



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**  
**CORPORATIONS AMENDMENT**  
**(TAKEOVERS) BILL 2007**

**In Committee**

**SPEECH**

**Thursday, 29 March 2007**

BY AUTHORITY OF THE SENATE

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# SPEECH

**Date** Thursday, 29 March 2007  
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**Questioner**  
**Speaker** Murray, Sen Andrew

**Source** Senate  
**Proof** No  
**Responder**  
**Question No.**

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**Senator MURRAY** (Western Australia) (1.27 pm)—I move Democrat amendment (1) on sheet 5234:

(1) Page 3 (after line 8), after item 1, insert:

1A After Division 8 of Part 2M.3

Insert:

Division 8A—Disclosure by companies of political donations

323DB Object of Division

The object of this Division is to authorise gifts and other political donations as defined in the *Commonwealth Electoral Act 1918* and in this Division, made by companies to political organisations.

323DC Prohibition of gifts and political donations by companies

(1) It is unlawful for a gift or other political donation as defined in this section to be made by a company to a political organisation or a candidate except as authorised by this Division.

(2) In this Division:

*candidate* means a candidate for election to the Commonwealth Parliament, a State Parliament or for a position in a registered organisation as defined in the *Workplace Relations Act 1996*.

*political donation* means:

- (a) a *gift* as defined by the *Commonwealth Electoral Act 1918*; or
- (b) a **disposition of property** as defined by the *Commonwealth Electoral Act 1918*.

*political organisation* means a **registered political party** or an associated entity as defined by the *Commonwealth Electoral Act 1918*.

*relevant time*, in relation to any political donation made by a company, means:

- (a) the time when the donation is made; or
- (b) the time, if earlier, when any contract or undertaking is entered into by a company in pursuance of which the political donation is made.

323DD Approval of gifts and political donations by companies

(1) It is unlawful for a company or an officer of a company to make any political donation to a political organisation or candidate unless:

- (a) the political donation is authorised by a resolution passed at a general meeting by a majority of shareholders of the company before the relevant time; or
- (b) the political donation is made on the authority of the company, board or management body in accordance with a donation policy which has been approved by a general meeting of the company before the relevant time.

Penalty:

- (a) in the case of an individual—by a fine not exceeding 2000 penalty units; or

(b) in the case of a body corporate—by a fine not exceeding 10,000 penalty units.

(2) For the purposes of this section, an approval resolution is a qualifying resolution which specifically authorises the company to make donations to nominated political organisations not exceeding in total a sum specified in the resolution, during the requisite period beginning with the date of the resolution and concluding at the expiration of 3 years after the date of the resolution, after which a further resolution is required in accordance with paragraph (1)(a).

(3) In this section:

*qualifying resolution* means an ordinary resolution or, if the directors so determine or the articles so require:

(a) a special resolution; or

(b) a resolution passed by any percentage of the members greater than that required for an ordinary resolution.

*requisite period* means three years or such shorter period as the directors may determine or the articles may require.

(4) The directors may make a determination in relation to a qualifying resolution or the requisite period unless any provision of the articles of the company operates to prevent them from doing so.

(5) An approval resolution must be expressed in specific terms which conform with subsection (2).

(6) If a company or an officer of a company makes any donation in contravention of subsection (1), no ratification or other approval made or given by the company or its members after the relevant time is capable of operating to nullify that contravention.

(7) For the purposes of this section, *company* includes a subsidiary of a company.

I seek leave to table the accompanying supplementary explanatory memorandum.

Leave granted.

**Senator MURRAY**—The amendment I have moved is opportunistic. On Friday, 23 March 2007—a week ago—the Minister for Employment and Workplace Relations was reported as telling journalists outside the Australian Mines and Metals Association conference in my home town of Perth:

[Unions] of course don't have the same accountability [as corporates] - they don't disclose how much union executives are being paid, they don't go to members and ask them whether they can contribute millions of dollars to the Labor Party.

They don't have the same disclosure arrangements as corporate Australia. They don't have the same fiduciary obligations to act in the best interests of the company - or the union movement - as corporate Australia, and that's something that I think needs to be addressed.

This statement leads me to conclude that there is now acceptance in the government of reform in this governance area. The Corporations Amendment (Takeovers) Bill 2007 is the earliest legislative corporate law vehicle available to effect such reform. And of course it is opportunistic, because with the election due any time from 4 August I need to address these issues as soon as I can.

The minister seems unaware that corporates do not have to gain shareholder approval for political donations and that most do not. I have raised this issue several times since 1996. I drew attention to this matter in my minority report to the Joint Standing Committee on Corporations and Financial Services May 2004 report into CLERP 9. I subsequently unsuccessfully moved an amendment reflecting my recommendation to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003. I have again drawn attention to the need for disclosure by companies making political donations without shareholder approval and unions making political donations without member approval and suggested the remedies for this. Note my supplementary remarks to the September 2005 report of the inquiry by the Joint Standing Committee on Electoral Matters into the conduct of the 2004 federal election and matters relating thereto.

The amendment, which is a fairly lengthy one, provides for the prohibition of gifts and political donations by companies unless the political donation is authorised by a resolution passed at a general meeting by a majority of shareholders of the company or unless the political donation is made in accordance with a shareholder-approved donation policy. It does not seek to prohibit donations; it seeks to require that the shareholders approve the policy under which donations are made.

I referred earlier to my supplementary remarks to the September 2005 report of the inquiry by the Joint Standing Committee on Electoral Matters into the conduct of the 2004 federal election. I said the following, which is the Democrats' approach to these matters:

The practice of companies making political donations without shareholder approval and without disclosing donations in annual reports must end. So must the practice of unions making political donations without member approval. It is neither democratic nor is it ethical. Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) should be given the right either to approve a political donations policy, to be carried out by the board or management body, or the right to approve political donations proposals at the annual general meeting. This will require amendments to the relevant acts ...

I think this position is clearly understood. If I were to take parliamentarians and ask them to put on their personal moral and ethical hats, I have no doubt they would support my remarks. But when you come across parliamentarians in their guise as representing political parties, of course it is not in their self-interest to support them, so I am anticipating the rejection of this amendment.

In closing on my motivation for the amendment, I do want to remind the committee that in the report of the Joint Standing Committee on Corporations and Financial Services, which assessed that original CLERP 9 legislation, recommendation 26 said the following:

The Committee recommends that provisions be inserted in the Corporations Act that would require the annual report of listed companies to include a discussion of the board's policy on making political donations.

To this date, of course, the government has not taken up that committee recommendation. That is not unusual: the government does not take up lots of recommendations of that particular committee. In my opinion it should take up more. I do not think there is much more to say from my point of view.