modest” donations:

there has been an increasing compliance burden upon small businesses that wish to contribute probably what would be a fairly modest amount for a small business to a political cause because they have also been required to go through the compliance issue of disclosure to the AEC. You would hardly classify many of these small businesses as having an agenda other than that of wanting to support their party of choice.<sup>42</sup>

- 13.67 However, the Australian Labor Party reiterated its view that disclosure regulations should be strengthened to ensure:

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39 JSCEM, *The 1996 Federal Election*, June 1997, p. 101.

40 Submission No. 95, (Liberal Party), p. 1.

41 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

42 Mr A Hall, *Evidence*, Monday, 8 August 2005, p. 59.

a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties.<sup>43</sup>

- 13.68 Emphasising Labor's opposition to an increase in the disclosure threshold, the party's National Secretary, Mr Tim Gartrell, repudiated the claim that, in 2005, donations below \$10,000 could not give rise to questions of undue influence, stating:

we categorically reject this view and believe that any raising of the threshold will have the potential to corrupt our political institutions. ... We believe the issue of funding disclosure is fundamental to the health of our democracy and the protection of the representative system of government.<sup>44</sup>

#### The Committee's view

- 13.69 The Committee firmly believes that the current disclosure thresholds are too low and should be increased.
- 13.70 The Committee acknowledges the argument of those in favour of the status quo that there is a need for transparency to reduce the potential for undue influence and corruption in the political system. However, it believes that such transparency would still occur under higher disclosure thresholds.
- 13.71 In supporting an increase in thresholds, the Committee is convinced that, since under the present rules 88% of the value of disclosed donations to the major parties is greater than \$10,000, even if the disclosure threshold were increased to that amount, disclosed donations would continue to be a very high proportion of all donations. Nevertheless, higher thresholds would encourage more individuals to make donations to all candidates and parties.
- 13.72 Supporting this argument, Liberal Party federal director Brian Loughnane told the Committee that an analysis of public disclosure figures showed that "88% of all moneys disclosed as donations by the ALP and the Liberal Party last financial year were amounts of \$10,000 or more".<sup>45</sup>
- 13.73 Thus, if an underlying aim of the scheme is to expose large donations that allegedly may exert undue influence on political decisions or policy, such an aim would continue to be met under higher thresholds

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43 Submission No. 136, (Australian Labor Party), p. 5.

44 Mr T Gartrell, *Evidence*, Monday, 8 August 2005, p. 36.

45 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

for disclosure. The Committee is sceptical that, in the contemporary economic environment, donations of less than the threshold it recommends could be said to exert undue influence over recipients or to engender corruption.

13.74 As a former chair of the Committee, Mr Petro Georgiou MP, observed when arguing for higher donor and party disclosure thresholds, of \$10,000 and \$5,000 respectively, in 1998 that the recommended amounts:

are certainly in line with current financial price levels. I think any suggestion that government decisions could be influenced by donations of the magnitude that would remain undisclosed under the new thresholds is quite simply ludicrous ... The Labor Party ... cannot realistically argue that threshold changes of this magnitude will lead to corruption or will compromise Australian democracy.<sup>46</sup>

13.75 The Committee emphasises that a disclosure threshold of \$10,000 would not place Australia out of step internationally. As noted above, Australia's current disclosure threshold of \$1,500 already is considerably lower than the levels in some of its overseas counterparts. For example the party disclosure threshold in New Zealand, is \$NZ10,000, and the party and donor thresholds in the United Kingdom are both £5,000.<sup>47</sup>

13.76 Even these sums are considered "very low", with a United Kingdom Electoral Commission report stating in a discussion of contribution limits on donations:

any cap would need to be set a very low level (in the regional of £10,000 per individual donor per annum) if the public were to be persuaded that its likely effect would be to eliminate the risk of corporate, trade union or individual interests buying influence.<sup>48</sup>

13.77 The Committee notes that, after an in-depth review of the funding of political parties, this commission concluded that the public was not likely to consider that amounts of less than £10,000 (that is, roughly \$23,000) could purchase political influence.

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46 Mr P Georgiou MP, House of Representatives, *Hansard*, 2 December 1998, p. 1180.

47 See Table 13.4 above

48 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, p. 105.

13.78 In terms of the second argument noted above, the Committee believes that raising the threshold levels would encourage more individuals and small businesses to make donations in that higher thresholds would:

- alleviate the administrative burden of filing a disclosure for relatively small donations; and
- ensure privacy for those who want to support the party of their choice but who may be deterred from doing so because they fear repercussions if their support were made public.

13.79 The Committee is concerned that the current low threshold for disclosure exposes donors to potential or feared political intimidation or pressure from opponents of the party to whom an individual or organisation is donating to either cease donating or make a corresponding donation to an opposing party. It agrees with those who argue that the problem of disclosure and intimidation is “very real” and notes the comments of Senator Warwick Parer who raised his concerns in the Senate in 1992:

... donors must be protected against coercion and intimidation. Every time I have raised this, people have said to me, ‘It does not really exist. You are making it up’. Anyone with any experience of the world out there knows the nonsense involved in that. ...

A businessman told me that if he gave a \$20 donation to the Liberal Party, in his honest opinion, the unions would ensure that \$200,000 worth of damage was done to his company. That is not a story that I am throwing around here for political purposes; it is a genuine belief held by people in society ... A little old lady pensioner from far north Queensland sent me through the mail a donation of \$10 but she said specifically that she did not want a receipt because she did not want anyone to know she had given it to me in case she was singled out for some sort of discrimination in the small country town from which she came.<sup>49</sup>

13.80 The Committee believes that a higher threshold for disclosure would have a positive impact on the democratic process in that it would encourage more people – both individuals and small-business owners – to take an active part in that process. Such an outcome

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49 Senator the Hon. W Parer, Senate, *Hansard*, 3 June 1992, p. 3379.

could increase the proportion of candidate and party income that comes from smaller donations, thereby reducing the dominance of corporate donations that prompts many of the concerns about alleged undue influence in politics.

#### **Recommendation 49**

- 13.81 **The Committee recommends that the disclosure threshold for political donations to candidates, political parties and associated entities be raised to amounts over \$10 000 for donors, candidates, political parties, and associated entities.**

#### **Recommendation 50**

- 13.82 **The Committee recommends that the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations should be indexed to the Consumer Price Index.**

### **Restrictions on donations**

- 13.83 Several submissions to the inquiry proposed additions or alternatives to the existing disclosure scheme in order to allay public fears about the alleged impact of donations on politics. Generally, these additions or alternatives took the form of bans or limits on particular sources of donations.

#### **Banning donations from particular sources**

- 13.84 The Member for Sturt, Mr Christopher Pyne MP, supported the broad proposal that “donations to political parties from organisations and businesses be banned”, thereby restricting political donations “solely to individuals”.<sup>50</sup>
- 13.85 In following Mr Pyne, the Member for Wentworth, Mr Malcolm Turnbull MP, offered a narrower version of the broad proposal,

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50 Submission No. 195, (Mr C Pyne MP), p. 2, incorporating Pyne C, ‘Healthy political parties generally provide stability’, *Sunday Mail*, 12 June 2005, p. 79.

suggesting that such a ban be applied to spending on political campaigns. Mr Pyne observed:

from time to time concern is expressed in the community that trade unions and corporations use financial donations to exert influence over political parties. ... as long as businesses and unions with vested interests can finance political campaigns real concerns will continue to be expressed. Some Australians will always have the perception, rightly or wrongly, that 'he who pays the piper calls the tune' .... Under our system of democracy only individuals can vote or stand for parliament. I propose that the law be changed so as to provide that only individuals can financially contribute to political campaigns.<sup>51</sup>

- 13.86 Mr Turnbull noted that such a limitation would mean that political parties could not spend on a campaign any funds that they had received from trade unions or corporations.
- 13.87 Mr Turnbull went on to canvass some of the constitutional issues that might arise from such a restriction, and suggested that a modified proposal – under which the limitation on spending was conditional on the receipt of public funding such that “a candidate or party would be free to spend whatever money from whatever source they like, but would forego [sic] public funding” – would not “fall foul of the High Court”.<sup>52</sup>

#### The Committee's view

- 13.88 The Committee appreciates the merits of the suggested changes. It can be argued, for example, that banning both union and corporate donations would answer the allegation that none of those entities has the right to donate its members' or shareholders' funds for political purposes.
- 13.89 In this context, the Committee noted that Senator Murray has argued over a considerable period of time in the public arena that the donation policies of public entities and registered organisations (including unions) should be authorised by the shareholders or members.<sup>53</sup> The basis of the vote would be share value and number of members respectively.

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51 Submission No. 196, (Mr M Turnbull MP), p. 1.

52 Submission No. 196, (Mr M Turnbull MP), pp. 2-3.

53 JSCEM, *Report on the 2001 Federal Election*, Supplementary Remarks.



- 13.90 In examining the proposed bans, the Committee was conscious that such actions could lead to inequities. For example, a major concern with the suggested ban on donations from organisations and businesses to *political parties* is that it creates a disparity between parties and independent candidates who might attract funds from, say, small businesses in their local area. Such disparity would undermine the level playing field that the current scheme aims to achieve. Banning donations from organisations and businesses to *all* participants in the political process (independents candidates and political parties) would be even more detrimental to this aim.
- 13.91 The Committee was concerned that the modification that allows candidates or political parties to forgo public funding in order to “spend whatever money from whatever source they like” would result in two categories of political participants – those who accepted political funding and those who did not. Again, such a division undermines a basic principle of the public funding scheme: the provision of a level playing field for all participants. It also weakens the ability of the scheme to act as a brake on campaign spending.
- 13.92 In examining the narrower proposal that “only individuals can financially contribute to political campaigns” the Committee noted that ‘campaign electoral purposes’ were to be “broadly defined with the intention of catching all traditional campaign and electoral activities”.<sup>54</sup>
- 13.93 The difficulty which the Committee could not resolve was that of making a distinction between campaign and other activities, especially in the current era of what political scientists and commentators have termed “permanent campaigns”. How, for example, would the line be drawn between on-going “campaign” costs and on-going administration costs? An examination of the AEC’s election funding and disclosure reports in the early years of the scheme, when candidates and political parties were required to prove election expenses in order to claim public funding reimbursement, reveals the many known practical difficulties inherent in this proposal. The Committee is especially concerned that any tie to “campaign” spending would require parties to return to filing detailed election (“campaign”) returns in addition to annual returns, a practice that Parliament legislated against in 1995 on the grounds that it was an unnecessary administrative and bureaucratic burden on volunteers in party branches.

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54 Submission No. 196, (Mr M Turnbull MP), p. 2.

## Limits on contributions

- 13.94 In their submission, Professor George Williams and Mr Bryan Mercurio suggested that the current disclosure regime could be broadened “to place limits on individual contributions to political parties”.<sup>55</sup> They argued that such limits were “by no means perfect”, but had “proved to be a potentially effective regulatory mechanism in other countries such as New Zealand and the United Kingdom”.<sup>56</sup>
- 13.95 The Democratic Audit of Australia also highlighted overseas experience, noting that Canada had limited to \$1,000 the amount that corporations, unions or other entities could donate to a political party per year and that the United Kingdom required prior shareholder approval for corporate political donations.<sup>57</sup> It indicated that one of its major concerns with Australia’s current system of electoral funding and disclosure was “the lack of any restrictions over the size or source of political donations or any cap on electoral expenditure”.
- 13.96 In supporting a ban on donations from organisations and corporations, the Member for Sturt, Mr Christopher Pyne MP, argued that only individuals should be able to make donations, and:
- there would be a limit of a maximum of \$10,000 in any year from any one individual.<sup>58</sup>
- 13.97 The Member for Wentworth, Mr Malcolm Turnbull MP, also suggested that an “annual cap on individual donations could be considered”.<sup>59</sup>

### The Committee’s view

- 13.98 One merit of the proposal to cap the amount that individuals or organisations can donate was that it could be seen as limiting the funds available to participants in the electoral process, which may have the flow-on effect of reining in the ever-increasing amount that is spent on election campaigns.
- 13.99 However, the Committee doubts that caps on donations from individuals or from organisations and businesses are feasible. Such

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55 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

56 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

57 Submission No. 97, (Democratic Audit of Australia), p. 2.

58 Submission No. 195, (Mr C Pyne MP), p. 2, incorporating Pyne C, ‘Healthy political parties generally provide stability’, *Sunday Mail*, 12 June 2005, p. 79.

59 Submission No. 196, (Mr M Turnbull MP), p. 2.

limits imply an infringement on donors' freedom of political association or expression that could be challenged in court.

- 13.100 In addition, there are questions as to whether such caps are practicable. The AEC previously has recommended against donation limits, arguing that the experience in the United States, where such limits apply, "is proof that simple limits alone are not effective."<sup>60</sup> The AEC notes that various "contrivances" are used in the United States to circumvent the caps on donations and concludes: "The adoption of donation restrictions could be expected to be similarly flouted in Australia."<sup>61</sup> The AEC's counterpart in the United Kingdom recently examined in detail the potential for donation limits to control party financing and concluded that there were sufficient arguments against such limits that they could not be justified at this time.<sup>62</sup>
- 13.101 More generally, the Committee observed that the proposals for banning certain types of contribution, or limiting the amounts which may be donated, arise from the apprehension of a potential for corruption and undue influence. In the absence of evidence of this occurring, the Committee could not accept the proposition that "Reform in Australia is long overdue".<sup>63</sup> In fact, the evidence suggests that, after 20 years, Australia's funding and disclosure scheme is achieving its major goals.

## Tax deductibility of donations

- 13.102 Under section 30-15 of the *Income Tax Assessment Act 1997*, an individual who makes a contribution worth \$2 or more to a political party registered under Part XI of the CEA in any one financial year can deduct up to \$100 in that financial year.<sup>64</sup> This provision does not apply to companies.

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60 Submission No. 7, (AEC), of the JSCEM 2001 *inquiry into disclosure of donations to political parties and candidates*, para. 8.8.

61 Submission No. 7, (AEC), of the JSCEM 2001 *inquiry into disclosure of donations to political parties and candidates*, paras. 8.8 and 8.9.

62 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, pp. 79–87.

63 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

64 The contribution can be money or property purchased in the 12 months before making the contribution.

13.103 In its submission, the Liberal Party argued for a “significant increase” to the current deductibility limit of \$100, which it described as “quite inadequate”.<sup>65</sup> Liberal Party Federal Director, Mr Brian Loughnane, told the Committee that an appropriate deductibility figure would be “well into four figures”. Mr Loughnane added:

the support and contribution of political parties is critical to the health of Australian democracy, and I believe it merits some recognition at a significantly greater level than the current level of tax deductibility.<sup>66</sup>

13.104 The Nationals also supported an increased level of tax deductibility for political donations, noting that deduction had not changed for “some 15 years”.<sup>67</sup>

13.105 The Australian Labor Party opposed any increase to the tax deduction for donations to political parties. Labor’s National Secretary, Mr Tim Gartrell, said in evidence to the Committee that raising the deduction from \$100 to possibly \$5,000:

would deliver thousands of taxpayers’ dollars into party coffers, with a considerable bias towards wealth individual donors who can afford to carry the cost of the donation until their tax return arrives.<sup>68</sup>

#### The Committee’s view

13.106 The Committee firmly believes that the tax deduction for donations to political parties should be higher than \$100 and that the new level of deduction should be inflation-adjusted. Arguments that the deduction should be fixed for all time are nonsensical.

13.107 The Committee notes an earlier unanimous JSCEM recommendation in 1997:

that donations to a political party of up to \$1,500 annually, whether from an individual or a corporation, are tax deductible.<sup>69</sup>

13.108 The government members of the Committee at this time were Mr Gary Nairn MP (chair), Senator Eric Abetz, Senator the Hon. Nick

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65 Submission No. 95, (Liberal Party of Australia), p. 3.

66 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 31.

67 Mr A Hall, *Evidence*, Monday, 8 August 2005, p. 60.

68 Mr T Gartrell, *Evidence*, Monday, 8 August 2005, p. 36.

69 JSCEM, *The 1996 Federal Election*: June 1997, Recommendation 61, p. 104.

Minchin, Mr Michael Cobb MP, and Mr Graeme McDougall MP. The opposition members of the Committee were Senator Stephen Conroy (deputy chair), Mr Laurie Ferguson MP, Mr Robert McClelland MP, and Senator Andrew Murray.

- 13.109 In his minority report, Senator Murray said he would propose opposing the recommendation lifting the deductibility threshold unless such a provision was available to all relevant community organisations. He recommended that “tax deductibility for donations to Political Parties and Independents mirror those available to Community organisations as a whole”.<sup>70</sup>
- 13.110 The recommendation to raise the deduction to \$1,500 resulted in an amendment to tax legislation going before parliament in the Taxation Laws Amendment (Political Donations) Bill 1999. The Bill lapsed when the 39<sup>th</sup> Parliament was prorogued in 2001.
- 13.111 The Committee supports the proposition that a higher tax deductibility level would encourage more people to participate in the democratic process. As the Committee argued in its 1996 election report:
- an increase in the maximum deduction would encourage small to medium donations, thereby increasing the number of Australians involved in the democratic process and decreasing the parties’ reliance on a smaller number of large donations.<sup>71</sup>
- 13.112 The role of the taxation system in increased political participation has international acceptance. In its December 2004 report on the financing of political parties, the United Kingdom’s Electoral Commission observed:
- one way of encouraging political participation in the democratic process and democratic renewal at the grass roots level would be to introduce income tax relief on small donations to political parties.<sup>72</sup>

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70 JSCEM, *The 1996 Federal Election*, June 1997, ‘Minority report’, pp. 162-163.

71 JSCEM, *The 1996 Federal Election*, June 1997, p. 103.

72 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, p. 99. This report suggested that the tax-relief scheme be limited to small donations, up to a value of £200, or the first £200 of larger donations, in the financial year, with the value increased in line with inflation.

- 13.113 The Committee agrees with the statement from Mr Loughnane that raising the deductibility figure would be “an important change to assist with an important civic responsibility by Australian citizens”.<sup>73</sup>

### **Recommendation 51**

- 13.114 The Committee recommends that the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2,000 per year.**

### **Tax deductibility of donations to independent candidates**

- 13.115 The member for Calare, Mr Peter Andren MP, noted that donations to independent candidates were not tax deductible.<sup>74</sup> Mr Andren has made this point previously in submissions to earlier election inquiries.<sup>75</sup>
- 13.116 In its report on the 1996 election, the Committee stated that the inequity between independent and party-endorsed candidates should be rectified. It unanimously recommended that the taxation law be amended so that donations to an independent candidate at a Federal or State Election were tax deductible, at the same level as donations to registered political parties.<sup>76</sup> (As noted above, it recommended this level be raised to \$2,000).
- 13.117 The 1999 taxation law amendment Bill noted in the previous section included a provision to amend the legislation to allow income tax deductions for contributions made to independent candidates and members of parliament. The Bill lapsed when the 39<sup>th</sup> parliament was prorogued in 2001.

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73 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 31.

74 Submission No. 130, (Mr P Andren MP), p. 1.

75 Submission No. 80, (Mr P Andren MP), to the JSCEM *Inquiry into the conduct of the 2001 Federal Election and matters related thereto*, p. 2; and Submission No. 25 (Mr P Andren MP) to the JSCEM *Inquiry into the conduct of the 2001 Federal Election and matters related thereto*, p. S83.

76 JSCEM, *The 1996 Federal Election*, June 1997, Recommendation 62, p. 104.

**Recommendation 52**

- 13.118 **That the *Income Tax Assessment Act 1997* be amended to provide that donations to an independent candidate, whether from an individual or a corporation, are tax deductible in the same manner and to the same level as donations to registered political parties.**

**Disclosure of donations**

- 13.119 The Committee's principal interest at this point was that some of the current disclosure provisions of the CEA impose a cumbersome administrative burden on donors, participants in the electoral process, and the AEC without adding to the information available.
- 13.120 In pursuing change in this area, the Committee noted Senator Murray's concern that it has been claimed that multiple donations of values less than the existing threshold could circumvent the current disclosure requirements and provide a final donation from one source vastly in excess of the declaration threshold.<sup>77</sup> Whilst the Committee has not received meaningful evidence that this is occurring, it notes that if it is, it is a product of the change of the original disclosure changes by the then Hawke Government in 1983.
- 13.121 Several provisions require unnecessary duplication, demanding that both donors and registered political parties lodge returns containing essentially the same details.
- 13.122 For example, section 305B of the Act requires donors who make gifts totalling \$1,500 or more in a year to the same registered political party or the same state branch of a registered political party to lodge a return giving all the details of the gift, even though that same information appears in the annual return of the registered political party or state branch of the registered political party.
- 13.123 In a similar vein, section 307 of the CEA requires candidates and groups to lodge returns, even when they have no details to disclose.
- 13.124 In respect of a candidate, the section states:

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<sup>77</sup> Senator A Murray, *Transcript of Evidence*, Monday, 8 August 2005, p. 29.

the return shall nevertheless be lodged and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.<sup>78</sup>

#### The Committee's view

13.125 The Committee believes that there are good arguments for reviewing some of these provisions with a view to abolishing them, thereby streamlining the process and alleviating the burden on all concerned.

13.126 With regard to section 305A on donor returns, the Committee considers the demand for donor disclosures to be an annoying duplication of information that does not add to the identification of donors to political parties. The onus for the identification of the source of political donations should be on candidates and political parties, not donors.

13.127 The Committee agrees with Liberal Party federal secretary Mr Brian Loughnane who submitted that this section could be removed from the Act because:

to end the requirement for donor returns would reduce the administrative burden for the AEC and for donors, while in my view it would not reduce transparency for political donations, since disclosure of donations would continue to be required from political parties and candidates.<sup>79</sup>

13.128 With regard to section 307, the Committee is of the opinion that, for candidates endorsed by a registered political party, the demand that they file a "nil return" is an unnecessary imposition on the candidate and on the AEC. Given that the agent of a registered political party files a return containing the necessary details, the demand that a party-endorsed candidate lodge a "nil return" is cumbersome and wasteful. It does not add to the transparency of the disclosure process.

13.129 The Committee suggests that Section 307 should not apply to party-endorsed candidates where the registered political party's agent is lodging a return.

#### "Third party" donations

13.130 A "third party" is a person or organisation under an obligation to lodge a disclosure return because of indirect involvement in Federal

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78 CEA, section 307 (1)

79 Submission No. 219, (Liberal Party of Australia), p. 1.



Elections through (typically) making political donations or placing electoral advertising. Third parties are different from registered political parties, candidates, Senate groups, associated entities, broadcasters and publishers all of which have separate disclosure obligations under the CEA.<sup>80</sup>

- 13.131 Under s305 of the CEA third parties which incur expenditure for a political purpose are required, within 15 weeks of the polling day, to disclose gifts received for the period beginning 31 days after the previous election and concluding 30 days after the current election.<sup>81</sup>
- 13.132 Under s309 (4) they are required to report on expenditure relating to the *election period* (ie from the issue of writs to the end of polling on election day), within 15 weeks of polling day.
- 13.133 The practical effect of these provisions is that, unlike other entities which report annually on funds received and disbursed for party political purposes in the period between elections and for the election period, third parties:
- only disclose donations received in the period between elections after each election;<sup>82</sup> and
  - are only required to disclose expenditure made for the election period.

#### The Committee's view

- 13.134 The Committee concluded that financial reporting arrangements for all entities involved in the political process and covered by the CEA, should be the same in the interests of transparency and consistency.

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80 AEC, *Political disclosures*,  
[http://www.aec.gov.au/\\_content/how/political\\_disclosures/index.htm](http://www.aec.gov.au/_content/how/political_disclosures/index.htm)

81 CEA s305(1); s305(A)(1); CEA s287(f); 305(1)(a), but "Subsection (1) does not apply to a person in respect of the disclosure period in relation to an election if the total amount of expenditure incurred by the person for political purposes during the disclosure period is less than \$1,000."

82 AEC, *Political disclosures*,  
[http://www.aec.gov.au/\\_content/how/political\\_disclosures/index.htm](http://www.aec.gov.au/_content/how/political_disclosures/index.htm)

**Recommendation 53**

- 13.135 **The Committee recommends that third parties be required to meet the same financial reporting requirements as political parties, associated entities, and donors.**