Electoral and political financing: the Commonwealth regime and its reforms

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Introduction

There has been considerable debate about electoral and political finance reform over the years, both in Australia and overseas. This Background Note provides an overview of the regulation of political financing at the Commonwealth level including election expenditure. It also gives an account of the various political financing reforms that have been implemented or proposed at the national level since the 1980s.

The funding of political activity and structures—from holding elections to assisting political parties to perform their vital democratic role—is a crucial consideration for modern democracies. Establishing a funding scheme that ensures fairness and openness requires a legislative system that promotes an equitable distribution of resources among political parties and candidates and the timely disclosure of political donations and electoral expenditure.

Generally speaking, regulatory political financing regimes:

- prescribe the mechanisms for the public funding of election campaigns
- set down rules for the monitoring and public disclosure of parties’ receipts and expenditures, along with the disclosure of political donations by individuals and others, and
- ensure oversight, monitoring and reporting of the regime by an independent body.

Background

Australia’s democratic political processes are funded from both private and public sources. The former typically involves donations to political parties and candidates, party fundraising events and income from investments. Donors may be individuals, independent or third party organisations, corporations, or the associated entities of political parties themselves. The regulatory challenge is to enable and encourage financial support for political participation while ensuring proper transparency and managing the risks of undue influence and corruption. As well, there remains the vexing question of the unfairness that can arise if there are large disparities in the private resources available to parties and candidates.

Many Australian jurisdictions provide public funding support for parties and candidates contesting elections. A description of the political financing regimes and reforms in Australia’s states and territories may be found in a companion Background Note titled Political financing: regimes and reforms in Australian States and Territories.

Where jurisdictions have made taxpayer-sourced funding available directly to parties and candidates it has typically taken the form of a partial underwriting of their election campaign costs. In some jurisdictions public funds have also been made available for other activities such as policy development and party administration. There are also provisions in the Income Tax Assessment Act 1997 (Cth) whereby contributions and gifts to political parties, independent candidates and
members (at any time in the electoral cycle) may be claimed as income tax deductions up to a limit of $1,500 per year.¹

The public funding of political parties—whether within or beyond an election campaign context—is a highly contested issue. Many voters dislike the idea of taxpayers’ money going to support the operations of political parties, even in an election context. As far as private political donations are concerned, citizens express disquiet about the extent to which money buys influence or tends to corrupt democratic ideals. There is a concern that certain individuals or organisations can apply substantial resources to lobbying governments or influencing public opinion, thereby skewing the political discourse. This issue is further muddied by claims of the ‘right to free speech’ in a democracy, and the extent to which those with very deep pockets are entitled to apply their wealth to greatly amplify or broadcast their views.

Arguments tend to fall between two poles—from the libertarian view that people or organisations have the right to speak as loudly and spend as freely as they wish to achieve their political ends, to the more collectivist view which seeks to curtail those rights in certain respects in the interests of limiting inequalities of influence and thereby ensuring a ‘fairer’ democratic process.

Two Australian scholars have been especially prominent in discussion about political financing regimes—Joo-Cheong Tham and Graeme Orr. Tham is highly critical of the role played by money in Australian electoral politics. He argues that the structure of our political financing system greatly favours the major established parties.² He argues that ‘corporate donations have become a primary source of party funding’ and that large donations to the big parties have become ‘normalised’:

Of the amounts declared to be donations by parties, corporate donations outstrip both trade union and individual donations for all parties except for Greens.... The normalisation of corporate donations poses two problems. First, it contributes to financial inequalities between the parties. Second, it is likely to mean that the parties’ policies are skewed towards the interests of corporate donors. The latter poses a serious challenge to the health of Australia’s democracy.³

Tham argues that ‘corporations wield enormous economic power with their decisions affecting the livelihoods of most Australians’ but they are ‘singularly undemocratic in their decision-making structure’ and ‘should not be able to directly translate their economic power into political power through the medium of political contributions’.⁴

Graeme Orr considers that Australia’s federal political financing regime—the ‘carrot’ of public funding and the ‘stick’ of disclosure—offers ‘some modest civilizing benefits to the jungle of

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1. Income Tax Assessment Act 1997 (Cth) (subdivision 30-DA)
3. Ibid.
4. Ibid.
unfettered electoral competition and money politics’.\textsuperscript{5} However, he concludes his analysis on a sombre note:

The picture that emerges of political finance law in Australia is thus one of laissez-faire, both in the absence of contribution or expenditure limits, and also in the limited enforcement, coverage and reform initiative in the field of disclosure. On both counts Australia is decidedly less well governed than its international counterparts.\textsuperscript{6}

Similar concerns have been noted in overseas jurisdictions. In September 2010 the UK Government’s advisory body, the Committee on Standards in Public Life, published an issues paper to inform a review of political party funding. Its introduction reads as follows:

Political parties are an essential part of the sound operation of the democratic process. ... If political parties are to operate effectively it is essential that they are adequately and appropriately funded but it is also important that the means by which this funding is provided commands public confidence.

It must be a matter of concern therefore that the current arrangements are widely regarded with considerable suspicion. In particular there is a common belief — whether justified or not — that through making donations of a significant size to political parties individuals or organisations can purchase influence or position.\textsuperscript{7}

The Committee’s subsequent report Political party finance: Ending the big donor culture was published in November 2011. In his letter of transmittal to the Prime Minister, the Committee chair, Sir Christopher Kelly, stated:

We have come to the conclusion that the only safe way to remove big money from party funding is to put a cap on donations, set at £10,000. We are conscious that the effects of a cap on the finances of the largest parties will be significant. We would expect them to have to respond by cutting their spending, particularly their spending on campaigning, and to step up their efforts to engage with a larger number of individual supporters.

But even allowing for that it is clear to us that an inevitable consequence of the cap will be an increase in support for the parties from public funds. The public may be cynical about political parties, but they play an essential role in UK democracy.

It is hard to imagine a more difficult climate in which to make such a proposal. We would not have made it if we thought there was a credible alternative. We do not believe there is. If the public want to take big money out of politics, as our research demonstrates they do, they also have to face up to the reality that some additional state funding will be necessary.

\textsuperscript{6} Ibid., p. 87.
We realise this is a very uncomfortable conclusion. But it needs to be kept in perspective. The additional amount involved annually of around £23 million is the equivalent of only about 50p per elector per year – little more than the current cost of a first class stamp. Much larger sums are already spent in supporting democracy.  

Also from the UK, the Democratic Audit report Funding Political Parties in Great Britain: A pathway to reform offers an excellent account of the challenges of political financing reform, along with thoughtful strategies to achieve that reform over the medium term.  

In a November 2011 report on the funding of political parties and election campaigns, the Chair of the Joint Standing Committee on Electoral Matters (JSCEM) observed:

Australia can be proud of its democratic system, but there is scope for improvement. ... While there is no evidence that the funding and disclosure system is being abused, the inquiry has provided an opportunity to strengthen and provide more confidence in the system. ...

In Australia, it is important to safeguard the integrity of our funding and disclosure system, but it is also vital not to unduly restrict the ability of individuals and groups to engage in the political arena, whether through donating to a candidate, political party or third party, or advocating on, or seeking to engage the community on, a particular issue. Australians’ rights to freedom of political expression and participation must also remain a high priority. In making the recommendations in this report, the committee has sought to strike an appropriate balance between these competing concerns.

The reforms recommended by the Committee are addressed in more detail later in this Background Note.

Public political financing

The financing of political activity from the public purse is a topic of enduring controversy. In Australia, where voting is compulsory, the question of the extent to which public funds should be applied to facilitating election campaigns and political party activity has a special resonance.

Under the Commonwealth Electoral Act 1918 as it currently stands, registered political parties are eligible to receive public election funding regardless of electoral expenditure. Parties are eligible to receive funding in respect of endorsed candidates or Senate groups who receive at least four...
per cent of the first preference votes. Unendorsed candidates and unendorsed Senate groups are
also eligible to receive funding if they receive at least four per cent of the first preference votes.\footnote{Australian Electoral Commission (AEC), ‘Election Funding’, AEC website, viewed 11 March 2011, http://www.aec.gov.au/Parties_and_Representatives/public_funding/index.htm}

Some arguments for and against public funding

_Arguments for public funding of elections:_

• As political parties perform functions that are crucial to parliamentary democracy, they need to
be adequately funded in order to perform these functions properly.

• Public funding assists in redressing the financial inequality between candidates and parties.

• Public funding means reducing parties’ reliance upon large donors and parties would therefore
be immune, and would be seen to be immune, from outside (and potentially improper) influence.

• Public funding indicates to the public that political parties are valuable, indeed essential,
institutions in a democratic society.

• Disclosure requirements for private donations discourage people from donating. This limits the
ability of candidates and parties to raise funds, therefore public funding is necessary.

• Parties would be able to fulfil their essential functions in the democratic system more fully and
effectively because their resources and energies could more appropriately be applied to matters
such as policy development and research, instead of being diverted to, say, fundraising.

_Arguments against public funding of elections:_

• Public (i.e. taxpayers’) money should not be spent to support parties with whose views individual
taxpayers may not agree.

• Political parties are not the highest priority in terms of public expenditure.

• Public funding at the Commonwealth level (and some other jurisdictions) is only available after an
election to parties and candidates receiving more that four per cent of the votes—even if they do
not actually get elected. This does not result in equal treatment of candidates, and favours those
who have sufficient private resources to mount electoral campaigns in the first place. It takes no
account of the amount of private funding received in the course of the campaign.

• Public funding tends to reinforce the current party status quo. Existing parties are supported out
of the public purse and new parties find it a struggle to break into the funding scheme. It
entrenches existing parties to the detriment of new and small parties.

• Parties should fund themselves through membership and donations, and public funding dilutes
the incentive for parties to recruit actively.
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• The disclosure of donations schemes that are now in place in most Australian jurisdictions are sufficient to ensure that campaign funds come from appropriate sources.

• Parties might be tempted to decrease fundraising efforts at the grassroots level and thereby decrease the amount of ‘civic engagement’ in the political process.

• Public funding may not have broad electorate support.

On the matter of voters’ acceptance of public political financing, in a 2008 report, the NSW Legislative Council Select Committee on Electoral and Political Party Funding noted that:

It is far from certain that the community would be willing to provide additional public funding for election campaigns... Community willingness to provide additional election funding is of course linked to the size of the proposed increase.12

The Australian Government’s Electoral Reform Green Paper suggests that ‘Public acceptance of additional public funding might be enhanced if community concerns about escalating donations and campaign costs were addressed simultaneously’, and that:

... the fairness of the allocation and administration of public funding can also be argued to be key to public acceptance of increased public funding, and public confidence in the use of such funding for electoral purposes rather than for profit.13

A central matter for a public funding scheme is determining the level of funding that should be provided. A full electoral expenditure reimbursement model would involve eligible parties declaring electoral expenditure after each election followed by 100 per cent reimbursement. An ongoing funding support model, however (with or without electoral expenditure reimbursement) would likely require the imposition of a set funding rate (possibly indexed) or a cap as a mechanism for budgetary certainty and control. The absence of a rate or cap in such a model would mean essentially open-ended funding with the potential for unrestrained increases.

Another important element in determining the level of funding is the actual financial needs of the political parties. There would seem to be little point in allocating inadequate levels of funding because—as the Green Paper notes— ‘setting [public funding levels] at an unrealistically low level which does not recognise the current costs of political activities, would leave political parties and candidates still needing to ‘chase’ higher levels of private funding’.14 By the same token, it has been justifiably stated that ‘adequacy ... does not mean what the parties want (or think they need for campaigning purposes) and must be strictly judged against the functions that parties ought to

14. Ibid.
perform. In addition, as the Green Paper notes, mechanisms for determining funding eligibility also require consideration.

Public funding and the escalation of ‘campaign war chests’

A key issue in relation to public political financing regimes is the extent to which the existing Australian scheme has or has not contained party and candidate expenditure on elections. This is somewhat hard to judge because the changes to the scheme in 1998 meant that the AEC has not since been able to provide total figures for parties’ election expenditure.

One of the original arguments put forward in favour of public funding was that it would help parties to meet the increasing cost of election campaigning without their having to rely on (or seek) private funds that might come with ‘strings attached’. Implicit in this argument is the idea that the amount spent on elections could be contained and that public funding would supplant the need to attract more and more private donations.

Since its introduction in 1983, public funding for federal elections has grown significantly. As explained earlier, funding is determined by the number of primary votes obtained by the party. The original rate in 1983 was 60 cents per vote in the House of Representatives and 30 cents per vote in the Senate. After the 1984 election the AEC disbursed $7.8 million in election funding. In 1995 the amount paid was increased to 150 cents per vote and after the 1996 election the AEC disbursed $32.15 million. The rate at the 1998 election was 162.21 cents per vote, and $33.92 million was disbursed. As at June 2001 the rate increased to 176.554 cents—partly a result of an inflation spike related to the introduction of the Goods and Services Tax.

The concern here is that an escalation in campaign costs undermines one of the original aims of a public funding scheme—namely to ‘level the playing field’ so that those without the support of powerful financial interest groups could participate in politics, thus ensuring a wide range of political views in the political arena. It can be argued that it is hard for new players to enter the arena and have their voices heard if campaigning has become so expensive that the cost is prohibitive, especially when there is no guarantee that a new party will attract enough votes for their campaign costs to be reimbursed with public funding (four per cent of the vote in the case of Australia’s existing Federal scheme).

A sense of the amount of public money flowing since 2001 to political parties for electoral and related purposes may be gleaned from the AEC figures. At the 2004 federal election, the AEC paid out a total of $41 926 158 to ten parties and 15 independent candidates. The funding rate for the

17. D Jaensch, ‘As the poll looms, so does a GST bonus for major parties’, The Advertiser, 19 July 2001
2004 federal election was 194.397 cents per vote. For the 2007 federal election, public funding was 210.027 cents per vote. The ALP received $22 million, the Liberal Party $18.1 million, the Nationals $3.2 million and the Australian Greens $4.4 million. For the 2010 federal election, the election funding payment to the ALP was $21.2 million; to the Liberal Party $21.1 million; to the Greens $7.2 million; and to the Nationals $2.5 million.

The Electoral Reform Green Paper reports that the total amount of public funding for election campaign costs between the 1984 election and the 1996 election increased in real terms by approximately 127 per cent from $7.8 million in 1984 (or $14.1 million in 1996 dollar values) to $32.2 million in 1996. The total amount of public funding paid after each subsequent election has continued to increase, reaching $49 million for the 2007 election (an increase in real terms of 162 per cent since 1984) and $53.1 million in 2010.

Some academics have argued that public funding has encouraged, rather than contained, the runaway costs of campaigning because it provides a floor for campaign spending. As Graeme Starr observed in 1990:

> Organisers planning a two million dollar campaign did not reduce their fund-raising activities because they were sure of an extra million dollars. Rather, they used the million dollars as a base and up-scaled their plans to suit a three million dollar campaign.

Ten years later, and in a similar vein, the ALP’s Carmen Lawrence MP observed that the public funding of elections was supposed to reduce the parties’ reliance on private, corporate and union donations, but that:

> All that has happened is a blowout in both public (doubled since 1993) and private funding as parties engage in an increasingly expensive bidding war at elections.

In 2011, however, the AEC provided to JSCEM an analysis suggesting a somewhat different picture:

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23. Starr, ibid., p. 3.
The analysis is complicated by the fact that political parties only lodged returns of electoral expenditure for the 1984, 1987, 1990 and 1996 general elections. The AEC, therefore, has restricted its analysis to only those years where firm figures are available.

The dramatic rise in public funding from 1990 to 1996 (due to an effective doubling of the rates of election funding shortly before the 1996 poll) was accompanied by a virtual flattening out of reported campaign expenditures. This limited data does not support a hypothesis that an increase in election funding was the sole cause for any increase in election campaign spending.

The figures show that from 1984 through to 1990 electoral expenditure increased at a far greater rate than election funding. [Moreover] three of the four main party groups appeared to have retired debt following the 1996 election. This may suggest that the increased spending in earlier election campaigns was, directly or indirectly, funded in part through debt making the previous trend of escalation unsustainable. The increase in election funding appears to have been used to consolidate parties’ financial bases instead of funding bigger election campaigns.

A return to a reimbursement scheme could raise a new set of problems related to the potential for unnecessary expenditure in order to claim public funding. Starr argued in 1990 (before the reimbursement provisions were abolished) that public funding had resulted in ‘unnecessary campaigning’ in safe seats, where incumbents had felt a need to ‘show the flag’ because their opponents were assured of some funds to ‘make a showing’ where previously they may not have bothered. Starr claimed that before the advent of public funding, campaigning in these seats would have consisted of ‘some basic printing and a letter-box drop by party volunteers’.

Currently, there is little concrete information available on how much is actually spent on election campaigns in Australia because since 1998 political parties have not been required to file expenditure returns that explicitly identify amounts spent on election-related items. In the absence of facts there has been much speculation about campaign spending. In 2009, former ALP National Secretary Tim Gartrell estimated that the major parties had raised and spent about $80 million on the 2007 election.

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26. Starr, op. cit., p. 3.

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Current Commonwealth political financing arrangements

The Commonwealth—like New South Wales, Queensland, Victoria, Western Australia and the Australian Capital Territory—has a public funding scheme to support election campaigns. South Australia, Tasmania and the Northern Territory do not currently have public funding schemes. The Commonwealth and ACT schemes currently provide formula-based funding regardless of actual election expenditure incurred. The NSW, Qld, Vic and WA schemes provide reimbursement for election expenditure and require expenditure verification, such as receipts.  

Election campaign funding from public resources

Federal elections are managed by the Australian Electoral Commission (AEC). The AEC is funded through the Budget process for normal, anticipated elections. The AEC gets additional funding should a by-election be needed. In the event of, say, a snap federal election, the AEC approaches the Minister for Finance for funding, which is provided from the Advance to the Finance Minister under Section 13 of the Appropriation Act (No.1).

Currently under the Commonwealth Electoral Act 1918 (the Act), registered political parties are eligible to receive public election funding regardless of electoral expenditure. Parties are eligible to receive funding in respect of endorsed candidates or Senate groups who receive at least four per cent of the first preference votes. Unendorsed candidates and unendorsed Senate groups are also eligible to receive funding if they receive at least four per cent of the first preference votes.  

The Act requires that at least 95 per cent of the entitlement must be paid as calculated on the votes counted as at day 20 after polling day with the remainder being paid as soon as possible after the full entitlement is known. The funding rate for the 2010 federal election was 231.191 cents per House of Representatives and Senate vote. This rate is indexed every six months to increases in the Consumer Price Index. At present, the funding entitlement is paid either to the relevant registered political party—or in the case of endorsed candidates and Senate groups, directly to the candidate or their agent.

Any balance of entitlement is paid following the conclusion of the count of votes. There is currently no claims process—although legislative changes are anticipated that will introduce a claims system

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28. A companion Background Note titled Political financing: regimes and reforms in Australian States and Territories provides details of these schemes.
for electoral funding and link funding to electoral expenditure. These proposed changes are discussed in more detail later in this Background Note.

The four per cent threshold of first preference votes that confers eligibility for election funding does not necessarily have a direct relationship with electoral success. Candidates may reach four per cent of first preference votes without being elected, and conversely candidates (especially Senate candidates) can be elected without having secured four per cent of first preference votes. This occurs from time to time, including at the 2010 Federal election, with the election of Victorian DLP Senator John Madigan. The DLP itself secured only 2.23 per cent of the Senate vote in Victoria, and only 0.1634 per cent of a quota, but after the distribution of preferences, the vote was sufficient for Madigan to take the sixth Senate seat. According to Madigan’s election return, his total electoral expenditure was $179.

In a submission to the 2011 JSCEM Inquiry into the Funding of Political Parties and Election Campaigns, Senator Madigan made the following points:

- the four per cent threshold fails to address the situation of small parties
- funding should be altered to include the circumstances when a candidate receives less than four per cent of the primary vote but is elected after distribution of preferences—which would also affirm that parliamentarians elected on preferences other than first preferences are as validly elected as those elected only on first preferences.
- the DLP received a refund of the $1000 nomination fee, while a number of candidates who gained over four per cent (such as Family First) received funding.

In its report, the JSCEM addressed the matters raised by Senator Madigan and recommended:

... that members elected with less than four per cent of the first preference vote be eligible for election funding. These members should be entitled to the lesser of: the application of the ‘per vote’ rate to the first preference votes won, or reimbursement for proven expenditure following the lodgement of a claim.

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32. The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 was passed by the House in 2010 and awaits consideration by the Senate in 2012.
Disclosure of election-related expenditure and donations received

Election returns for candidates and Senate groups

Following each federal election, candidates, unendorsed Senate groups and Senate groups endorsed by more than one registered political party must disclose donations and electoral expenditure incurred.36 (Political parties themselves do not have to submit election returns, but must submit annual returns.)

Definition of ‘donations’

The Act refers to ‘gifts’ rather than ‘donations’. Section 287 of the Act defines ‘gift’ to include any transfer or disposition of property or services for which no payment, or an inadequate payment, is received. Political donations come within the scope of this definition. Donations may be in cash, or may be ‘gifts-in-kind’. A gift to any person or organisation that is intended to benefit a particular registered political party is taken to be a gift to that party.

The AEC describes ‘gifts-in-kind’ as ‘goods, assets or services for which no payment (in cash or in kind) or a payment of less than true value is made’.37 The definition of ‘gift’ in the Act indicates that volunteer labour is not a donation and as such is not subject to disclosure requirements.

Definition of ‘election / electoral expenditure’

Reportable electoral expenditure is that incurred on:

- broadcasting advertisements (including production costs)
- publishing advertisements (including production costs)
- displaying advertisements at a theatre or other place of entertainment (including production costs)
- costs of campaign material where the name and address of the author, or the authorising person, is required (e.g. how-to-vote cards, pamphlets, posters)
- direct mailing
- opinion polling or other research relating to the election.

The electoral expenditure part of the return covers campaign expenses for goods used or services provided during the period from the issue of writ until the close of polling, irrespective of when payment is made.  

Election returns to the AEC submitted by candidates and Senate groups must show:

- electoral expenditure incurred between the issue of the writ and polling day
- the total value of donations received
- the total number of donors
- all individual donations received above the disclosure threshold (personal gifts such as Christmas and birthday presents need not be disclosed)
- the details of donations including:
  - the date on which each donation was received
  - the amount or value of each donation, and
  - the name and address of the donor.

**Election returns for election donors**

People or organisations making donations to a candidate or member of a Senate group totalling more than the threshold during the period from 31 days after the previous federal election until 30 days after the current election must lodge an **Election Donor Return** with the AEC before the end of 15 weeks after the polling day for the election. The disclosure threshold amount from 1 July 2011 to 30 June 2012 is more than $11,900. The return must show the name and address of the candidate, the date each donation was made and the value of each donation at the time it was made.

The AEC publishes election returns on its website. As well, subsection 17(2) of the **Commonwealth Electoral Act 1918** requires the AEC to prepare a report on the operation of Part XX (Election Funding and Financial Disclosure) of the Act. Thus the AEC publishes an **Election Funding and Disclosure Report** after every election.

**Annual returns for political parties, associated entities, third parties and donors**

Registered political parties and their branches and associated entities—as well as other individual or third party donors to parties—are each required to lodge an annual return with the AEC.

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39. Ibid.
Political parties

The AEC publishes a Funding and Disclosure Guide to assist political parties to understand their financial disclosure obligations under the provisions of Part XX of the Commonwealth Electoral Act. The Guide provides information derived from the Act as well as from the experiences of the AEC in the administration of the funding and disclosure scheme.

The political party annual return requires:

- disclosure of total amounts for receipts, payments and debts
- detailed disclosure, including the full names and addresses of individuals, organisations or other entities from which receipts of money, gifts, gifts-in-kind or loans with a value of more than the threshold that were received over the financial year
- details of debts greater than the threshold.  

The disclosure threshold applying in relation to the 2010–11 disclosure period was for amounts of more than $11 500. This figure is adjusted annually according to the consumer price index.

The Political Party Disclosure Return must reach the AEC at its National Office in Canberra by 20 October each year. The AEC has no legislative discretion to extend this deadline. The names of all political parties that fail to submit a return by the due date are published on the AEC website and/or in the AEC’s report to Parliament. The AEC also has an eReturns portal to facilitate lodgement.

Associated entities

An associated entity under the Act (s287) means an entity:

- that is controlled by one or more registered political parties; or
- that operates wholly or to a significant extent for the benefit of one or more registered political parties; or
- that is a financial member of a registered political party; or
- on whose behalf another person is a financial member of a registered political party; or
- that has voting rights in a registered political party; or on whose behalf another person has voting rights in a registered political party.  

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40. Donors must submit returns where their total donations exceed the applicable donations threshold.
42. Ibid.
Examples of associated entities include ‘500 clubs’, ‘think tanks’, registered clubs, service companies, trade unions and corporate party members.

Associated entities are required to lodge an Associated Entity Disclosure Return by 20 October each year. The following information is disclosed:

- total receipts and payments for the financial year, and total debts as at 30 June each year
- details of amounts of more than the threshold received during the reporting period
- details of debts of more than the threshold outstanding as at 30 June, and
- details of capital contributions (deposits) from which payments to a political party were generated.

Those associated entities who incur political expenditure in excess of the threshold are also required to lodge a Third Party Return of Political Expenditure. The disclosure threshold for the 2010–2011 financial year is more than $11 500. This figure is indexed annually. Registered political parties and their state or territory branches, donors and ‘third parties’ which incur political expenditure also have reporting obligations.

The AEC publishes a Guide for associated entities to assist them in meeting their disclosure obligations.

Third parties

Third parties are people or organisations (other than registered political parties, candidates and Federal government agencies) who incur political expenditure on:

- public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means
- public expression of views on an issue in an election by any means
- printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business
- broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the Broadcasting Services Act 1992, and
- opinion polling and other research relating to an election or the voting intention of voters.

Where political expenditure reaches the disclosure threshold, third parties are required to lodge an annual Third Party Return of Political Expenditure by 17 November each year.

The AEC publishes a *Funding and Disclosure Guide for Third Parties incurring Political Expenditure*.

**Donors to political parties**

People or organisations (other than registered political parties, associated entities, candidates and members of a Senate group in an election) who make donations in excess of the threshold to political parties must submit annual returns.

Note that donors are distinguished from ‘third parties’ who might incur political expenditure to advocate certain causes or to promote a policy adopted by a political party. Donors, by contrast, give direct to a party (or candidate).

Donors who have made donations to registered parties or party branches within the financial year totalling more than the disclosure threshold require must specify:

- name and address details of the recipient registered party or party branch
- the date and value of each donation, and
- the details (name and address details of those giving donations to the donor, date and value of donations) of any donations above the disclosure threshold received by the donor to make up the donor’s own donations above the threshold to parties.\(^{46}\)

Subject to the disclosure threshold, donors to parties must lodge an annual *Donor to Political Party Return* by 17 November each year. The AEC publishes a *Guide for donors* to assist them in meeting their disclosure obligations.

As explained earlier, for those who donate to the election campaigns of candidates or Senate groups, an Election Donor Return must be submitted to the AEC. This must disclose:

- donations in excess of the threshold made directly to a candidate or to a member of a Senate group, and
- donations in excess of the threshold received and used, in whole or in part, to make such donations.

The AEC cross-checks returns from donors, parties and others and follows up any discrepancies.

**Other publicly funded elements of political financing**

**Parliamentarians’ entitlements**

There is a *range of entitlements available to MPs and Senators*, in addition to their annual salary—entitlements which are designed to facilitate their work as parliamentarians. These include

\(^{46}\) AEC, *Funding and disclosure guide for donors to political parties*. 

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**Donors to political parties**

People or organisations (other than registered political parties, associated entities, candidates and members of a Senate group in an election) who make donations in excess of the threshold to political parties must submit annual returns.

Note that donors are distinguished from ‘third parties’ who might incur political expenditure to advocate certain causes or to promote a policy adopted by a political party. Donors, by contrast, give direct to a party (or candidate).

Donors who have made donations to registered parties or party branches within the financial year totalling more than the disclosure threshold require must specify:

- name and address details of the recipient registered party or party branch
- the date and value of each donation, and
- the details (name and address details of those giving donations to the donor, date and value of donations) of any donations above the disclosure threshold received by the donor to make up the donor’s own donations above the threshold to parties.\(^{46}\)

Subject to the disclosure threshold, donors to parties must lodge an annual *Donor to Political Party Return* by 17 November each year. The AEC publishes a *Guide for donors* to assist them in meeting their disclosure obligations.

As explained earlier, for those who donate to the election campaigns of candidates or Senate groups, an Election Donor Return must be submitted to the AEC. This must disclose:

- donations in excess of the threshold made directly to a candidate or to a member of a Senate group, and
- donations in excess of the threshold received and used, in whole or in part, to make such donations.

The AEC cross-checks returns from donors, parties and others and follows up any discrepancies.

**Other publicly funded elements of political financing**

**Parliamentarians’ entitlements**

There is a *range of entitlements available to MPs and Senators*, in addition to their annual salary—entitlements which are designed to facilitate their work as parliamentarians. These include

\(^{46}\) AEC, *Funding and disclosure guide for donors to political parties*. 

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allowances for the operation of electorate offices, travel, communications with electors and so on. They are generally acknowledged to be a ‘benefit of incumbency’ when it comes to electoral politics, although restrictions apply to the use of such allowances in an election context. For example, ‘it is recognised that in carrying out their electorate business Members may use their entitlements in support of their own re-election but not in support of another candidate’.\(^{46}\) The printing and communications entitlement ‘cannot be used to print how-to-vote cards but may be used to print a limited number of postal vote applications for an election’.\(^{47}\)

The Department of Finance and Deregulation also provides funding on a reimbursement basis to political party secretariats and independent Senators and Members (not affiliated with a major party) for training in areas such as communications, office management, constituent management, electorate business and media management. During 2010-11 the maximum reimbursement available for each secretariat and independent Senator or Member was $1,000. The maximum reimbursement available is reduced on a pro-rata basis where a Senator or Member’s term commences part-way through a financial year.\(^{48}\)

Think tanks and research centres

The Department of Finance and Deregulation provides grants-in-aid to research centres and think-tanks connected with Australia’s main political parties. These organisations undertake research, prepare public policy advice and analysis, and generally promote the principles and values of their respective parties.

The international development agency AusAID provides grant funding of up to one million dollars to each of the Australian Labor Party and the Liberal Party of Australia (on behalf of the Coalition) ‘to support international activities to promote democracy within the region and the rest of the world’.\(^{49}\)

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47. Ibid.
Political financing reforms in Australia: a brief history

From an international perspective, an element of public funding for elections has been in existence in various countries under various regulatory regimes for about 50 years. In most of the countries that have public funding for parties and/or elections, the schemes have been introduced for the following reasons, either alone or in combination:

• Costs
  – Campaign costs have become so expensive that parties exhaust themselves on fundraising, with the danger that political participation could become the preserve of the rich individual and of large, well organised interests.

• Corruption
  – Parties may find that seeking funding from a few wealthy donors is easier than soliciting contributions from smaller, less-well-off individual donors, and the wealthy may expect political favours in return for their contributions.

• Fair competition
  – Better-funded candidates and parties have a greater chance of winning notwithstanding that others may be of equal or better merit.

A brief consideration of these issues appears below; in the Australian context, a convenient recent discussion of election funding options and the various arguments that surround them can be found in the March 2010 report by the NSW Parliamentary Joint Standing Committee on Electoral Matters entitled *Public funding of election campaigns*.  

Australian political financing reforms

Political historians tend to regard Australia as having been progressive and innovative with respect to democratic franchise and electoral systems, both in the colonies and post-Federation.

Early electoral reform

Before Federation, the question of female suffrage had arisen often, but ‘a great number of woman suffrage bills which passed through colonial Legislative Assemblies were negated by Legislative Councils’. In 1902 the *Commonwealth Franchise Act 1902* and the *Commonwealth Electoral Act*...
1902 provided for the secret ballot for both men and women (but not Indigenous) and ‘first-past-the-post’ voting for both House and Senate. The Commonwealth Electoral Act was comprehensively re-written in 1918, becoming the fundamental piece of legislation for Australia’s electoral system. It included the introduction of preferential voting for the House of Representatives. Compulsory voting was introduced in 1924.

In March 1926, the Australian Parliament agreed to the establishment of the Joint Committee on Electoral Law and Procedure which was required to examine, among other things, ‘donations or gifts by Members or candidates’. The report of the Joint Committee makes intriguing reading.

On the matter of donations or gifts, the concern was not for gifts received by but rather gifts given by Members or candidates. ‘Very little evidence of a definite character was obtained’ from Members and Senators ‘for the fear that their statements would be misconstrued by the outside public’. The Committee recommended ‘that the Act be amended to provide that no Member of the Federal Parliament shall offer, promise, or give directly or indirectly any gift, donation or prize to or for any club or other association or institution except hospitals, institutions and associations for charitable purposes, schools and war memorials’.

The NSW public funding initiative

The Commonwealth’s involvement in electoral and political financing can be seen to have its roots in reforms that began in New South Wales, when, in the late 1970s, the Wran Government began a push for the public funding of election campaigns, and established a Joint Committee to that end. That the Joint Committee was established to investigate how—and not whether—a public election subsidy scheme was to be introduced was an important distinction.

The public funding scheme, which was passed into law on 2 June 1981, was based on the Committee’s report, ‘with only small changes’. The Election Funding Act 1981 introduced public funding of State elections to New South Wales, and made disclosure of donations compulsory. The New South Wales Election Funding Authority (NSWEFA) was established to oversee the new scheme.

53. Ibid.
55. Australia, Parliament, Report from the Joint Select Committee on Commonwealth Electoral Law and Procedure, 3 March 1927
56. Ibid., p. 15.
57. Ibid.
The new Act established a state election fund equal to 22c per voter per year, divided into two parts:

- two-thirds of the money was assigned to a Central Fund (for parties), and
- one-third to a Constituency Fund (for individual candidates).

The Committee had argued for the funds to be split in this way because it recognised that in modern election campaigns the bulk of the planning and expenditure occurred at a central party level.

As recommended by the Committee, the funding scheme was essentially a reimbursement scheme, with the money paid only for receipted election-related expenditure. The period for an election, and thus the period for which expenses could be claimed, was not defined because, the Committee argued, ‘an election campaign is not just that period of time when there is a hurly-burly of electioneering’.

Although participation in the scheme was voluntary, with any unclaimed funds returning to the Treasury, all legitimate expenditure incurred by every candidate, party and election group seeking election had to be reported to the Election Funding Authority. The Committee had recommended the same ‘rigid’ rules on disclosure be applied to all parties, whether or not they received public funds: ‘Only if all the information is available will the funding authority be able to monitor overall expenses in an election campaign and discern the balance between public subsidy and total expenditure’. The Committee dismissed the arguments against disclosure as, ‘in the main, quite tawdry’.

Both the Liberal and the National Country parties initially refused to participate in the proposed new arrangements. The Joint Committee was unconcerned at the opposition to the scheme, observing that history showed that any alterations to the electoral landscape, including the introduction of universal suffrage, had met with fierce opposition and ‘[p]rophecies of dire peril’. Both the Liberal and the National Country parties subsequently reversed their positions.

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60. Ibid., p. 79.
61. NSW Parliament, *Report from the Joint Committee Upon Public Funding of Election Campaigns*, 27 November 1980, p. xxix, para. 4.7.1
62. Ibid., para. 4.7.6.
63. Chaples, op. cit.
64. *Report from the Joint Committee*, op. cit., p. xxxii, para. 4.11.4.
65. Ibid., p. xxxiii, para. 4.11.9.
Over the ensuing decade, the NSW election funding scheme was ‘the subject of strong criticism’. In September 1992, the NSW Parliament Joint Select Committee Upon the Process and Funding of the Electoral System published a second report that recommended changes that would fine tune the public funding and disclosure scheme. In 1993, a bill to amend the Election Funding Act 1981 (NSW) — based largely on the Committee’s findings — was passed by the NSW Parliament.

A new concept—that of third party disclosure—was introduced to reveal the real source of a donation, and prevent funds being “channelled” through a third party, leaving only the third party to be identified as the donor. The third party disclosure requirements:

- applied to persons other than political parties, groups and candidates who incurred electoral expenditure of more than $1,500 and
- required disclosure of details of expenditure incurred, together with details of donations of $1000 or more received by a third party to finance or partially finance that expenditure.

The bill also introduced a new fund, known as the political education fund, with an annual appropriation to the fund of an amount equal to the cost of one ordinary postage stamp for each elector in NSW. Parties would be entitled to receive funding based on the number of first preference votes received by candidates endorsed by the party for election to the Legislative Assembly at the previous general election. The whole scheme would be managed and audited by the Election Funding Authority.

Substantial political financing reforms have taken place in NSW since 2009. A more detailed account of these reforms appears in a companion Background Note titled Political financing: regimes and reforms in Australian States and Territories.

70. R Callinan, op. cit., p. 46.
71. Hannaford, op. cit.
72. Ibid.
Reforms at the Commonwealth level

For much of the 20th century, political financing received little attention from the Federal Parliament.

The Whitlam government intended substantial electoral reform, but its initiatives foundered in a hostile Senate. Nevertheless, the Electoral Office was made a statutory authority, received a modest increase in staffing, and developed a computerised roll-maintenance system.

In 1983 the Hawke government came into office with an ambitious program for change inherited from the Whitlam period. A Joint Select Committee on Electoral Reform (later the Joint Standing Committee on Electoral Matters—JSCEM) was established. It noted, among other things, that the state already provided indirect subsidies for elections and parties in the form of:

- compulsory voting (which saved parties having to organise voter drives)
- Australian Electoral Office election-related advertising and provision of material
- tax deductibility of candidates’ election expenses
- the continued provision of services such as telephones, free travel, and so on to sitting MPs and Senators during an election campaign.

The main arguments in relation to public funding put to the Joint Committee by the parties in 1983 were as follows:

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74. Ibid.
76. Ibid., pp. 147–51.
The Electoral Reform Committee offered the following arguments in response to objections by opponents of public funding:

- **on taxpayers being forced to support parties they found objectionable:**
  - funding would be disbursed in relation to votes received at an election; thus, ‘A taxpayer’s contribution will in effect follow his [sic] vote to the party of his [sic] choice’.

- **on competing demands on the public purse:**
  - public funding was a legitimate claim on public funds given that it enhanced legitimate political decision-making, ‘ensuring that no element in the political process should be
hindered in its appeal to electors nor influenced in its subsequent actions by lack of access to adequate finance’.

- **on public funding being costly to administer:**
  - the New South Wales system had demonstrated that public funding could be ‘simply, cheaply and efficiently administered’.

- **on public funding leading to more frequent elections:**
  - the absence of public funding ‘has not proven to be a deterrent to the calling or forcing of early elections in the past decade’.  

In addition, and in what can be seen as a bid to tackle some of the other arguments against public funding, the majority of the Committee agreed to the following basic principles for the scheme:

- aid should be given only to those who had demonstrated in elections that they could command a significant level of support, and the amount of support should be related to the relative electoral strengths of the parties
- subsidies should be calculated and allocated according to fixed rules in order to avoid the possibility of preferential treatment, and
- while there should be no control over how parties used their allocated public funding, the funds received must not exceed election-related expenditure.  

Outcomes under the Hawke government, via the Commonwealth Electoral Legislation Amendment Act 1983, included:

- the creation of the independent Australian Electoral Commission
- public funding of election campaigns
- disclosure of political donations and electoral expenditure, and
- the printing of party affiliations on ballot papers.  

The Commonwealth Electoral Legislation Amendment Act 1983 provided for public funding at the rate of 60 cents per first preference vote received by registered House of Representatives candidates and 30 cents per vote received by registered Senate candidates, provided that the

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77. Ibid., pp. 155–6.
78. Ibid., p. 156.
79. Proponents of the legislation in the House and Senate noted that it was the first major overhaul of the electoral legislation since 1918. See, for example, K Beazley, Second reading speech, House of Representatives, Debates, 2 November 1983, p. 2213, viewed 12 December 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=id%3A%22chamber%2Fhansard%2F1983-11-02%2F0075%22
candidate received at least 4 per cent of the eligible votes cast. It required parties and candidates to file election returns making a claim for payment, and the amount paid could not exceed the election expenditure incurred, which had to be properly accounted for.

In 1995, largely in response to a JSCEM report entitled *Financial reporting by political parties* the public funding scheme was amended by the Commonwealth Electoral Amendment Act 1995 to remove the obligation for political parties to file election returns. The debates in the House and the Senate in 1995 reveal that the changes were seen as a means of reducing the administrative burden on political parties and the Australian Electoral Commission. Members and Senators were especially concerned 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 to ‘count the number of tea bags [the branch] had in stock’. Labor argued that the changes would simplify the administrative process and speed up payments.

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. Greens Senator Christabel Chamarette and National Party Senator William O’Chee were among those arguing against the changes, condemning them as a ‘windfall’ and a ‘government subsidy’ for parties, which would ‘become fatter and lazier and less responsive to voters and members’.

The removal of the link between funding and reimbursement in 1995 allegedly created a situation in which ‘profiteering’ could occur. That is, in removing the requirement for candidates and parties to provide evidence of their campaign expenditures, a candidate or party could be paid a level of public funding (according to the entitlement formula) more than it spent on its election campaign.

It is alleged that profiteering occurred with Pauline Hanson’s One Nation in 1998, when the party was said to have spent only about $1.3 million on the campaign, but received just over $3 million in public election funding. At the Joint Standing Committee on Electoral Matters inquiry into the 1998

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81. Ibid.
federal election, Labor’s then National Secretary, Gary Gray, claimed that One Nation had indicated publicly that it viewed the federal election as a ‘money gathering exercise through public funding’.\footnote{Joint Standing Committee on Electoral Matters, Official Committee Transcript, Conduct of the 1998 Federal Election and Matters Related Thereto, Canberra, 1 April 1999, p. 20.}

In another example of receipts from public funding exceeding election expenditure, Independent Peter Andren received public funding of $73,017 for the 2001 election on the basis of his 40,786 first-preference votes, while his campaign expenses were only $58,274. An article in the *Australian Financial Review* in January 2002 quoted Andren as saying that he intended to spend the surplus on a ‘worthy cause’ in his electorate.\footnote{J Koutsoukis, ‘Andren to repay voters’, *Australian Financial Review*, 30 January 2002, viewed 12 December 2011, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FX4T56%22}} Noting that, as things stood, he could just ‘put the money in [his] pocket’ if he wanted to, Andren called for the system to require greater accountability.

The arguments against allowing ‘profiteering’ to occur relate to the underlying original aim of the scheme: that is, it was intended to help candidates and parties defray the direct costs of an election campaign, not to fund on-going administrative costs or provide a financial base from which to fight future elections. As the AEC noted in its *Funding and Disclosure Report: Election 96*:\footnote{AEC, *Funding and Disclosure Report: Election 96*, Canberra, 1997, p. 5.}

[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 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.\footnote{Ibid.}

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’.\footnote{JSCEM, *The 1998 Federal Election*, House of Representatives, June 2000, pp. 125–6.}

The Labor Party argued in its submission to the Joint Standing Committee on Electoral Matters inquiry into the 1998 federal election that all parties and candidates should be required to certify election expenditure to ensure that taxpayers knew that the money they provided to parties and candidates to run election campaigns was ‘properly spent and profiteering of the sort that took place in the federal election to the advantage of the One Nation Party ... cannot happen again’.\footnote{Ibid.}

However, the Australian Electoral Commission was not in favour of a return to a scheme based on the reimbursement of proven campaign expenditure, arguing that the ‘opportunity for profiteering on funding existed, and most likely occurred’ under the earlier scheme in that claimants could provide evidence for expenditures that were not a true cost to the party. For example, a party could enter a contract to pay for services that would otherwise be provided voluntarily: ‘The contracts are
legally binding and clearly constitute claimable campaign expenditure but the contracts may never be paid out on, or some or all of the fee may later be donated back to the party.  

The Joint Standing Committee on Electoral Matters concluded in its report into the 1998 federal election that a return to a reimbursement scheme was 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.

Political financing reform under the Howard Governments

Under the first two terms of the Howard Government, amendments made to the Electoral Act 1918 were largely of a technical nature designed to improve operational matters, and were usually based on recommendations of the Joint Standing Committee on Electoral Matters (JSCEM). In December 1998, the Howard Government introduced more substantial changes in the Electoral and Referendum Amendment Bill (No.2) 1998 in order to implement reforms arising 'out of the recommendations contained in the Joint Standing Committee on Electoral Matters’ report on the conduct of the 1996 federal election, which was tabled on 16 June 1997'. It contained a raft of controversial provisions around voter proof-of-identity requirements, close of rolls and disclosure thresholds that would ultimately be enshrined in the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006.

An earlier version of the bill had been introduced into the Senate during the 1998 Winter Sittings. The bill was then referred to the Senate Finance and Public Administration Legislation Committee, which tabled its report on the bill in the Senate on 23 June 1998. The (majority) Committee recommended that the bill be passed without amendment. However, the bill was not debated before the Parliament was dissolved for the 1998 Federal Election.

Separate bills, the Commonwealth Electoral Amendment Bill (No.1) 2000, and the Commonwealth Electoral Legislation (Provision of Information) Bill 2000 introduced various electoral reform measures, but did not include political financing matters. In March 2001, the Electoral and Referendum Amendment Bill (No. 1) 2001 was introduced to deal with technical changes recommended by the JSCEM.

On 26 September 2001, shortly before the 2001 election was called, the Howard Government introduced the Electoral and Referendum Amendment Bill (No. 2) 2001 which sought to implement the more controversial recommendations of JSCEM’s report on the 1998 election, including increasing political donation disclosure thresholds to $3000. The bill lapsed, but its provisions

formed the basis of electoral reform pursued by the Howard government in the next two parliaments.

Howard Government amendments to the Electoral Act between 2001–2003 had been confined largely to technical matters related to election funding and candidate nominations. But the return of the Howard Government in 2004 saw a re-engagement with the kinds of changes to the Electoral Act that had first been suggested as far back as 1998. From 2004, these more controversial electoral reforms—which had been proposed in previous bills but never fully enacted—were gradually put into effect.

Before the 2004 election, legislation had been passed dealing with issues of access to the electoral roll and enrolment integrity. These matters arose from JSCEM’s report on the 2001 election. These Acts included amendments that prevented from voting prisoners who were serving a sentence of three years or more (instead of five years or more).

During the 41st Parliament (2004–07) a series of amendments was made. The most controversial of the changes were contained in the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill introduced in December 2005. It included political financing and disclosure measures to:

- increase the tax deductibility value of contributions and gifts to political parties, independent candidates and members
- raise thresholds for disclosure of political donations to $10,000 and linked these to CPI. 93

During the Second Reading debate on the bill, the Opposition moved that ‘the bill be withdrawn until (its) undemocratic provisions ... are removed’. 94

It was under the provisions of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 that Australian voters went to the polls in 2007. The effects of these provisions were examined by the JSCEM in its 2009 report on the 2007 election. That report ‘looked closely at many aspects of existing electoral legislation, including amendments to the Commonwealth Electoral Act made in the lead-up to the 1998 election and especially those made following the 2004 election’. 95 The JSCEM report made 53 recommendations, several of which related to repealing aspects of the Howard Government’s changes. (Further discussed below.)

93. Note: An attempt to increase thresholds from $1500 to $3000 had failed in 2004.
Political financing reform under the Rudd and Gillard governments

Electoral administration was a key area for legislative amendment under the Rudd Government. Much of the reform was directed at repealing the changes that had been introduced during the Howard years. Proposals to amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* also arose from JSCEM reports and from Government green papers on electoral finance reform and the electoral system. 96

In early 2008, the Rudd Government introduced the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* — a package of measures concerning political donations and election funding that included:

- reducing the disclosure threshold for donors, registered political parties, candidates and others from ‘more than $10,000’ (indexed annually to the CPI) to a flat rate of $1,000
- reducing the timeframes for the lodgement of returns by political parties to every 6 months, and shorten a range of other reporting periods under the Act
- making it unlawful to accept overseas donations and extending the prohibition on accepting anonymous gifts and donations
- tying public funding for elections to genuine election expenditure.

In June 2008, the bill was referred to the JSCEM, which reported in October 2008, suggesting two minor amendments to the bill, but supporting its provisions overall. A dissenting report by Coalition members recommended that the bill be deferred pending the outcomes of the Green Paper process. The Government’s subsequent attempts to have the legislation dealt with were repeatedly frustrated. (Details appear later in this Background Note.)

In December 2008, the Government released its first electoral reform Green Paper *Donations, Funding and Expenditure* and invited comment on the issues raised to be submitted by 23 February 2009. In March 2009, the Government introduced, and passed through the House, its *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009*. The bill subsequently lapsed at the end of the 42nd Parliament.

In September 2009 the Government launched a second Green Paper on electoral reform. As well as inviting written submissions, an online discussion forum was held from Monday 9 November to Friday 13 November 2009.

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The JSCEM report on the 2007 election, tabled in June 2009, commented on a range of matters connected with the effects of the Howard government’s controversial changes to electoral legislation, but did not concern itself with political financing arrangements. 97

On 11 February 2010 the Government introduced the Electoral Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 that sought, among other things, to restore the close of rolls period to seven days after the issuing of the writs. The bill passed the House on 10 March 2010 and was introduced in the Senate on 15 March 2010, but lapsed in July 2010 with the conclusion of the 42nd Parliament. With the 2010 election pending, a challenge to the 2006 Howard amendments relating to the close of rolls was mounted in the High Court of Australia in July 2010. On 6 August 2010 the Court declared the 2006 amendments to be invalid. As a consequence, a week prior to the election the AEC announced that an extra 57 732 voters had been enrolled and that a further 40 408 voters had their enrolment details updated.

Other elements of the Government’s electoral reform agenda achieved in 2010 were:

• the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Act 2010.
• the Electoral and Referendum Amendment (Modernisation and Other Measures) Act 2010.
• the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010.

Political financing developments following the 2010 election

Following the 2010 election, the Gillard Labor Government signed agreements with the Australian Greens and two of the non-aligned independents (Tony Windsor MP and Rob Oakeshott MP) committing the signatories to legislation that would:

• lower the donation disclosure threshold from $11 500 to $1000
• prevent donation-splitting
• ban foreign donations and anonymous donations over $50
• increase the frequency of disclosure, and
• link electoral funding to campaign expenditure. 98

The agreements also committed the signatories to establish a parliamentary committee inquiry into further election finance reform options in 2010–11. The agreement with the Greens further noted that the Greens’ preference is for full public funding of elections.

98. Note: A number of these measures had been introduced by the Rudd Government in 2008 and 2009 in legislation that did not pass the Senate.
Prime Minister Gillard also signed an agreement with another non-aligned independent, Andrew Wilkie MP. This agreement recognised that work was underway on the reform of ‘Funding of political parties and election campaigns’ and committed the signatories to collaborate on this, but did not specify further actions.

In September 2010 the Coalition, too, agreed with the ALP and the independent members on the necessity for parliamentary and governmental reform. While the agreement concerned mainly parliamentary reforms, it also stated that ‘It is expected, through the life of this Parliament ... that there will be further steps taken to improve Government’ in a number of areas including ‘Electoral Funding Improvements’ and ‘Truth in Political Advertising improvements’. In mid-October 2010 it was reported that the Opposition was reconsidering its support for electoral finance reform due to concerns over third party donations.

**Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010**

On 20 October 2010, the Gillard Government introduced the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 which resurrected the Rudd Government bill that had lapsed prior to the 2010 Federal election.

The bill, which was in substantially the same form as the bill originally introduced in 2009, contained:

... six measures in three key areas: increasing the transparency of political donations disclosure; more frequent and timely reporting of political donations and expenditure; and reforming the public funding of elections.

The 2010 bill does not seek to legislate for limits on campaign expenditure, but seeks, among other things, to introduce a claims-based funding framework informed by the principle of linking public electoral funding to actual electoral expenditure incurred. In the Second Reading speech on the bill it was stated that the new measures:

... will prevent candidates, or any political party, from making financial gain from the electoral public funding system. Public funding will continue to be paid to registered political parties, unendorsed candidates and unendorsed Senate groups who receive at least four per cent of the formal first preference votes at an election. Under the Bill, they will receive the lesser amount of

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100. Ibid., p. 9.
102. Ibid.
either the electoral expenditure that was actually incurred in an election period between the issuing of the writs and the end of polling day, or the amount awarded per vote.¹⁰³

The main purpose of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 is to amend the Commonwealth Electoral Act 1918 so as to:

• reduce the donations disclosure threshold from $11,500 (current rate, CPI-indexed) to $1,000 and remove CPI indexation

• prohibit foreign donations to registered political parties, candidates and members of Senate groups and also prevent the use of foreign donations for political expenditure

• prohibit anonymous donations above $50 to registered political parties, candidates and members of Senate groups and also prevent the use of anonymous donations above $50 for political expenditure

• permit anonymous donations of $50 or less in certain circumstances

• limit the potential for ‘donation splitting’

• introduce a claims system for electoral funding and link funding to electoral expenditure

• extend the range of electoral expenditure that can be claimed and prevent existing members of Parliament from claiming electoral expenditure that has been met from their parliamentary entitlements, allowances and benefits

• introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns, and

• introduce new offences and increase penalties for a range of existing offences.

In his Second Reading speech, the Special Minister of State said that the bill was:

... implementing the government’s recent commitment to the Australian Greens and Independent members to seek immediate reform of donation, disclosure and funding laws for political parties and election campaigns. The bill aims to improve our system of political donations disclosure and election funding to help ensure that campaigning is fair and transparent.¹⁰⁴

The Opposition opposed the bill in the House, describing it as:


... a deliberate attempt to advantage the Labor Party and the Greens and to entrench that financial advantage. It will disadvantage permanently the Coalition, the Independents and the smaller parties like Family First. So once again I say: we opposed the previous bills and we will continue to oppose this bill.105

The Australian Greens and independent MPs Wilkie, Windsor and Oakeshott supported the bill during its first passage (involving a division) through the House on 17 November 2010. It is likely that independent Senator Nick Xenophon will vote in favour of the bill in the Senate given his support for the original 2008 Bill. In March 2009 Senator Xenophon indicated that he was ‘supportive of the measures’ in that bill and stated that ‘we need to get on with these particular amendments ... but we also need to look at the big picture in terms of comprehensive reforms’.106 It has been reported that Senator Xenophon favours monthly donations disclosure together with immediate disclosure during election campaigns.107

The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 passed the House on a division on 17 November 2010 and is expected to be dealt with by the Senate in 2012.

JSCEM 2011 Report of the Inquiry into the funding of political parties and election campaigns

On 9 December 2011, JSCEM tabled its Report of the Inquiry into the funding of political parties and election campaigns, with Committee Chair Daryl Melham MP declaring that:

Australia can be proud of its democratic system, but there is scope for improvement. In terms of political financing arrangements, the funding and disclosure system that was introduced in 1984 was a leader in its field. However, more than a quarter of a century later, Australia’s political financing arrangements are in need of review and revitalising.108

The key reforms recommended by the Committee are entirely congruent with the measures proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, and seek to achieve better and more timely disclosure of political expenditure. The proposals include:

108. JSCEM, Report on the funding of political parties and election campaigns, op. cit., p. iii.
• introducing an election funding framework that ties parties’ funding to the lesser of the proven election expenditure incurred or the amount determined by the application of the ‘per vote’ formula

• reducing the donation disclosure threshold from the current $11,900 (indexed to CPI) to $1,000, without indexation

• enhanced online lodgement systems managed by the AEC

• changing the reporting requirement for political parties, associated entities and third parties, from annual to six-monthly returns, and

• banning anonymous donations over $50.

The Committee has also recommended the introduction of special reporting of single donations over $100,000, which must be disclosed to the AEC within 14 business days of receiving the donation and made publicly available soon after on the AEC website. It has also recommended the implementation of a scheme of ‘ongoing administrative funding for registered political parties and Independents … [as] part of a broader package of public funding reforms … The Australian Government should, in consultation with key stakeholders, develop a model for the entitlement and payment of administrative funding appropriate for application at the Commonwealth level’.

Notwithstanding disagreement among the major parties on certain aspects of reform concerning the treatment of donations, there seems to be broad support for some level of public funding for administrative and policy activity by parties and candidates. The question of placing caps on electoral expenditure remains a key issue to be resolved.

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109. Ibid., p. iv.
110. Ibid.
Appendix 1: Timeline of Commonwealth political financing initiatives

Introduction: 1983 and 1984

Legislation establishing a public funding scheme was introduced by the Hawke Government on 2 November 1983, passed in the House of Representatives on 10 November 1983 and the Senate on 2 December 1983, becoming the Commonwealth Electoral Legislation Amendment Act 1983.

Public funding was designed, among other things, to ‘assist candidates and political parties defray the direct costs incurred in a federal election campaign’. It was not designed to ‘subsidise ongoing administration costs or provide a financial base from which future election campaigns could be fought’. It was also designed to ensure a degree of public accountability in the funding of political parties.

Under the new regime, the Australian Electoral Commission (AEC) was required to disburse funding to registered political parties following a general election.

Under the scheme:

- the basic amounts for public funding were to be based on the annual primary postage rate (30 cents in 1983), or 90 cents every three years, and were to be indexed to increases in the postage rate
- the funding was to be paid at 60 cents per House of Representatives vote and 30 cents per Senate vote
- participants would have to receive at least 4 per cent of the primary vote to qualify for funding
- only registered political parties and candidates could apply for funding
- payment was to be on the basis of total electoral expenditure incurred in the period after an election was announced, was not to exceed this amount and evidence of expenditure had to be provided
- funding was to be paid to state party branches for all candidates for either the House or Senate who were endorsed by a registered party, and
- there was no maximum payment to any party or candidate.

An obligation to disclose expenditure was introduced to ‘reinforce the integrity’ of the funding system, and political parties, candidates, state branches, interest groups, third parties and media organisations were obliged to disclose expenditure in relation to costs of television, radio and

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112. Ibid.
newspaper advertising, authorised material, production and display of advertising at theatres and so
on, and opinion polls.\(^\text{113}\)

**Amendment: 1992**

An amendment to the *Electoral Act* in 1992 changed the policy on returns, such that parties and
their state branches now had to submit *annual* returns disclosing all receipts, payments and debts,
rather than *election* returns. The return had to list all transactions (payments, receipts or debts) of
$1500 or more, in some detail.

**Recommendations and amendments: 1994 and 1995**

In June 1994, the Joint Standing Committee on Electoral Matters produced an interim report,
*Financial Reporting by Political Parties*, which recommended that parties be required to
list only total amounts of expenditure in their annual returns, rather than individual transactions.\(^\text{114}\) It also
recommended that the same amount of funding be given for Senate votes as for the House of
Representatives.

As a result of the report, several major changes were made to the legislation via the *Commonwealth
Electoral Amendment Act 1995*. Those related to public funding included the following:

- The amount of funding for the Senate and the House was equalised and increased to a new base
  rate of $1.50. The indexed rate applicable at the 1996 election (the election immediately after
  the legislation was changed) was $1.58. The equalisation and increase were justified on the basis
  that it required the same effort to gain a Senate vote as a House of Representatives vote, and
  that the costs of campaigning had increased while donors had become more reluctant to
  contribute (because of the disclosure requirements).

- The funding was to be paid regardless of how much participants spent on an election campaign
  (or even whether they spent any money on a campaign). That is, the funding was to be
  automatic, rather than linked to reimbursements. This change was seen to both speed the
  process for the Australian Electoral Commission and reduce the administrative burden on
  participants.

- Political parties again were required to furnish an election expenditure return, and the definition
  of election expenditure was amended to include direct mail.

The removal of the link between funding and reimbursement in 1995 allegedly created a situation in
which ‘profiteering’ could occur. That is, in removing the requirement for candidates and parties to
provide evidence of their campaign expenditures, a candidate or party could be paid in public
funding (according to the entitlement formula) more than it spent on its election campaign.

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\(^{113}\) Cass and Burrows, op. cit., p. 500.

Amendment: 1998

An amendment in 1998 (the Electoral and Referendum Amendment Act 1998) abolished the requirement (re-introduced barely three years previously) that parties lodge electoral expenditure returns; rather, parties again only had to lodge annual returns of expenditure.

Proposed inquiry into funding and disclosure: 2000

In August 2000 the Special Minister of State (Senator Ellison) requested the Joint Standing Committee on Electoral Matters (JSCEM) to inquire into those recommendations of the AEC’s 1996 and 1998 Funding and Disclosure Reports that were not currently incorporated in legislation or not previously examined by the Committee. The Committee was required to report on the desirability of incorporating the remaining AEC funding and disclosure recommendations into the existing legislation. The reference for this inquiry lapsed when the Committee ceased to exist at the dissolution of the House of Representatives on 8 October 2001. Nevertheless, the 21 submissions to the inquiry are available on the JCSEM website.

Amendment: 2002

An amendment in 2002 (introduced originally but not passed in 2001, and reintroduced in 2002 after the federal election) changed the way that public funding was paid to the Liberal Party. Previously, the funding was payable to an agent agreed by the party’s state branch and federal secretariat. Under the Commonwealth Electoral Amendment Bill 2001, the money was to be paid to the agent of the federal secretariat, rather than the state or territory division.

The Parliamentary Library’s Bills Digest on the Commonwealth Electoral Amendment Bill 2001 noted that the official rationale for the change was that it reflected the purpose of public funding. That is, it was appropriate for the public funding to be paid to the Liberal Party’s federal secretariat because this was the body responsible for federal election campaigns, including the control of mass media coverage and so on.115 The Bills Digest observed that commentators had put forward at least two other rationales: that the change relieved the party of the administrative burden of the Goods and Services Tax, and that it resolved a dispute between the Liberal Party’s federal secretariat and some of its state and territory divisions.

The ALP had argued in favour of public funding being paid to a party’s national secretariat in a submission to the JSCEM inquiry into the 1993 election. The JSCEM noted in its interim report of 1994 that Labor had argued that the move would decrease the time and paperwork required for

state-by-state apportionment, and would establish the principle that ‘funding provided by the national parliament for national elections should go direct to the national offices of parties’.  

**Recommendations and amendments: 2005–11**

As explained in detail earlier in this Background Note, various changes have been made or proposed to electoral laws since 2005. None of these, however, have gone directly to the matter of the public funding arrangements for elections.

Briefly, in 2006 the Howard Government made a number of changes to the disclosure aspects of the financing regime. In 2005 a majority of the Joint Standing Committee on Electoral Matters had recommended the introduction of a $10 000 CPI-indexed disclosure threshold for political donations. The changes introduced by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* included raising the disclosure threshold for political donations from $1500 to ‘more than $10 000’ (CPI indexed) and raising the limit for anonymous donations from $1000 to donations exceeding $10 000 (also indexed). Other measures relating to electoral finance and disclosure included an extension of the definition of ‘associated entities’ and an increase in the tax deductibility threshold for donations.

Several of these measures were controversial and were opposed by the ALP (then in Opposition) and by the minor parties. Since attaining office in 2007 successive Labor governments sought to reverse them, notably with the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010*. The Bill passed the House in November 2010 and is expected to be dealt with by the Senate in 2012.


