

REGULATING MONEY IN DEMOCRACY: AUSTRALIA'S POLITICAL FINANCE LAWS ACROSS THE FEDERATION

A Report Prepared for the Electoral Regulation
Research Network

January 2021

By Dr Yee-Fui Ng*

* Senior Lecturer, Faculty of Law, Monash University. The author would like to thank Andrea Olivares Jones, Benjamin Edwards and Rajat Lal for their assistance on this project.

TABLE OF CONTENTS

| | |
|---|-----|
| Abstract | 3 |
| I Introduction: Regulating Money in Politics | 5 |
| II The Democratic Role of Political Finance: Principles of Regulation..... | 6 |
| III The History of Legislative Development of Electoral Law in Australia..... | 9 |
| A Commonwealth..... | 9 |
| B Victoria..... | 13 |
| C New South Wales..... | 14 |
| D Queensland..... | 20 |
| E Western Australia..... | 23 |
| F South Australia..... | 24 |
| G Tasmania | 27 |
| H Northern Territory..... | 28 |
| I Australian Capital Territory | 30 |
| IV Key Elements of Political Finance Regulation..... | 34 |
| A Disclosure Requirements..... | 34 |
| B Caps on Donations | 50 |
| C Caps on Expenditure..... | 55 |
| D Bans on Donations from Certain Sectors | 65 |
| E Foreign Donations Bans | 69 |
| F Political Funding Streams and Funding Rates | 73 |
| G Indexation | 85 |
| H Enforcement..... | 96 |
| V Political Finance Laws Across the Jurisdictions: Opportunities for Harmonisation..... | 108 |
| A Transparency Measures: Disclosure Requirements..... | 108 |
| B Regulation of Supply and Demand of Money in Politics: Caps and Bans on Donations and Expenditure..... | 109 |
| C Public Funding..... | 110 |
| D Indexation | 111 |
| E Enforcement..... | 111 |
| F Summary..... | 112 |
| VI Conclusion..... | 114 |

ABSTRACT

This report provides a comprehensive overview of the current regulation of political finance laws across the federation. Part I outlines the scope and impetus of this report, which is commissioned by the Electoral Regulation Research Network.

Part II provides an analytical framework of principles for political finance regulation. These principles are: protecting the integrity of representative government, promoting fairness in politics, the principle of transparency, supporting parties in performing their functions, and respecting political freedoms. It also provides regulatory options to promote these principles, such as transparency measures, supply-side measures such as source restrictions which regulate who can make financial contributions; and amount restrictions that limit the sums that can be given, as well as public funding of electoral campaigns.

Part III outlines the history of major legislative changes to electoral legislation at the Commonwealth, State and Territory levels in Australia. Australian jurisdictions have previously had minimal regulation of political finance that was described as *laissez faire* or “lackadaisical” compared to other major democracies. In recent years, however, several Australian State jurisdictions have undertaken various dynamic political finance reforms that have tightened up the regulatory net, particularly Victoria, NSW and Queensland.

Part IV identifies nine key elements of political finance regulation: disclosure requirements (donations and expenditure), caps on donations, caps on expenditure, indexation, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, and enforcement. It examines and classifies these key elements of political finance regulation for all jurisdictions in Australia. It shows that there is a distinct lack of uniformity in the regulation of political finance in Australian jurisdictions at the Commonwealth, State and local government levels in all nine regulatory dimensions.

Part V provides recommendations for law reform and harmonisation across jurisdictions as follows:

Transparency Measures: Disclosure Requirements

- administrative harmonisation across jurisdictions in terms of website functionality and visualisations for disclosures utilising user-friendly interfaces.
- administrative harmonisation in terms of the format, accessibility and timing of disclosures of electoral expenditure.

Regulation of the Supply and Demand of Money in Politics

- consideration should be given towards broader adoption of donations caps in Australian jurisdictions to promote political equality.
- there should be policy harmonisation of adoption of caps on expenditure for all Australian jurisdictions to promote equality between the parties and dampen the demand for electoral money.
- consideration of broader adoption of bans on foreign donations across Australian jurisdictions to enhance public integrity.

Public Funding

- consideration should be given towards adopting the SA public funding model of paying a higher fixed-dollar amount for the first tranche of the vote a party attracts, than for the rest of the vote share it wins.
- policy harmonisation that streamlines the level of public funding across jurisdictions, provided that this is coupled with electoral expenditure caps.
- policy harmonisation in providing annual funding for parties, including new parties, to ensure that parties are adequately funded to promote their policy platforms.

Indexation

- indexation categories should be harmonised across jurisdictions in terms of disclosure thresholds, donation caps, expenditure caps, and public funding.
- harmonisation of the quarter of CPI adjustment across jurisdictions.

Enforcement

- categories of offences should be harmonised across jurisdictions in terms of breach of disclosure requirements, donation caps and bans, and expenditure caps.
- penalties for breaches should be confined to fines or civil penalties, rather than imprisonment or criminal penalties.

I INTRODUCTION: REGULATING MONEY IN POLITICS

The regulation of political finance is an essential component of a modern democracy. Political parties require funding to carry out their representational activities; yet the influence of money raises integrity issues, such as the potential for corruption and undue influence through political donations. A well-functioning political finance system can thus enhance the equity and transparency of a democratic system.

In recent years, there have been extensive legislative amendments of political finance laws in various Australian jurisdictions, yet there is no up to date report about the current regulation of political finance laws across the federation.

This report provides a comprehensive coverage of political finance laws across the federation by:

- analysing the operation of political finance laws at the federal, State, Territory and local government levels,
- outlining the history of legislative development for each jurisdiction;
- conceptualising the key elements of political funding laws, including disclosure requirements, caps on donations, caps on expenditure, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, indexation and enforcement; and
- identifying similarities in political finance laws, including opportunities for joined-up evaluation, reporting and policy harmonisation between jurisdictions.

It will do so by first examining the principles for regulating money in politics (Part II), Following this, the history of legislative development in each Australian jurisdiction will be examined (Part III). Part IV will conceptualise the key elements of political funding laws, and outline how these are regulated in each Australian jurisdiction. Finally, the report will identify similarities in political finance laws, including opportunities for joined-up evaluation, reporting and policy harmonisation between jurisdictions.

II THE DEMOCRATIC ROLE OF POLITICAL FINANCE: PRINCIPLES OF REGULATION

The proper financing of politics is essential to the effective operation of democracies. It enables political parties to communicate their policy platforms to the public in their election campaigns, so that the public can make an informed choice about who to elect to represent them.

Any regulation of political finance has to balance two competing interests. First, there is the freedom of individuals and corporations to express their political preferences, including giving money to political parties they support. Indeed, the Australian *Constitution* protects the freedom of political communication,¹ which means that legislative schemes, including political finance regimes, which infringe these principles will be struck down as unlawful.

This has to be counterbalanced with the pernicious influence of money in politics. The key here is whether large political donations secure greater access to politicians than ordinary people have. A question is whether large donations sway politicians to bestow illegitimate favours or adopt policies that directly benefit donors. As Donald Trump stated:

I gave to many people before this – before two months ago, I was a businessman. I give to everybody. When they call, I give. And you know what, when I need something from them two years later, three years later, I call them. They are there for me. That’s a broken system.²

Trump thus suggested that it is possible to “buy” political access and influence through political donations. In Australia, the managing director of Transfield Holdings, Luca Belgiorno-Nettis, recently likened political donations to the Latin saying *do ut des*: “You give in order to have given back.”³

However, according to democratic principles, individuals are entitled to equal representation by our elected representatives. We can also expect politicians to be transparent and accountable in exercising their public duties. In particular, politicians should not engage in corrupt behaviour, such as bartering with a wealthy donor to

¹ In *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, the High Court held that there is an implied freedom of political communication derived from sections 7 and 24 of the *Constitution*.

² Andrew Belonsky, ‘What Donald Trump’s Political Donations Reveal about Him’, *Rolling Stone* (online, 25 April 2016) <<https://www.rollingstone.com/politics/politics-news/what-donald-trumps-political-donations-reveal-about-him-180861/>>.

³ Katharine Murphy, ‘Transfield Holdings Boss says Political Donations “Bought Access” to MPs’, *The Guardian* (online, 23 May 2016) <https://www.theguardian.com/australia-news/2016/may/23/transfield-boss-says-political-donations-bought-access-to-mps?CMP=soc_568>.

make decisions in their favour in exchange for a large sum of money. It is not just actual corruption that's the issue; even the perception of corruption can damage trust in the political system.

It can thus be surmised that there are several main purposes in regulating money in politics. The first is to prevent corrupt behaviour by public officials. The second purpose is a broader notion of political equality in ensuring the fairness of government policy-making and decision-making processes by increasing transparency in the disclosure of political donations. This is aimed at reducing the incidence of secret donations by vested interests and reducing the risk of regulatory capture by government. The prevention of corruption and increase of transparency leads to the third main purpose of improving the quality of government decision-making and policy-making in ensuring that government decisions are made according to merit, rather than skewed towards narrow sectional interests. This in turn will increase public confidence in the integrity of political institutions.

To combat these risks while balancing political freedoms, as Tham argues, there are four major objectives of a political finance regime:

- *protecting the integrity of representative government*: which relates to the moral qualities of government officials of acting with honesty, probity, and avoiding conflicts of interest, as well as processes that promote these qualities;
- *promoting fairness in politics*: which turns on equality of treatment by the decision-maker of all parties who ought to be heard in decision-making processes.
 - Related to this is the *principle of transparency*, which is the government's obligation to share information with members of the community, thus allowing the community to hold their public officials accountable;
- *supporting parties in performing their functions*: which involves providing adequate financial support to political parties to enhance their function of democratic representation; and
- *respecting political freedoms*: that is the individual freedom to donate to political parties as part of political participation.⁴

Towards achieving these aims, there are several regulatory options. The first and most basic are transparency measures, requiring that parties, candidates and other

⁴ Joo-Cheong Tham, *Money and Politics: A Democracy We Can't Afford* (UNSW Press, 2010) 20. Similarly Keith Ewing identifies three 'guiding principles': adequate funding of parties, anti-corruption and fair competition, and a regulatory menu with three dishes: transparency (disclosure), caps (on donations or campaign spending), and public funding. Keith Ewing, 'Political Party Finance: Themes in International Context' in Joo-Cheong Tham et al (eds), *Electoral Democracy: Australian Prospects* (Melbourne University Press, 2011) 143, 147-9, 151-3.

political actors disclose their funding details.⁵ There are also supply-side measures that directly regulate the flow of money into politics.⁶ These measures generally take two forms: *source restrictions* which regulate who can make financial contributions; and *amount restrictions* that limit the sums that can be given. Source restrictions are typically directed at preventing corruption (for example, by banning contributions from certain high-risk industries to parties). Amount restrictions share this aim but also seek to promote political fairness.⁷ Finally, there is public funding of electoral campaigns.

The regulation of political finance in Australia has charted an uneven course, with all jurisdictions adopting disparate regulation at the Commonwealth, State and local government level. Accordingly, this paper will examine of the history of electoral regulation in Australian jurisdictions (Part III), and then further analyse the regulatory options adopted by Australian jurisdictions in Part IV.

⁵ Tham, *Money and Politics* (n 4) 21.

⁶ *Ibid* 22.

⁷ *Ibid*.

III THE HISTORY OF LEGISLATIVE DEVELOPMENT OF ELECTORAL LAW IN AUSTRALIA

Australian jurisdictions have previously had minimal regulation of political finance that was described as *laissez faire* or “lackadaisical” compared to other major democracies.⁸ In recent years, however, several Australian State jurisdictions have undertaken various dynamic political finance reforms that have tightened up the regulatory net, particularly Victoria, NSW and Queensland.

This part will provide the history of major legislative changes to electoral legislation in Australian jurisdictions. In providing this legislative history, only amendments that enact significant changes to electoral law will be considered, i.e. changes to disclosure obligations, imposition of caps and bans, public funding, indexation and enforcement. More minor or technical changes are omitted.

A Commonwealth

For the first 80 years of Commonwealth electoral history, regulation has focussed on imposing electoral expenditure limits for candidates. The *Commonwealth Electoral Act 1902* (Cth) prescribed limits for electoral expenditure of candidates, and required all candidates to file a return of electoral expenses following each election.⁹ The expenditure limit was 250 pounds for a Senate election and 100 pounds for a House of Representatives election. Following this, the *Commonwealth Electoral Act 1905* (Cth) provided an additional requirement that the return of candidates’ expenses were to be open to inspection upon payment of the prescribed fee.¹⁰

The *Commonwealth Electoral Act 1911* (Cth) imposed an additional requirement that trades union registered or unregistered, organisations, associations, leagues, or body of persons which have, or a person who has, in connection with any election, expended any money or incurred any expense on behalf of, or in the interests of, any candidate or political party, must submit a return.¹¹ The penalty for failure to comply was 50 pounds.¹² All returns of trade unions and organisations were to be made open to public inspection.¹³ In addition, proprietors of newspapers were obliged to provide returns setting out the amounts they were due to be paid for publishing electoral matters and the names and addresses of the trades unions registered or unregistered, organisations, associations, leagues, bodies of persons, or persons

⁸ Zim Nwokora et al, ‘Political Finance Regulation and Reform in New South Wales: Towards a Fairer System?’ (2019) 65(1) *Australian Journal of Politics and History* 115; Graeme Orr, ‘Political Disclosure Regulation in Australia: Lackadaisical Law’ (2007) 6(1) *Election Law Journal* 72.

⁹ *Commonwealth Electoral Act 1902* (Cth), ss 169-72.

¹⁰ *Commonwealth Electoral Act 1905* (Cth), s 49.

¹¹ *Commonwealth Electoral Act 1911* (Cth), s 172A.

¹² *Commonwealth Electoral Act 1911* (Cth), s 172A.

¹³ *Commonwealth Electoral Act 1911* (Cth), s 172A.

authorising it.¹⁴ The penalty on a proprietor who breached the section was 500 pounds.¹⁵

The *Commonwealth Electoral Act 1918* (Cth) repealed all previous electoral legislation, and is the current core legislation governing the conduct of elections in Australia. It has been amended several times since the 1940s to present.

Firstly, the *Commonwealth Electoral Act 1946* (Cth) increased the expenditure limits for elections as follows:

- Senate election: from 250 to 500 pounds.
- House of Representatives election: from 100 to 250 pounds.¹⁶

However, the major change in the architecture of the Commonwealth political finance regulatory framework to its contemporary form occurred in the *Commonwealth Electoral Legislation Amendment Act 1983* (Cth). It removed the limits of electoral expenditure for candidates in favour of a system of public funding and disclosure of donations and expenditure. In particular, it:

- established an independent Australian Electoral Commission (AEC) to administer the federal electoral system;
- introduced the registration of political parties;
- introduced public funding of election campaigns and disclosure of political donations and electoral expenditure;
- removed limits on electoral expenditure for candidates;
- inserted new offences for failure to furnish a return;
- inserted new investigation powers for the electoral commission; and
- inserted a new provision making claims and returns viewable by public.¹⁷

Following this, electoral legislation remained dormant for a couple of decades until the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) which, amongst other things, increased the disclosure threshold for donations, thus reducing transparency, and increasing the regulatory net to third parties. In particular, it:

- increased the disclosure thresholds from \$1,500 to \$10,000 (with legislated Consumer Price Index (CPI) increases); and
- required that third parties— people other than registered political parties, candidates, Senate groups and donors— must complete annual disclosure returns if they incurred expenditure for a political purpose or received gifts

¹⁴ *Commonwealth Electoral Act 1911* (Cth), s 172B.

¹⁵ *Commonwealth Electoral Act 1911* (Cth), s 172B.

¹⁶ *Commonwealth Electoral Act 1946* (Cth), s 145.

¹⁷ Explanatory Memorandum, *Commonwealth Electoral Legislation Amendment Bill 1983* (Cth).

over the disclosure threshold which enabled them to incur expenditure for a political purpose during a financial year.

The *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth) banned foreign donations the Commonwealth level. It was enacted based on the Joint Standing Committee on Electoral Matters' (JSCEM) *Second Interim Report on the Inquiry into the Conduct of the 2016 Federal Election: Foreign Donations*. In particular, the Act:

- established public registers for key non-party political actors;
- prohibited donations from foreign governments and state-owned enterprises being used to finance public debate;
- required wholly political actors to verify that donations over \$250 come from an organisation incorporated in Australia, or with its head office or principal place of activity in Australia, an Australian citizen or Commonwealth elector;
- prohibited other regulated political actors from using donations from foreign sources to fund reportable political expenditure;
- limited public election funding to demonstrated electoral spending; and
- modernised the enforcement and compliance regime for political finance regulation by decriminalising many existing offences in Part XX of the Electoral Act.

The *Electoral Legislation Amendment (Miscellaneous Measures) Act 2020* (Cth) clarified the relationship between federal and state and territory electoral funding and disclosure laws following *Spence v Queensland* [2019] HCA 15. The amendments provide that state and territory laws cannot restrict the ability of donors to give funds for federal purposes and gift recipients to deploy funds for federal purposes. In *Spence*, the High Court ruled section 302CA of the *Electoral Act 1918* (Cth) invalid, due to being beyond the legislative powers of the Commonwealth. Section 302CA conferred authority on a person to make, and on a political entity to receive and retain, a gift that is not prohibited by Div 3A, provided only that the gift, or part of the gift, is required to be, or may be used for the purposes of incurring electoral expenditure or creating or communicating electoral matter. The revised provisions are narrower, and do not confer immunities for gifts that may, or may not be, used for a federal purpose.¹⁸

Commonwealth Legislative History

| Legislation | Summary |
|--|---|
| <i>Commonwealth Electoral Act 1902</i> (Cth) | <ul style="list-style-type: none"> • established the machinery and regulations for federal elections. • prescribed limits for electoral expenditure of candidates. • required all candidates to file a return of electoral expenses following each election. |

¹⁸ Explanatory Memorandum, Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (Cth).

| | |
|---|---|
| | <ul style="list-style-type: none"> contained no financial disclosure requirements. |
| <i>Commonwealth Electoral Act 1905</i> (Cth) | <ul style="list-style-type: none"> provided an additional requirement that the return of candidates' expenses are to be open to inspection upon payment of the prescribed fee. |
| <i>Commonwealth Electoral Act 1906</i> (Cth) | no significant changes to financial disclosure requirements. |
| <i>Commonwealth Electoral Act 1909</i> (Cth) | no significant changes to financial disclosure requirements. |
| <i>Commonwealth Electoral Act 1911</i> (Cth) | <ul style="list-style-type: none"> provided additional requirement that trades union registered or unregistered, organisations, associations, leagues, or body of persons which has, or person who has, in connexion with any election, expended any money or incurred any expense on behalf of, or in the interests of, any candidate or political party, shall submit a return. Penalty: 50 pounds. provided additional requirement that proprietors of newspapers were obliged to provide returns setting out the amounts they were due to be paid for publishing electoral matters and the names and addresses of the trades unions registered or unregistered, organisations, associations, leagues, bodies of persons, or persons authorising it. Penalty: 500 pounds. |
| <i>Commonwealth Electoral Act 1918</i> (Cth) (current main electoral legislation) | <ul style="list-style-type: none"> repealed all previous electoral legislation. current core legislation governing the conduct of elections in Australia. |
| <i>Commonwealth Electoral Act 1946</i> (Cth) | <ul style="list-style-type: none"> increased expenditure limits for elections: <ul style="list-style-type: none"> Senate election: from 250 to 500 pounds. House of Representatives election: from 100 to 250 pounds. |
| <i>Commonwealth Electoral Legislation Amendment Act 1983</i> (Cth) | <ul style="list-style-type: none"> established an independent Australian Electoral Commission (AEC) to administer the federal electoral system. introduction of the registration of political parties. introduction of public funding of election campaigns and disclosure of political donations and electoral expenditure. removed limits on electoral expenditure for candidates. inserted new offences for failure to furnish a return. inserted new investigation powers for electoral commission. inserted a new provision making claims and returns viewable by public. |
| <i>Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006</i> (Cth) | <ul style="list-style-type: none"> increased the disclosure thresholds from \$1,500 to \$10,000 (with legislated CPI increases). required that third parties— people other than registered political parties, candidates, Senate groups and donors— must complete annual disclosure returns if they incurred expenditure for a political purpose or received gifts over the disclosure threshold which enabled them to incur expenditure for a political purpose during a financial year. |
| <i>Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018</i> (Cth) | <ul style="list-style-type: none"> established public registers for key non-party political actors. prohibited donations from foreign governments and state-owned enterprises being used to finance public debate. required wholly political actors to verify that donations over \$250 come from an organisation incorporated in Australia, or with its head office or principal place of activity in Australia, an Australian citizen or Commonwealth elector. prohibited other regulated political actors from using donations from foreign sources to fund reportable political expenditure. limited public election funding to demonstrated electoral spending. modernised the enforcement and compliance regime for political finance regulation by decriminalising many existing offences in Part XX of the Electoral Act. |

| | | |
|---|------------------------------------|--|
| <i>Electoral Amendment Measures) Act 2020 (Cth)</i> | <i>Legislation (Miscellaneous)</i> | clarified the relationship between federal and state and territory electoral funding and disclosure laws following <i>Spence v Queensland</i> [2019] HCA 15. |
|---|------------------------------------|--|

B Victoria

In Victoria, the main piece of legislation governing electoral processes is the *Electoral Act 2002* (Vic), which regulates political donations and disclosure rules. In comparison to other Australian jurisdictions, the Act, and Victorian electoral regulation as a whole, has been amended relatively infrequently.

Until the *Electoral Legislation Amendment Act 2018* (Vic) was introduced, Victoria relied upon the Commonwealth political donations scheme and had no separate disclosure requirements.¹⁹ In response to the consequential lack of transparency regarding the making and receiving of political donations and excessive delays before public disclosure, issues identified by several parliamentary committees and reports from 2009 onwards, the Amendment Act was introduced to establish Victoria's own comprehensive political donations and reporting scheme.²⁰ The Act was adopted to alleviate community concerns regarding the capacity for political donations to improperly compromise electoral processes.²¹

In establishing a Victorian disclosure scheme, The Act introduced numerous regulatory initiatives under three umbrella areas, the introduction of caps and bans on political donations, disclosure requirements for political donations and amendments to the public funding for electoral campaigns and empowering authorities to enforce compliance with the scheme. These initiatives included:

- A prohibition on elected members or parties receiving political donations from foreign sources;
- Introduced a cap on anonymous donations in excess of \$1,000;
- Introduced an offence to make or accept an illegally made political donation;
- Empowered the Victorian Electoral Commission ("VEC") to enforce compliance with the scheme through appointing authorised officers;
- Required disclosure of political donations equal or above \$1,000; and
- Imposed a cap of \$4,000 upon political donations received from the same source within each four-year election period.

Victorian Legislative History

| Victoria | Summary |
|---------------------------------|---|
| <i>Electoral Act 2002</i> (Vic) | main legislation regulating political disclosure and donations rules in Victoria. |

¹⁹ Second Reading Speech, Electoral Legislation Amendment Bill 2018 (Vic).

²⁰ *Ibid.*

²¹ *Ibid.*

| | |
|--|--|
| <p><i>Electoral Legislation Amendment Act 2018 (Vic)</i></p> | <ul style="list-style-type: none"> • Established a Victorian political donations disclosure and reporting scheme. • Prohibited political donations from foreign sources. • Imposed a cap on anonymous donations of more than \$1,000. • Established an offence to knowingly make or accept an illegal political donation, with a penalty of 300 penalty units or 2 years imprisonment. • Empowered the Commission with powers to monitor and enforce the political donations scheme. This achieved through the ability to appoint compliance officers who are able to investigate potential legislative contraventions. • Provided for administrative funding to be paid to both registered elected parties and independent elected members. Parties and Independent members are to be paid \$10,000 each quarter per elected member. • Established an offence if a person fails to provide a disclosure or annual return. Penalty: 200 penalty units • Established an offence if a person provides a disclosure or annual return containing false or misleading information. Penalty: 300 penalty units and/or 2 years imprisonment • Introduced a cap of \$4,000 for each four-year election period on political donations received from the same source • Prohibited the making of more than six donations to third party campaigners each election period • Required that political donations equal or in excess of \$1,000 must be disclosed by both donor and recipient. • Introduced new penalties and strengthened existing penalties for failure to comply with the disclosure and reporting scheme. Penalties: up to two years in prison and/or fines of \$45,000. |
|--|--|

C New South Wales

The *Electoral Funding Act 2018* (NSW) makes provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for State parliamentary and local government election campaigns and for the public funding of State parliamentary election campaigns. This Act was enacted in response to the *Final Report on Political Donations by the Panel of Experts* (the Schott Report) (2014), the *Report on the Inquiry into the Final Report of the Expert Panel - Political Donations and the Government's Response* (2016) and the *Report on the Administration of the 2015 NSW Election and Related Matters* (2016), both by the Joint Standing Committee on Electoral Matters.²² In particular, it:

- required a disclosure of a reportable political donation received or made during a certain timeframe and extended these provisions to associated entities of political parties;
- decreased the applicable cap on electoral expenditure for a third-party campaigner for a state general election;

²² Explanatory Note, Election Funding Bill 2018 (NSW).

- provided that if a person makes a political donation and within 12 months of making that donation becomes a property developer, then the person must pay an amount that is double the amount or value of the donation to the state;
- provided for a 'dollar-per-vote' model of public funding for state election campaigns;
- renamed the 'Policy Development Fund' as the 'New Parties Fund';
- expanded the items of policy development expenditure claimable from the New Parties Fund to include electoral expenditure in the calendar year in which a Legislative Assembly general election is held; and
- enabled certain civil and criminal proceedings to be brought against parties that are unincorporated associations as if the parties were corporations.

The *Electoral Funding Act 2018* (NSW) replaced the *Election Funding, Expenditure and Disclosures Act 1981* (NSW), which was the first legislation in NSW to introduce public funding of election campaigns, with payments through the Central Fund and the Constituency Fund. It also imposed post-election disclosure obligations on political parties, groups of candidates and candidates. As Anderson et al explain, for more than two decades from the 1980s, the NSW political finance regime rested upon the two key planks of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW), public funding and post-election disclosure.²³

The *Election Funding Amendment Act 2006* (NSW) was enacted based on concerns raised by the Electoral Commissioner about its administration and enforcement of the Act.²⁴ The Act:

- enabled election candidates from registered parties to claim amounts incurred by the party on behalf of the candidate as electoral expenditure amounts for the purposes of payment from the Constituency Fund; and
- created an offence of failing to comply with a notice to produce documents that are expected to have been involved in a possible contravention of the requirement to disclose electoral expenditure.²⁵

The regulatory landscape began to profoundly change from 2008 onwards through a series of legislation that significantly tightened requirements, so that NSW now has one of the most robust regulation of political finance in Australia.

The *Election Funding Amendment (Political Donations and Expenditure) Act 2008* (NSW) required disclosure of donations and campaign expenditure of \$1,000 or

²³ Malcolm Anderson et al, 'Less Money, Fewer Donations: The Impact of New South Wales Political Finance Laws on Private Funding of Political Parties' (2018) 77(4) *Australian Journal of Public Administration* 797, 799.

²⁴ Second Reading Speech, Election Funding Amendment Bill 2006 (NSW).

²⁵ Explanatory Note, Election Funding Amendment Bill 2006 (NSW).

more every six months and banned anonymous donations and loans of \$1,000 or more during the same periods.

The *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009* (NSW) banned political donations from property developers. This was in response to a series of scandals from mid-2005 relating to political donations from property developers.²⁶

A particularly significant legislation that enacted ground-breaking reforms was the *Election Funding and Disclosures Amendment Act 2010* (NSW). This Act provided a broad scheme for regulating political funding in NSW through caps on political donations and electoral communication expenditure, and a substantial increase of public funding; it also extended the ban on political donations from property developers to tobacco, liquor and gambling industry entities. These reforms were directed at reducing the advantages of money in dominating political debate, providing for a more level playing field for candidates seeking election and for third parties who wish to participate in political debate, as well as putting a limit on the political “arms race”, where ‘those with the most money have the loudest voice and can simply drown out the voices of all others’.²⁷ Thus NSW led the way in providing for more comprehensive regulation of political finance in Australia.

The *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW) restricted the ability to make political donations to those on the electoral rolls, and hence banned political donations from individuals not on the electoral rolls, corporate entities and trade unions (including membership fees paid by trade unions affiliated to the NSW Australian Labor Party (ALP)). This legislation also aggregated the spending of affiliated organisations to caps of their respective political parties (e.g. spending of trade unions affiliated to NSW ALP aggregated to the caps applying to NSW ALP). This Act was, however, struck down by the High Court in *Unions NSW v NSW*²⁸ on the basis that it breached the freedom of political communication implied under the Commonwealth *Constitution*. As a result, the *Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014* (NSW) was passed with the invalid provisions removed.

The *Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013* (NSW) implemented the recommendations made by the Joint Standing Committee on Electoral Matters following its inquiry into administrative

²⁶ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding in New South Wales* (2008) 7–10.

²⁷ Second Reading Speech, Election Funding and Disclosures Amendment Bill 2010.

²⁸ (2013) 252 CLR 530.

funding for minor parties in NSW.²⁹ It was prompted by concerns that changes to the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) in 2010 had placed a higher administrative burden, and as such had a disproportionate financial impact, on smaller parties.³⁰ Accordingly, the Act:

- increased the amounts that registered parties with elected members of State Parliament, and elected members of State Parliament who are not members of registered parties, are eligible to be paid by the Election Funding Authority (“the Authority”) for administrative expenditure incurred;
- enabled quarterly payments of such amounts to be paid in respect of actual administrative expenses already incurred and capped at a percentage of the applicable annual amount; and
- required payments from the Administration Fund or the Policy Development Fund for expenditure incurred to be made by the Authority within six weeks after a claim is made.

The *Election Funding, Expenditure and Disclosures Amendment Act 2014* (NSW) increased offences under the Act, in particular it:

- made it a separate indictable offence (with a maximum penalty of 10 years’ imprisonment) to enter into or carry out a scheme for the purpose of circumventing political donations or electoral expenditure prohibitions or requirements;
- increased the maximum penalty for existing summary offences under the principal Act relating to political donations and electoral expenditure;
- extended the limitation period for commencing proceedings for summary offences under the principal Act from 3 years to 10 years;
- made expenditure associated with campaign research or travel costs electoral communication expenditure that is to be taken into account in determining expenditure caps and public campaign funding;
- increased the amount of annual public funding from the Administration Fund for parties with more than 3 elected members from the current rate of \$86,800 per member to \$100,000 per member; and
- doubled the amount of annual public funding from the Policy Development Fund for parties without elected members (and therefore without an entitlement to funding from the Administration Fund).³¹

²⁹ Second Reading Speech, Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Bill 2013 (NSW).

³⁰ Second Reading Speech, Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Bill 2013 (NSW).

³¹ Explanatory Note, Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014 (NSW).

These amendments were based on an interim report of an expert panel engaged by the NSW Government to report on options for reform on election finance, political donations and campaign expenditure laws.³²

The *Local Government and Elections Legislation Amendment (Integrity) Act 2016* (NSW) imposed caps on political donations for local government elections. This was part of a package of reforms to promote the integrity of local government decision-making,³³ in response to community concern about the actions of a very small minority of elected officials who have allegedly misused their civic office to advance their business interests.³⁴

The *Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019* (NSW) was enacted to address the recommendation by the Joint Standing Committee on Electoral Matters' *Inquiry into the Impact of Expenditure Caps for Local Government Election Campaigns*.³⁵ It altered the expenditure caps for electoral participants in local government elections to be determined by reference to the number of enrolled electors for the local government area or ward concerned for the election.

NSW Legislative History

| Legislation | Summary |
|--|--|
| <i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW) | <ul style="list-style-type: none"> introduced public funding of election campaigns with payments through the Central Fund and the Constituency Fund. imposed post-election disclosure obligations on political parties, groups of candidates and candidates. |
| <i>Election Funding Amendment Act 2006</i> (NSW) | <ul style="list-style-type: none"> enabled election candidates from registered parties to claim amounts incurred by the party on behalf of the candidate as electoral expenditure amounts for the purposes of payment from the Constituency Fund. created an offence of failing to comply with a notice to produce documents that are expected to have been involved in a possible contravention of the requirement to disclose electoral expenditure. |
| <i>Election Funding Amendment (Political Donations and Expenditure) Act 2008</i> (NSW) | <ul style="list-style-type: none"> required disclosure of donations and campaign expenditure of \$1,000 or more every six months. banned anonymous donations and loans of \$1,000 or more. |
| <i>Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009</i> (NSW) | Introduced ban on political donations from property developers. |
| <i>Election Funding and Disclosures Amendment Act</i> | <ul style="list-style-type: none"> introduced caps on political donations and electoral communication expenditure, and substantially increased public funding. |

³² Second Reading Speech, Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014 (NSW).

³³ Explanatory Note, Local Government and Elections Legislation Amendment (Integrity) Bill 2016.

³⁴ Second Reading Speech, Local Government and Elections Legislation Amendment (Integrity) Bill 2016.

³⁵ New South Wales Joint Standing Committee on Electoral Matters, *Inquiry into the Impact of Expenditure Caps for Local Government Election Campaigns* (2018).

| | |
|--|---|
| 2010 (NSW) | <ul style="list-style-type: none"> extended the ban on political donations from property developers to tobacco, liquor and gambling industry entities. |
| <i>Election Funding, Expenditure and Disclosures Amendment Act 2012</i> (NSW) (struck down by High Court as unconstitutional in <i>Unions NSW v NSW</i> (2013) 252 CLR 530) | <ul style="list-style-type: none"> restricted the ability to make political donations to those on the electoral rolls, and hence banned political donations from individuals not on the electoral rolls, corporate entities and trade unions (including membership fees paid by trade unions affiliated to the NSW ALP). aggregated the spending of affiliated organisations to caps of their respective political parties. |
| <i>Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013</i> (NSW) | <ul style="list-style-type: none"> increased the amounts that registered parties with elected members of State Parliament, and elected members of State Parliament who are not members of registered parties, are eligible to be paid by the Election Funding Authority (“the Authority”) for administrative expenditure incurred. enabled quarterly payments of such amounts to be paid in respect of actual administrative expenses already incurred and capped at a percentage of the applicable annual amount. required payments from the Administration Fund or the Policy Development Fund for expenditure incurred to be made by the Authority within six weeks after a claim is made. |
| <i>Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014</i> (NSW) | <ul style="list-style-type: none"> legislation passed with unconstitutional amendments removed. |
| <i>Election Funding, Expenditure and Disclosures Amendment Act 2014</i> (NSW) | <ul style="list-style-type: none"> made it a separate indictable offence (with a maximum penalty of 10 years’ imprisonment) to enter into or carry out a scheme for the purpose of circumventing political donations or electoral expenditure prohibitions or requirements. increased the maximum penalty for existing summary offences under the principal Act relating to political donations and electoral expenditure. extended the limitation period for commencing proceedings for summary offences under the principal Act from 3 years to 10 years. made expenditure associated with campaign research or travel costs electoral communication expenditure that is to be taken into account in determining expenditure caps and public campaign funding. increased the amount of annual public funding from the Administration Fund for parties with more than 3 elected members from the current rate of \$86,800 per member to \$100,000 per member. doubled the amount of annual public funding from the Policy Development Fund for parties without elected members (and therefore without an entitlement to funding from the Administration Fund). |
| <i>Local Government and Elections Legislation Amendment (Integrity) Act 2016</i> (NSW) | imposed caps on political donations for local government elections. |
| <i>Election Funding Act 2018</i> (NSW) (current main electoral legislation) | <ul style="list-style-type: none"> makes provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for State parliamentary and local government election campaigns and for the public funding of State parliamentary election campaigns. Repealed and replaced the <i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW) |
| <i>Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019</i> (NSW) | altered the expenditure caps for electoral participants in local government elections to be determined by reference to the number of enrolled electors for the local government area or ward concerned for the election. |

D Queensland

In Queensland, the regulation of electoral processes is streamlined into two legislative schemes, the *Electoral Act 1992* (Qld), which is concerned with state elections, while the *Local Government Electoral Act 2011* (Qld) performs the same role in respect of local government elections. Each will be examined separately.

(i) *Amendments to the Electoral Act 1992 (Qld)*

The *Electoral Act 1992* (Qld) has undergone numerous amendments since its inception, as fluctuating political support for strengthening the political donations and disclosure provisions has been reflected in legislative amendments, in which governments have strengthened or weakened changes made by previous governments.

The *Electoral and Other Acts Amendment Act 2002* (Qld) was enacted in response to the *Beattie Good Government Plan for Queensland* (the Barcardine Reforms) and the recommendations of a Legal, Constitutional and Administrative Review Committee Report concerning electoral reform in light of the 1998 State election.³⁶ It significantly increased penalties for electoral offences to be the strongest in Australia, while mandating additional transparency in respect of the access of political parties to loans.³⁷

The *Electoral Amendment Act 2008* (Qld) was adopted to align the state's regulatory system with the Commonwealth regime and with the fundamental aim of increasing transparency in respect of political donations to consequently increase public confidence in democratic processes.³⁸ Its main amendments included reducing the donation disclosure threshold and lessening reporting times for significant donations, while additionally prohibiting foreign donations to political parties and candidates.

The *Electoral Reform and Accountability Amendment Act 2011* (Qld) represented the most significant strengthening of the donation and disclosure regime at the time. It was introduced with the intention of removing undue influence from electoral processes through ensuring that political donations do not allow certain individuals to leverage excessive power from the political process.³⁹ It introduced caps on both political donations and expenditure of political parties for electoral campaigns to

³⁶ Second Reading Speech, Electoral and Other Acts Amendment Bill 2002 (Qld); *Restoring Integrity: The Beattie Good Government Plan for Queensland* (2001) (the Barcardine Reforms); Legal, Constitutional and Administrative Review Committee, *Issues of Queensland Electoral Reform arising from the 1998 State Election and Amendments to the Commonwealth Electoral Act 1918* (2000) Report No 23.

³⁷ Second Reading Speech, Electoral and Other Acts Amendment Bill 2002 (Qld).

³⁸ Second Reading Speech, Electoral Amendment Bill 2008 (Qld).

³⁹ Second Reading Speech, Electoral Reform and Accountability Amendment Bill 2011 (Qld).

maintain equitable access to the democratic process, which was further supported by an increase to public funding to political parties for electoral campaigns.

The *Electoral Reform Amendment Act 2014* (Qld) removed several of the previous provisions introduced previously and consequently weakened the political donations and disclosure regime. It did so on the basis that the previous government that had introduced significant reform had overreached in its previous changes through failing to adequately consider policy ramifications, and had done so for political advantage.⁴⁰ The Act removed caps on political donations and expenditure, increased the disclosure threshold and significantly raised the threshold required for political parties to have access to public funding for electoral campaigns. This was changed on the basis that it cost taxpayers excessively.

The *Electoral and Other Legislation Amendment Act 2015 No 2* (Qld) reinstated several prior initiatives that were removed in the previous amending act, including the \$1,000 cap for disclosure of anonymous donations, in addition to the special reporting of donations in excess of \$100,000. These amendments were supported by consultations with several notable legal bodies, including the Bar Association and aligned itself with reporting obligations in most other Australian jurisdictions.⁴¹

The *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (Qld) was introduced to further the integrity of the State's electoral processes by mitigating the capacity for certain individuals or entities to improperly influence political parties and candidates and to ensure electoral campaigning is an equitable process.⁴² It sought to implement these policy objectives through re-introducing caps for both political donations and campaign expenditure, increasing public funding for electoral campaigns, lowering the threshold for access to such public funding and empowering the electoral commission to enforce the new scheme.

Queensland Legislative History (Electoral Act)

| Legislation | Summary |
|--|---|
| <i>Electoral Act 1992</i> (Qld) | main legislation regulating State political disclosure and donations rules in Queensland. |
| <i>Electoral and Other Acts Amendment Act 2002</i> (Qld) | <ul style="list-style-type: none"> introduced stronger penalties for serious electoral offences including bribery which were the most severe at the time. E.g. the penalty for bribery was increased from two to seven years' imprisonment. prohibited political parties and candidates to receive loans of a specified value from an entity other than a financial institution unless certain information is recorded. The relevant value for a political party is loans of \$1,500 and \$200 for a candidate. |
| <i>Electoral Amendment Act</i> | <ul style="list-style-type: none"> reduced the electoral donation disclosure threshold from \$1,500 to |

⁴⁰ Second Reading Speech, Electoral Reform Amendment Bill 2014 (Qld).

⁴¹ Second Reading Speech, Electoral and Other Legislation Amendment Bill 2015 (Qld).

⁴² Second Reading Speech, Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2020 (Qld).

| | |
|---|---|
| 2008 (Qld) | <p>\$1,000.</p> <ul style="list-style-type: none"> prohibited donations from overseas or non-Australian companies. mandated that donations in excess of \$100,000 are reported by both donor and recipient within 14 days |
| <i>Electoral Reform and Accountability Amendment Act 2011 (Qld)</i> | <ul style="list-style-type: none"> introduced a donation cap for use in State election campaigns of \$5,000 per donor per party per year, \$2,000 for candidates of a political party and \$2,000 for independent candidates. introduced an expenditure cap for use by political parties, candidates or third parties for state election campaigns. This was set at \$80,000 times the number of seats contested at a state election for a political party, \$50,000 per endorsed candidate and \$75,000 for independent candidates. Third parties were not able to exceed \$5,000,000 state-wide or \$75,000 for a single electorate. required political parties, candidates and third parties to establish dedicated state campaign accounts. required third parties to register with the Queensland Electoral Commission (QEC) if they spend more than \$10,000 during an election period. empowered the electoral commission to regulate the new regulatory regime. |
| <i>Electoral Reform Amendment Act 2014 (Qld)</i> | <ul style="list-style-type: none"> removed caps on donations and expenditure. increased the disclosure threshold to \$12,400. increased the threshold for entitlement to public election funding from 4% to 10% of the primary vote. |
| <i>Electoral and Other Legislation Amendment Act 2015 (Qld)</i> | <ul style="list-style-type: none"> reinstated the \$1,000 gift threshold in respect of disclosure obligations including anonymous donations. reinstated the special reporting of donations of \$100,000 or more. |
| <i>Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020 (Qld)</i> | <ul style="list-style-type: none"> introduced a cap on the giving and acceptance of political donations to political parties, candidates and third parties. introduced an expenditure cap for political parties and third parties. For state elections, the expenditure cap was set at \$92,000 for a political party multiplied by the number of electoral districts contested by a candidate, \$58,000 for an endorsed candidate. For state elections, the expenditure cap for registered third parties was set at \$1 million. mandated that political parties, candidates and registered third parties maintain dedicated campaign accounts. increased public election funding for political parties and candidates. introduced offences for councillors who fail to comply with conflict of interest obligations. expenditure caps formulated through indexing previous caps prescribed under the <i>Electoral Reform and Accountability Amendment Act 2011 (Qld)</i>. introduced new offences requiring election participants to maintain a state campaign account and requiring donations to be paid into that account, and exceeding the electoral expenditure amount. reinstated the 4% threshold of the primary vote for access to public election funding. |

(ii) *Amendments to the Local Government Electoral Act 2011 (Qld)*

The *Local Government Electoral Act 2011 (Qld)* (“LGEA”) is the main legislation regulating Local Government political disclosure and donations rules in Queensland, and has had one substantial amendment to date.

The *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (Qld) was introduced to improve upon the ‘integrity, transparency and public accountability’ of elections.⁴³ The amendment was introduced as part of introducing the recommendations made by the Belcarra Report.⁴⁴ The report was undertaken by the Crime and Corruption Commission following complaints made concerning the actions of candidates in several 2016 local government elections in respect possible contraventions of the LGEA and ultimately made 31 recommendations to mitigate risks of corruption in local government elections. The amending Act was also in response to the 74 recommendations made by an independent panel into the conduct of the Queensland Electoral Commission in the same elections.⁴⁵ The Act implemented these recommendations by requiring disclosure of electoral expenditure and mandating that councillors are unable to participate in decision-making processes where a conflict of interest arises.

Queensland Legislative History

| Legislation | Summary |
|---|---|
| <i>Local Government Electoral Act 2011</i> (Qld) | main legislation regulating Local Government political disclosure and donations rules in Queensland. |
| <i>Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019</i> (Qld) | <ul style="list-style-type: none"> • Required the disclosure of electoral expenditure in excess of \$500 incurred by candidates or political parties. • Required that candidates in local government elections undergo a training course concerning financial disclosure obligations prescribed under the LGEA. • Introduced an offence mandating that councillors cannot participate in decision-making if they have a conflict of interest in the relevant matter. • Required that donors notify a recipient of the source of a gift. |

E Western Australia

Political finance legislation came into force in Western Australia in 1992 as Part VI of the *Electoral Act 1907* (WA) through the *Electoral Amendment (Political Finance) Act 1992* (WA), which introduced a donations disclosure scheme and sets out offences for failures to file returns.

The *Electoral Reform (Electoral Funding) Act 2006* (WA) introduced public funding of candidates and parties and minimum thresholds for election funding and return of deposits. It provided for electoral funding of political parties and candidates and specifically to:

⁴³ Second Reading Speech, *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019* (Qld).

⁴⁴ Queensland Crime and Corruption Commission, *Operation Belcarra: A Blueprint for Integrity and addressing Corruption Risk in Local Government* (2017).

⁴⁵ Queensland Government, *Inquiry Report: A Review of the Conduct of the 2016 Local Government Elections, the Referendum and the Toowoomba South By-election* (2017) (Soorley Report).

- stipulate that the election funding reimbursement amount was \$1.39413 or the amount calculated under s 175LC(2) for each valid primary vote received in an election for the Legislative Assembly and Legislative Council and that this may be adjusted annually in line with the CPI;
- require that claims for payments must be lodged with the Electoral Commissioner in an approved form within the claims period;
- provide that a claim for payment will be decided by the Electoral Commissioner, stipulate the circumstances in which payment is to be made and provide that the amount of payment must not exceed the electoral expenditure; and
- set out various matters relating to the payment of claims, provide for the Electoral Commissioner's power to revoke a decision regarding payment and stipulate payment entitlements upon the death of a candidate.

The *Electoral Amendment Act (No 2) 2008 Act (WA)* reduced the specified amount of the political donation disclosure threshold from \$1,800 to \$1,000 (indexed to CPI), thus improving transparency.

The Electoral Amendment Bill 2020 (WA) was introduced into the Legislative Assembly on 25 June 2020 but has yet to be passed into law. It:

- aims to improve disclosure laws around political donations;
- introduces expenditure caps for election campaigns; and
- prohibits foreign political donations.

Western Australia Legislative History

| Western Australia | |
|--|--|
| <i>Electoral Act 1907 (WA)</i> | sets out the electoral funding, expenditure and disclosure scheme for Western Australia. |
| <i>Electoral Amendment (Political Finance) Act 1992 (WA)</i> | introduced donations disclosure scheme and set out offences for failures to file returns. |
| <i>Electoral Reform (Electoral Funding) Act 2006 (WA)</i> | introduced public funding of candidates and parties and minimum thresholds for election funding and return of deposits. |
| <i>Electoral Amendment Act (No 2) 2008 Act (WA)</i> | reduced the specified amount of the political donation disclosure threshold from \$1,800 to \$1,000 (indexed to CPI). |
| Electoral Amendment Bill 2020 (WA) (yet to be passed) | <ul style="list-style-type: none"> • aims to improve disclosure laws around political donations; • introduces expenditure caps for election campaigns; and • prohibits foreign political donations. |

F South Australia

The *Electoral Act 1985 (SA)* sets out an electoral funding, expenditure and disclosure scheme for South Australia. At its inception, the Act did not have any disclosure or funding provisions. However, this changed with the enactment of the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013 (SA)*, which implemented significant reforms that modernised South Australia's electoral laws, as

part of the government's reforms aimed at restoring the fundamental principles of accountability, transparency and efficiency in government.⁴⁶ It introduced for the first time a regulatory disclosure scheme, requiring all key political participants, including political parties, their associated entities, candidates, groups and third party campaigners to disclose certain financial information on a regular basis, including relevant details of all gifts and loans valued over a threshold of \$5,000. It also introduced a voluntary public funding scheme which partially reimbursed political parties, candidates and groups for political expenditure incurred during the campaign period, with a choice of opting into the scheme to receive funding. As a condition of opting into the public funding scheme, parties, candidates and groups were subject to prescribed limits on political expenditure. In particular, the Act introduced:

- disclosure of donations, including the imposition of special reporting requirements for gifts exceeding \$25,000 in value and the provision that it was unlawful to receive certain gifts and loans unless certain specified details were known and recorded;
- the furnishing of returns to the Electoral Commissioner in respect of registered political parties, associated entities and third parties, as well as requirements to furnish annual returns relating to political expenditure and annual returns relating to gifts received for political expenditure;
- the public funding of candidates and groups for elections, including to impose caps on an agent of candidates endorsed by a registered political party, the making of payments by the Electoral Commissioner to the agent of the relevant candidate or group and the provision of payments in circumstances where a candidate has passed away;
- limitations on political expenditure, including the imposition of caps on political expenditure, the imposition of prohibitions on political expenditure in excess of the applicable expenditure cap during the capped expenditure period in relation to an election and in respect of entering into agreements or arrangements with third parties to avoid applicable expenditure caps in relation to an election;
- special assistance funding for political parties, including outlining the circumstances under which a registered political party was to be paid its half yearly entitlement to special assistance funding, the calculation of such special assistance funding and the prohibition on using special assistance funding for political expenditure; and
- audit certificates, the public inspection of returns, amendment of returns, the keeping of records, investigations and the obligation to produce documents pursuant to notice, as well as offences relating to furnishing returns.

⁴⁶ Second Reading Speech, Electoral (Funding, Expenditure and Disclosure) Amendment Bill 2013.

The *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2016 (SA)* was enacted in response to various concerns that have been raised by the SA Electoral Commission and political parties in relation to part 13A.⁴⁷ In particular, it:

- amended section 130Q, which sets out the circumstances in which public funding payments should be reduced or not made, e.g. where the political expenditure incurred is less than the amount of public funding payable;
- amended s 130U (entitlement to and claims for half yearly entitlement to special assistance funding) to provide scope for the amounts of half yearly special assistance funding to be increased by way of regulation, and to increase the period for lodging an application for special assistance funding from within seven days to within 30 days of the end of the half yearly period; and
- allowed for an additional one-off amount of special assistance funding to be paid to registered political parties to assist with the initial costs associated with complying with the funding, expenditure and disclosure scheme.

South Australia Legislative History

| Legislation | Summary |
|--|---|
| <i>Electoral Act 1985 (SA)</i> | sets out the electoral funding, expenditure and disclosure scheme for South Australia. |
| <i>Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013 (SA)</i> | <ul style="list-style-type: none"> • disclosure of donations, including the imposition of special reporting requirements for gifts exceeding \$25,000 in value and the provision that it is unlawful to receive certain gifts and loans unless certain specified details are known and recorded. • the furnishing of returns to the Electoral Commissioner in respect of registered political parties, associated entities and third parties, and requirements to furnish annual returns relating to political expenditure and annual returns relating to gifts received for political expenditure. • the public funding of candidates and groups for elections, including to impose caps on an agent of candidates endorsed by a registered political party, the making of payments by the Electoral Commissioner to the agent of the relevant candidate or group and the provision of payments in circumstances where a candidate has passed away. • limitations on political expenditure, including the imposition of caps on political expenditure, the imposition of prohibitions on political expenditure in excess of the applicable expenditure cap during the capped expenditure period in relation to an election and in respect of entering into agreements or arrangements with third parties to avoid applicable expenditure caps in relation to an election. • special assistance funding for political parties, including outlining the circumstances under which a registered political party is to be paid its half yearly entitlement to special assistance funding, the calculation of such special assistance funding and the prohibition on using special assistance funding for political expenditure. • audit certificates, the public inspection of returns, amendment of returns, the keeping of records, investigations and the obligation to produce documents pursuant to notice, as well as offences relating to |

⁴⁷ Second Reading Speech, Electoral (Funding, Expenditure and Disclosure) Amendment Bill 2016.

| | |
|--|--|
| <i>Electoral (Funding, Expenditure and Disclosure) Amendment Act 2016 (SA)</i> | furnishing returns. <ul style="list-style-type: none"> • amended section 130Q, which sets out the circumstances in which public funding payments should be reduced or not made, e.g. where the political expenditure incurred was less than the amount of public funding payable. • amended s 130U (entitlement to and claims for half yearly entitlement to special assistance funding) to provide scope for the amounts of half yearly special assistance funding to be increased by way of regulation, and to increase the period for lodging an application for special assistance funding from within seven days to within 30 days of the end of the half yearly period. • allowed for an additional one-off amount of special assistance funding to be paid to registered political parties to assist with the initial costs associated with complying with the funding, expenditure and disclosure scheme. |
|--|--|

G Tasmania

The Tasmanian political finance system remains the most undeveloped in Australia. The *Electoral Act 2004* (Tas) provides that candidates for the Legislative Council have an indexed expenditure limit and must file returns of their electoral expenditure with the Tasmanian Electoral Commission. Political parties must not incur expenditure in relation to Legislative Council elections. There are no provisions concerning disclosure of gifts to political parties, but all parties registered federally must lodge an annual return with the Australian Electoral Commission showing relevant receipts and expenditure.

In 2018, Premier Will Hodgman announced that the government would undertake a review of Tasmania's political finance laws, with an interim paper released.⁴⁸ Based on these recommendations, the Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2020 (Tas) has been introduced into the Legislative Assembly on 15 October 2020. These amendments will significantly modernise Tasmania's political donations system, as the bill introduces for the first time a donations disclosure system in Tasmania and sets a limit for electoral expenditure. In particular, it:

- requires the disclosure of all political donations to parties, candidates or members of the House of Assembly or Legislative Council over \$1,000, including multiple donations from a single donor that cumulatively add up to over \$1,000, within 30 days;
- prohibits anonymous donations over \$1,000 to individual MPs, candidates and parties;
- prohibits foreign donations over \$1,000 to individual MPs, candidates and parties;
- sets a limit of \$100,000 for the campaign expenditure of candidates endorsed by a political party for House of Assembly elections, increasing by CPI;

⁴⁸ Tasmanian Government, *Electoral Act Review: Interim Report* (2018) <https://www.justice.tas.gov.au/__data/assets/pdf_file/0009/453564/Electoral-Act-Review-Interim-Report.pdf>.

- sets a limit of \$120,000 for the campaign expenditure of candidates not endorsed by a political party for House of Assembly elections, increasing by CPI;
- sets a limit of \$40,000 per candidate, to a maximum of 25 candidates, for the campaign expenditure of political parties for House of Assembly elections, increasing by CPI; and
- increases the spending limit for candidates for election to the Legislative Council to \$20,000, increasing by CPI.

Tasmania Legislative History

| Legislation | Summary |
|---|--|
| <i>Electoral Act 1985</i> (Tas) | Contained no financial disclosure requirements. |
| <i>Electoral Act 2004</i> (Tas) | <ul style="list-style-type: none"> • replaced the <i>Electoral Act 1985</i> (Tas). • replaced the office of Chief Electoral Officer with Tasmanian Electoral Commissioner. • candidates for the Legislative Council have an indexed expenditure limit and must file returns of their electoral expenditure with the Tasmanian Electoral Commission. • political parties must not incur expenditure in relation to Legislative Council elections. • no provisions concerning disclosure of gifts to political parties, but all parties registered federally must lodge an annual return with the AEC showing relevant receipts and expenditure. |
| Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2020 (Tas) (yet to be passed) | <ul style="list-style-type: none"> • introduced into Legislative Assembly on 15 October 2020. • requires the disclosure of all political donations to parties, candidates or members of the House of Assembly or Legislative Council over \$1,000, including multiple donations from a single donor that cumulatively add up to over \$1,000, within 30 days. • prohibits anonymous donations over \$1,000 to individual MPs, candidates and parties. • prohibits foreign donations over \$1,000 to individual MPs, candidates and parties. • sets a limit of \$100,000 for the campaign expenditure of candidates endorsed by a political party for House of Assembly elections, increasing by CPI. • sets a limit of \$120,000 for the campaign expenditure of candidates not endorsed by a political party for House of Assembly elections, increasing by CPI. • sets a limit of \$40,000 per candidate, to a maximum of 25 candidates, for the campaign expenditure of political parties for House of Assembly elections, increasing by CPI. • increases the spending limit for candidates for election to the Legislative Council to \$20,000, increasing by CPI. |

H Northern Territory

The *Electoral Act 2004* (NT) replaced the *Northern Territory Electoral Act 1995* (NT) and implemented some of the recommendations of Minter Ellison Consulting, whom the government engaged to undertake an independent review of the NT electoral system. The Act introduced for the first time registration of political parties in the NT, and set criteria for registration, but not financial disclosure provisions.

The *Electoral Legislation Further Amendment Act 2019* (NT) first introduced a scheme of political donations and electoral expenditure in the NT, including the introduction of expenditure caps. The amending act:

- introduced definitions of ‘third party campaigners’ and defines ‘gifts’ to a third party campaigner, and updated the definition of ‘electoral expenditure’ to include contemporary examples such as social media advertising;
- required third party campaigners and associated entities to publicly register with the NT Electoral Commission prior to third party campaigners incurring more than \$1,000 of political expenditure and in the case of associated entities, prior to receiving a gift or incurring electoral expenditure;
- introduced caps on electoral expenditure;
- introduced sharing of the electoral expenditure cap between associated entities and their affiliated political party;
- introduced a dedicated campaign account;
- strengthened disclosure requirements, applicable from 2020;
- introduced new donation reporting requirements, including new reporting thresholds and more frequent reporting in election years;
- provided a shorter timeframe for provision of annual reports;
- provided an infringement notice scheme that will allow the NT Electoral Commission to issue infringement notices for offences related to record-keeping and returns; and
- introduced a range of new offences for breaching new obligations under the new scheme for political donations and electoral expenditure.

The changes were enacted following the recommendations of an inquiry into options for the reform of political funding and donations in the Northern Territory.⁴⁹

NT Legislative History

| Legislation | History |
|--|---|
| <i>Northern Territory Electoral Act 1995</i> (NT) | Contained no financial disclosure requirements. |
| <i>Electoral Act 2004</i> (NT) | <ul style="list-style-type: none"> • replaced the <i>Northern Territory Electoral Act 1995</i> (NT). • established the NT Electoral Commission. • outlines financial disclosure provisions relating to donations, electoral expenditure and reporting that are incumbent on candidates, registered political parties, associated entities, publishers and broadcasters. |
| <i>Electoral Legislation Further Amendment Act 2019</i> (NT) | <ul style="list-style-type: none"> • introduced definitions of ‘third party campaigners’ and defines ‘gifts’ to a third party campaigner, as well as updating the definition of ‘electoral expenditure’ to includes contemporary examples such as social media advertising. • required third party campaigners and associated entities to publicly register with the NT Electoral Commission prior to third party campaigners incurring more than \$1,000 of political expenditure and in the case of associated entities, prior to receiving a gift or incurring |

⁴⁹ John Mansfield, *Final Report of the Inquiry into Options for the Reform of Political Funding and Donations in the Northern Territory* (2018) 8 <<https://donationsinquiry.nt.gov.au/>>.

| | |
|--|--|
| | <p>electoral expenditure.</p> <ul style="list-style-type: none"> • introduced caps on electoral expenditure. • introduced sharing of electoral expenditure cap between associated entities and their affiliated political party. • introduced a dedicated campaign account. • strengthened disclosure requirements, applicable from 2020. • introduced new donation reporting requirements, including new reporting thresholds and more frequent reporting in election years. • provided a shorter timeframe for provision of annual reports. • provided an infringement notice scheme that will allow the Northern Territory Electoral Commission (“NTEC”) to issue infringement notices for offences related to record keeping and returns. • introduced a range of new offences for breaching new obligations under the new scheme for political donations and electoral expenditure. |
|--|--|

I Australian Capital Territory

In the Australian Capital Territory, the main electoral legislation is the *Electoral Act 1992* (ACT), which regulates the disclosure and donations rules in the ACT. It has been amended several times, including to introduce caps on electoral expenditure and gifts in 2012, and to prohibit donations from property developers in certain circumstances in 2020.

The *Electoral Amendment Act 2001* (ACT) was introduced based on recommendations made by the ACT Electoral Commission in its report *The 2001 ACT Legislative Assembly Election: Review of the Electoral Act 1992* tabled in the Assembly on 20 August 2002.⁵⁰ This report examined the operation of the Electoral Act in relation to the conduct of the 2001 election.

This amending act required a greater level of disclosure, such as requiring all donations to be taken into account when disclosure thresholds for parties, ballot groups, Members of the Legislative Assembly (“MLAs”) and associated entities are calculated (previously individual donations of less than \$500 did not have to be taken into account, creating a potential loophole in the scheme), extended the disclosure obligations currently imposed on independent MLAs to cover all MLAs, and extended the obligations imposed on associated entities.

Like its predecessor, the *Electoral Amendment Act 2004* (ACT) was enacted based on recommendations made by the ACT Electoral Commission in its 2001 review of the Electoral Act, tabled in the Legislative Assembly on 20 August 2002.⁵¹ The

⁵⁰ Second Reading Speech, Electoral Amendment Bill 2001 (ACT). See ACT Electoral Commission, *2001 ACT Legislative Assembly Election: Review of the Electoral Act (1992)* <https://www.elections.act.gov.au/__data/assets/pdf_file/0003/831387/2001electionreview.pdf>.

⁵¹ Second Reading Speech, Electoral Amendment Bill 2003 (ACT). See ACT Electoral Commission, *2001 ACT Legislative Assembly Election: Review of the Electoral Act (1992)* <https://www.elections.act.gov.au/__data/assets/pdf_file/0003/831387/2001electionreview.pdf>.

amending act reduced transparency by increasing the thresholds for disclosure of identities of donors to candidates and submission of disclosure returns by persons incurring electoral expenditure from \$200 to \$1,500, and also increased the threshold at which anonymous gifts may not be received by candidates, MLAs, parties, ballot groups and associated entities from \$200 to \$1,500.

The *Electoral Amendment Act 2012* (ACT) was introduced in order to implement several of the recommendations made in the Standing Committee on Justice and Community Safety regarding its inquiry into campaign finance laws in the ACT, with significant amendments including introducing caps on electoral expenditure and gifts.⁵² In particular, it:

- capped electoral expenditure to \$60,000 during the capped expenditure period, and capped gifts to \$10,000 per donor in a financial year;
- provided that gifts received, expenditure incurred, and amounts received, paid or owed, by or on behalf of a party candidate or prospective candidate for a party in relation to the candidate's or prospective candidate's campaign, the party or an election, are taken to be received, incurred, paid or owed by the party;
- imposed penalties or a fine enforcement regime in order to enforce breaches of the caps on electoral expenditure by party groups, Ministers, candidates and third party campaigners, including where certain entities incur electoral expenditure in relation to an election in the capped expenditure period and the total amount of the expenditure is more than a prescribed amount, punishable by a penalty equal to twice the amount by which the electoral expenditure is exceeded;
- addressed payments made between related political parties, and imposed the same \$10,000 cap as applied to gifts;
- defined when a person or entity incurs electoral expenditure as when the service or product that constitutes the expenditure is provided or delivered;
- made it an offence for a person to give a gift to another person on the understanding that they will then give that gift to a party, member of the Legislative Assembly, candidate, or an associated entity in a financial year in an attempt to exceed the limit on gifts, which is \$10,000, attracting a

⁵² Second Reading Speech, Electoral Amendment Bill 2012 (ACT). Second Reading Speech, Electoral Amendment Bill 2012 (ACT). See ACT Standing Committee on Justice and Community Safety, *Inquiry into Campaign Finance Reform* (2011) <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/Standing-Committees-Seventh-Assembly/Standing-Committee-on-Justice-and-Community-Safety/07-Inquiry-into-Campaign-Finance-Reform>>.

maximum penalty of 100 penalty units;

- made further offence provisions, including for failure to fulfil with compliance requirements by failing to provide the Electoral Commissioner with a return or providing an incomplete return, attracting a maximum penalty of 20 penalty units;
- outlined the prescribed amount of public funding that is payable for each eligible vote cast for a candidate or party in an election; and
- set out the disclosure requirements for gifts received by third-party campaigners.

The ACT Government committed in the 2016 Parliamentary Agreement to ban gifts from property developers.⁵³ In its inquiry, the Select Committee on the 2016 ACT Election and the Electoral Act recommended that political donations from property developers be banned in the ACT, which was agreed to by the government.⁵⁴ Accordingly, the *Electoral Amendment Act 2020* (ACT) (which commences 1 July 2021) made the following amendments:

- prohibits gifts from property developers and their close associates to Members of the Legislative Assembly, political parties, candidates, and associated entities;
- prohibits political entities from accepting gifts from property developers or their close associates;
- amends the definition of gift to include the first \$250 of a contribution in a single fundraising event; and
- amends the timeframe for reporting of gifts received over the \$1,000 threshold to introduce a year-round requirement for gifts to be reported to the Electoral Commission within seven days to allow for more real time public oversight.

ACT Legislative History

| Legislation | Summary |
|---|--|
| <i>Electoral Act 1992</i> (ACT) | Main legislation that regulates the disclosure and donations rules in the ACT. |
| <i>Electoral Amendment Act 2001</i> (ACT) | <ul style="list-style-type: none"> • required a greater level of disclosure, e.g. requiring all donations to be taken into account when disclosure thresholds for parties, ballot groups, MLAs and associated entities are calculated (previously |

⁵³ Second Reading Speech, Electoral Amendment Bill 2020 (ACT).

⁵⁴ Second Reading Speech, Electoral Amendment Bill 2020 (ACT). See Select Committee on the 2016 ACT Election and the Electoral Act, *Inquiry into the 2016 ACT Election and Electoral Act* (2016) <https://www.parliament.act.gov.au/__data/assets/pdf_file/0020/1133336/Select-Committee-on-the-2016-ACT-Election-and-Electoral-Act-Report.pdf>.

| | |
|---|---|
| | <p>individual donations of less than \$500 did not have to be taken into account, creating a potential loophole in the scheme).</p> <ul style="list-style-type: none"> • extended the disclosure obligations currently imposed on independent MLAs to cover all MLAs. • extended the obligations imposed on associated entities. |
| <i>Electoral Amendment Act 2004 (ACT)</i> | <ul style="list-style-type: none"> • the thresholds for disclosure of identities of donors to candidates and submission of disclosure returns by persons incurring electoral expenditure increased from \$200 to \$1,500. • the threshold at which anonymous gifts may not be received by candidates, MLAs, parties, ballot groups and associated entities increased from \$200 to \$1,500. |
| <i>Electoral Amendment Act 2012 (ACT)</i> | <ul style="list-style-type: none"> • capped electoral expenditure to \$60,000 during the capped expenditure period, and capped gifts to \$10,000 per donor in a financial year. • provided that gifts received, expenditure incurred, and amounts received, paid or owed, by or on behalf of a party candidate or prospective candidate for a party in relation to the candidate's or prospective candidate's campaign, the party or an election, are taken to be received, incurred, paid or owed by the party. • imposed penalties or a fine enforcement regime in order to enforce breaches of the caps on electoral expenditure by party groups, Ministers, candidates and third party campaigners, including where certain entities incur electoral expenditure in relation to an election in the capped expenditure period and the total amount of the expenditure is more than a prescribed amount, punishable by a penalty equal to twice the amount by which the electoral expenditure exceeds. • addressed payments made between related political parties, and imposes the same \$10,000 cap as applied to gifts. • defined when a person or entity incurs electoral expenditure as when the service or product that constitutes the expenditure is provided or delivered. • made it an offence for a person to give a gift to another person on the understanding that they will then give that gift to a party, member of the Legislative Assembly, candidate, or an associated entity in a financial year in an attempt to exceed the limit on gifts, which is \$10,000, attracting a maximum penalty 100 penalty units. • further offence provisions, including for failure to fulfil with compliance requires by failing to provide the Electoral Commissioner with a return or providing an incomplete return, attracting a maximum penalty of 20 penalty units. • outlined the prescribed amount of public funding that is payable for each eligible vote cast for a candidate or party in an election. • set out the disclosure requirements for gifts received by third-party campaigners. |
| <i>Electoral Amendment Act 2020 (ACT) (commences 1 July 2021)</i> | <ul style="list-style-type: none"> • prohibits gifts from property developers and their close associates to Members of the Legislative Assembly, political parties, candidates, and associated entities. • prohibits political entities from accepting gifts from property developers or their close associates. • amends the definition of gift to include the first \$250 of a contribution in a single fundraising event. • amends the timeframe for reporting of gifts received over the \$1,000 threshold to introduce a year-round requirement for gifts to be reported to the Electoral Commission within seven days to allow for more real time public oversight. |

IV KEY ELEMENTS OF POLITICAL FINANCE REGULATION

This section will now examine, identify and classify the key elements of political finance regulation in Australia at the Commonwealth, State, Territory and local government levels. In this context, it is noted that the ACT does not have a local government level.

Towards this end, the report has identified nine key elements of political finance regulation: disclosure requirements (donations and expenditure), caps on donations, caps on expenditure, indexation, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, and enforcement.

These regulatory mechanisms can be divided into a few categories. The first are *transparency measures*, such as disclosure requirements in terms of donations and expenditure. There are also *regulations that limit the supply and demand for money* in politics. Supply-side restrictions include caps on donations, bans on donations from certain sectors and bans on foreign donations, while demand restrictions include caps on expenditure. Another mechanism is *public funding* of political parties to ensure they are adequately resourced. Finally, there is *indexation* of funding amounts, expenditure and caps, and *enforcement mechanisms*.

A Disclosure Requirements

A fundamental method of regulating political finance is through implementing disclosure requirements. There are two forms of disclosure obligations that will be considered separately:

- *Donations disclosure requirements*, i.e. providing public disclosure of who is donating and the amounts donated; and
- *Expenditure disclosure requirements*, i.e. providing public disclosure of the political expenditure incurred for elections.

1 Rationale of Disclosure Requirements

Full and timely disclosure promotes transparency, as it enables us to know who is funding the parties and what they are getting in return. As Kim Beazley emphasised when proposing, as Special Minister for State, the federal funding and disclosure regime:

The whole process of political funding needs to be out in the open ... Australians deserve to know who is giving money to political parties and how much.⁵⁵

Transparency is a universally embraced principle, with lawmakers from all sides often supporting it as a force for good within democracy,⁵⁶ with exuberant exhortations such as 'sunlight is ... the best of disinfectants'.⁵⁷

Increasing transparency via the disclosure of the identity of those seeking to influence government, as well as the political expenditure on elections, will enhance the fairness of the democratic system by correcting the information asymmetry that may develop where individuals and corporations can hide their activities behind closed doors. This goes to the broader concept of 'clientelism' referred to by the joint judgment of the High Court in *McCloy v New South Wales*.⁵⁸ the danger that government officials will decide issues not on their merits or the desires of their constituencies, but according to the wishes of certain vested interests. In order for disclosure to be fully effective, the timing of the disclosures is essential, which should be frequent and contemporaneous.

2 Scope of Disclosure Obligations

A major issue is who should be covered by disclosure obligations. The primary actors that should provide disclosure of their donations are political parties. However, merely covering political parties is insufficient as these parties would be able to evade disclosure requirements by channelling funds to related entities. Thus disclosure schemes should also target associated entities to political parties, that is, entities that are either controlled by one or more registered political parties or that operate wholly or to a significant extent for the benefit of one or more registered political parties.

Another question is whether third parties should be included within the ambit of disclosure obligations. Examples of third parties include non-government organisations (NGOs) that engage in political campaigns during election time, such as the Australian Council of Trade Unions, the Business Council of Australia and GetUp!. There may be an argument that imposing onerous donation disclosure requirements on third parties that do not have the power and influence of political

⁵⁵ Kim Beazley, Special Minister of State, House of Representatives Hansard, 2 November 1983, 2215.

⁵⁶ See, eg, Henry Belot, 'Bill Shorten Pushes for Federal ICAC-style Watchdog to Crack Down on Political Corruption', *ABC News* (online, 30 January 2018) <<https://www.abc.net.au/news/2018-01-30/bill-shorten-pushes-for-federal-anti-corruption-watchdog/9374420>>.

⁵⁷ Louis D Brandeis, *Other People's Money and How the Bankers Use It* (F A Stokes, 1914) 92.

⁵⁸ *McCloy v New South Wales* (2015) 257 CLR 178.

parties, which have elected representatives in Parliament, may stifle legitimate political debate or criticism of government policies and decisions.

On the other hand, where well-funded third parties mount expensive political campaigns in order to consistently support certain political parties, there may be arguments for providing disclosure of the funding received for these political campaigning activities. However, beyond the clear links between unions and the Labor Party, it is unclear whether other third party organisations fall into this category. Overall, there is less justification for third parties to provide disclosures of their donations.

This paper will now consider the donations disclosure requirements, followed by expenditure disclosure requirements in Australia.

3 Donations Disclosure Requirements in Australia

Disclosure requirements for donations exist in every Australian jurisdiction, apart from Tasmania.

(a) Commonwealth

At the **Commonwealth** level, *registered political parties, associated entities, candidates, groups and political campaigners* who receive donations above \$13,800 (indexed) are required to disclose donations by way of a return to the AEC within 15 weeks of polling day. Returns must include: total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift received.⁵⁹

In addition, *donors* (unless associated entities) who make donations of over \$13,800 (indexed) must do the same.⁶⁰ Candidates and groups must lodge returns even if there is nothing to disclose, including a statement that there are no relevant gifts to disclose.

⁵⁹ Relevant details are the amount/value of the gift, the date made and: (for unincorporated associations) the name of association and names/addresses of executive committee; (for gifts made from a trust) title of trust and names and addresses of trustees/foundation; (for all others) the name and address of the gift giver. *Commonwealth Electoral Act 1918* (Cth), s 302.

⁶⁰ Relevant details for gifts to candidates/ groups are the same as those for gift recipients. Further details required for gifts to political parties and political campaigners: whether the gift was used wholly/partly to make another gift to the *same registered political party/ branch/ political campaigner* and whether the later gift amounts to more than the disclosure threshold (\$13,800 indexed). *Commonwealth Electoral Act 1918* (Cth), s 305A.

(b) Victoria

In **Victoria** (at the **State level**), *registered political parties, candidates, groups, elected members, nominated entities, associated entities or third party campaigners* who receive donations of \$1,000 or more (includes aggregate gifts) must disclose donations by way of return to the VEC within 21 days of receiving donations.⁶¹

Donors who make gifts of \$1,000 or more (includes aggregate gifts) must also disclose gifts by way of return to the VEC within 21 days of making the donation.⁶² For multiple donations, the return must be furnished within 21 days of each subsequent donation. Returns must include: the name of the donor, residential address or registered office (natural person vs entity), the name of the registered political party, candidate, group, elected member, nominated entity, associated entity or third party campaigner that received the donation, and the date that the donation was made/received. Separate disclosures must also be furnished annually accounting for all donations made/ received that financial year.

In Victoria (at the **local government level**), *candidates* in an election must provide returns detailing any gifts over \$500 to the Chief Executive Officer (CEO) of the Local Council within 40 days of polling day.⁶³ Returns must include the name of the relevant council, name of municipal district, name of candidate, details of the gift (name of donor, address of donor, date given, exact value of the gift, form of the gift or description of the gift and estimated value of the gift) and a declaration by the candidate stating that the election donation return is a complete record of gifts made. The CEO must then notify the Minister for Local Government of all candidates that have furnished disclosures within 14 days of receiving the return.

(c) New South Wales

In **NSW** (at the **State level and Local Government level**), *parties, elected members, candidates, groups and associated entities* must disclose both general donations and reportable donations (\$1,000 or more - including aggregations) received or made during an election by way of return to the New South Wales Electoral Commission ("NSWEC") within 21 days of polling day.⁶⁴ For reportable donations, returns must include: the party/ elected member/ group/ candidate to or for whose benefit the gift was made, the date of donation, name and address or registered office of donor, the amount of donation, and where the donor is not

⁶¹ *Electoral Act 2002* (Vic), s 216(1).

⁶² *Electoral Act 2002* (Vic), s 216(2).

⁶³ *Local Government Act 2020* (Vic), s 306.

⁶⁴ *Electoral Funding Act 2018* (NSW), s 12.

an individual the relevant business number of the entity (ABN), as well as details of other donations with which donations are aggregated.

Major political donors (those who made donations of \$1,000 or more) must also make disclosures. In addition, for local governments, political donations are required to be disclosed to the General Manager of the Council.⁶⁵

(d) Queensland

In **Queensland** (at the **State level**) *political parties, candidates and groups* that receive donations of \$1,000 or more must disclose donations by way of return to the QEC within 15 weeks of polling day.⁶⁶ Returns must include: the value of the gift, date made, relevant particulars of the entity that made the gift or the source of the gift. In addition, the return must specify the total value of all gifts received by the candidate and the number of entities that made gifts. If no gifts are required to be disclosed, a return stating so must still be provided.

Third parties that *make or receive* donations of \$1,000 or more (made for the purpose of incurring electoral expenditure) must also disclose donations by way of return to the QEC within 15 weeks of polling day.⁶⁷ Returns must include: the value of the gift, date made, relevant particulars of the entity that made the gift or the source of the gift. In addition (where donations are received for the purposes of incurring electoral expenditure) details must include the electoral expenditure incurred or whether the gift was made to/for the benefit of a political party/candidate in the election or to enable another person to use all/part of the gift for an electoral purpose.

In **Queensland** (at the **local government level**) *candidates and groups* that receive donations of \$500 or more must disclose gifts by way of return to the QEC within 30 days of polling day.⁶⁸ Returns must include the name of the candidate/members of the group/third party and relevant details for the gift.

Third parties that receive donations of \$500 or more where the donor intended the gift to be used to incur political expenditure or reimburse political expenditure or used by the third party to do so must also disclose gifts by way of return to the QEC within 30 days of polling day. Donors that make donations of \$500 or more must also disclose gifts by way of return to the QEC within 30 days of polling day. Returns must include details of the loan, and if the entity is not the source of the gift, the source of the gift.

⁶⁵ *Electoral Funding Act 2018* (NSW), s 12.

⁶⁶ *Electoral Act 1992* (Qld), s 261.

⁶⁷ *Electoral Act 1992* (Qld), s 264.

⁶⁸ *Local Government Electoral Act 2011* (Qld), s 117.

(e) Western Australia

In **Western Australia** (at the **State level**) *political parties and associated entities* that receive gifts of \$1,500 or more must disclose them by way of annual return to the Western Australian Electoral Commission (“WAEC”) by 30 November each year.⁶⁹ Returns must include: for unincorporated associations, the name of the association and addresses of executive committee members; for trust funds, the name of the fund or foundation and names and addresses of trustees or beneficiaries; and in any other case, the name and address of the person who made the gift.

Candidates and groups that receive gifts of \$1,500 or more must also disclose them by way of annual return to the WAEC within 15 weeks of polling day.⁷⁰ Returns must include the total amount/value of gifts and the relevant details of each gift received by the person during the disclosure period.

Other persons (not associated entities, candidates or groups) that receive gifts of \$1,500 or more and use these gifts to incur political expenditure or reimburse political expenditure must also be disclosed by way of return to the WAEC within 15 weeks of polling day.⁷¹ Returns are required even where there is nothing relevant to disclose.

Western Australia has introduced a bill in 2020 that will reduce the disclosure threshold to \$1,000 a year.⁷²

In **Western Australia** (at the **Local Government level**) both candidates and donors must disclose gifts of \$200 or more to the CEO of the council within 3 days of receiving/making the gift or within 3 days of nomination (for gifts made prior to commencement of disclosure period).⁷³ Disclosures must contain a description of the gift, the value of the gift, the name and address of each donor.

(f) South Australia

In **South Australia** (at the **State level**) *candidates/ groups* that receive donations of more than \$5,000 (aggregated donations of \$200 or more included) must disclose them by way of return to the South Australian Electoral Commission

⁶⁹ *Electoral Act 1907* (WA), ss 175N, 175NA.

⁷⁰ *Electoral Act 1907* (WA), ss 175O, 175P.

⁷¹ *Electoral Act 1907* (WA), s 175Q.

⁷² Electoral Amendment Bill 2020 (WA).

⁷³ Local Government (Elections) Regulations 1997 (WA); ss 30A, 30B, 30CA.

("SAEC") by the end of the disclosure period.⁷⁴ Returns must include the value, date and details of all gifts received of more than \$5,000.

Special returns must be made for donations of more than \$25,000.⁷⁵ Special returns must include: the amount/value of the give, date made, name and address of a relevant entity, and other details required by regulations.

Donors that make donations of more than \$5,000 to registered political parties, associated entities, candidates or groups must also furnish a return.⁷⁶ Returns must include the value, date and details of all gifts of more than \$5,000 made, or received to enable the making of gifts, or reimburse the making of gifts. Donors that make donations to relevant entities must also furnish returns.

Persons (except candidates, groups) must also furnish annual returns for gifts over \$5,000 used to enable the person to incur electoral expenditure or reimburse a person for incurring electoral expenditure to the SAEC within 12 weeks of the end of the financial year.⁷⁷ Annual returns must include: the amount of gift, date made; for unincorporated associations, the name of association and names and addresses of executive committee; for trust funds, the name of fund or foundation, and names and addresses of trustees or beneficiaries; and in any other case, the names and addresses of donors.

In **South Australia** (at the **Local Government level**) candidates that receive donations of \$500 or more must disclose these gifts to an office of Council within 30 days of the conclusion of an election.⁷⁸ Returns must include: the total amount/value of total gifts received by candidate during disclosure period, number of persons who made each gift, the amount/value of each gift; for unincorporated associations, the name of association and names and addresses of executive committee; for trust funds, the name of fund or foundation, and names and addresses of trustees or beneficiaries; in any other case, the names and addresses of donors.

(g) *Tasmania*

In **Tasmania** (at the **State level**) there are no disclosure requirements for political gifts.

⁷⁴ *Electoral Act 1985* (SA), s 130ZF. Disclosure period commencement dates vary for new candidates, candidates that are not new and groups. See *Electoral Act 1985* (SA), s 130ZF(5).

⁷⁵ *Electoral Act 1985* (SA), s 130ZI.

⁷⁶ *Electoral Act 1985* (SA), s 130ZG.

⁷⁷ *Electoral Act 1985* (SA), s 130ZH.

⁷⁸ *Local Government (Elections) Act 1999* (SA), s 81.

In **Tasmania** (at the **Local Government level**), councillors have an obligation to notify the general manager of the Council of any gifts of more than \$50 received within 14 days of receiving the gift.⁷⁹ The notice must include the description of the gift, the name of donor (if known), the councillor's relationship to donor (if known), the suburb/locality where the donor resides (if known), the date received, and the amount or estimated value of the gift.

(h) Northern Territory

In the **Northern Territory** (at the **Territory level**) *candidates, registered parties, associated entities and third party campaigners* who receive gifts of \$1,500 or more must disclose gifts by way of a return to the NTEC within the specified period.⁸⁰ In addition, *registered parties* must provide returns with details of aggregate donations within 20 weeks of the end of the financial year. Returns must include: for unincorporated associations other than registered industrial organisations, the name of association and names and addresses of executive committee; for trust funds, the names and addresses of trustees of fund or foundation, the title or description of the trust or foundation; and for others, the name and address of donors.

Donors who make donations of \$1,500 or more to candidates or registered parties or \$1,000 or more to specified entities must also disclose these by way of return to the NTEC within 60 days of the end of the financial year.⁸¹ Returns by donors must include: the total amount of gifts made by person to each candidate/entity and for unincorporated associations other than registered industrial organisations, the name of association and names and addresses of executive committee; for trust funds, the names and addresses of trustees of fund or foundation, the title or description of the trust or foundation; and for others, the name and address of donors.

In the **Northern Territory** (at the **local government level**), there are no donation disclosure requirements.

(i) Australian Capital Territory

In the **Australian Capital Territory** *party groupings, non-party members of the Legislative Assembly, associated entities, non-party groupings, and non-party prospective candidate groups* that receive gifts of \$1,000 or more (including aggregations) must disclose these gifts by way of return to the ACT Electoral

⁷⁹ *Local Government Act 1993* (Tas), s 56A; *Local Government (General) Regulations 2015* (Tas), reg 29A.

⁸⁰ Disclosure periods vary depending on the circumstances. See *Electoral Act 2004* (NT), ss 191-2.

⁸¹ *Electoral Act 2004* (NT) ss 193-4.

Commission (“ACTEC”) within the specified time.⁸² Returns must include the date the gift was received, the amount of the gift, the defined details for a gift, whether the gift was made anonymously, and the total amount of gifts from one person.⁸³ Returns are required within 60 days even where there is nothing relevant to disclose, and must include a statement that there were no relevant gifts to disclose.

Non-party candidates that receive gifts of \$1,000 or more (including aggregations) must disclose these gifts by way of return to the ACTEC within 60 days of polling day.⁸⁴ Returns by non-party candidates must include: the total number of gifts received by the candidate, the total number of persons who made gifts, the date the gifts were received, the amounts received, and the defined details of each gift. Returns are required within 60 days even where there is nothing relevant to disclose, and must include a statement that there were no relevant gifts to disclose.

Third party campaigners who receive gifts of \$1,000 or more, where gifts are wholly or partially used for the purposes of incurring electoral expenditure, or reimbursing such expenditure, must disclose these gifts by way of return to the ACTEC within 60 days of polling day.⁸⁵

4 Summary of Donation Disclosure Requirements

DISCLOSURE REQUIREMENTS GIFTS/DONATIONS

| Jurisdiction | Summary | Legislation |
|---------------------|---|--------------------------|
| Commonwealth | | |
| | Gifts/Donations must be disclosed in Electoral Return by Recipients | Part XX Division 4 s 304 |
| | Gifts/Donations above the disclosure threshold (\$13,800 indexed) must be disclosed by the donor. | |

STATES

| Jurisdiction | Summary | Legislation |
|---------------------|--|------------------------------|
| Victoria | | |
| State | Any donations equal to or exceeding \$1,000 within a financial year must be disclosed by donors and recipients to the Commission. | Part 12 Division 3 s 216 (1) |
| | Disclosure must be made within 21 days of making the donation. | |

⁸² Time for disclosure depends on if the donation was given during an ordinary election or extraordinary election. See *Electoral Act 1992* (ACT), s 216A.

⁸³ Defined details mean: (for unincorporated associations) the name of association and names and addresses of executive committee members, (for trust funds) the name of fund or foundation, and names and addresses of trustees or beneficiaries, (in any other case) the names and addresses of donors.

⁸⁴ *Electoral Act 1992* (ACT), s 217.

⁸⁵ *Electoral Act 1992* (ACT), s 220.

| | | |
|--------------------------|---|---|
| Local | Donations over \$500 must be disclosed in 'election campaign donation return'. Anonymous gifts over \$500 are prohibited. | Part 8 Division 10 s 306 Part 8 Division 10 s 309 |
| NSW | | |
| State | Any donations equal to or exceeding \$1,000 within a financial year must be disclosed by donors and recipients to the Commission. Disclosure is required even if the entity or person has ceased to be a party, member or candidate as long as the entity or person was elected during the relevant disclosure period. Anonymous donations are prohibited. \$100 limit on cash donations. Disclosure must be made within 12 months period ending on 30 th June. | Part 3 Division 2 s 12 S 49 S 50A Part 3 Division 2 s 13 |
| Local | As above. | |
| Queensland | | |
| State | Gifts over the 'gift amount threshold' of \$1,000 must be disclosed. | Part 1 Division 7 Subdivision 2 (s 261) |
| Local | Donations of >\$500 must be disclosed by donors and recipients. Anonymous donations of >\$500 are prohibited. | Part 6 Division 3 Subdivision 1 s 117 Part 3 Division 8 |
| Western Australia | | |
| State | Disclosure required for gifts over the 'specified amount' of \$1,500. Anonymous donations of \$1500 are prohibited. | Part VI s 175R Part VI s 175R |
| Local | Candidates and donors must disclose gifts over \$200. | Part 5A |
| South Australia | | |
| State | Gifts of >\$5,000 must be disclosed. Special reporting required for large gifts of \$25,000 or more. Annual returns for gifts/donations required. Gifts >\$200 from anonymous sources are prohibited. | Part 13A Division 7 Part 13A Division 7 s 130ZJ |
| Local | Donations >\$500 must be disclosed. Anonymous donations of >\$500 are prohibited. | Part 14 Division 1 Part 14 Division 1 s 82 |
| Tasmania | | |
| State | No disclosure requirements. | |
| Local | Gifts over \$50 must be disclosed. Councillors must notify of gifts. | Part 5A |

TERRITORIES

| Jurisdiction | Summary | Legislation |
|-------------------------------------|--|--|
| Northern Territory | | |
| Territory | Donations \$1,500 to candidates must be disclosed. Donations \$15,000 to registered parties. Anonymous gifts > \$1,000 are prohibited for political parties, associated entities and third parties. Anonymous gifts >\$200 are prohibited for candidates. | Part 10 Division 3 Part 10 Division 1 s 197 |
| Local | N/A | |
| Australian Capital Territory | | |
| Territory | Gifts of >\$1,000 must be disclosed. Anonymous gifts of \$1,000 are prohibited. Anonymous gifts must not be accepted if they would total to over \$25,000. | S 216A S 222 S 222(3) |

5 Expenditure Disclosure Requirements in Australia*(a) Commonwealth*

At the **Commonwealth** level, candidates and groups have an obligation to disclose expenditure by way of electoral expenditure returns and annual returns.

Candidates and Groups (not part of registered political parties) must disclose electoral expenditure by way of electoral expenditure return furnished to the AEC within 15 weeks of polling day.⁸⁶ Returns must include: (where applicable) details of discretionary benefits received by members of the group, and any other requirements published on the AEC website. Even where no electoral expenditure was incurred, candidates and groups must provide a return and include a statement to the effect that no relevant expenditure was incurred.

Registered political parties and campaigners must also disclose expenditure by way of annual returns to the AEC within 16 weeks of the end of the financial year.⁸⁷ Returns must include: amounts received, amounts paid by or on behalf of the party or campaigner that financial year, outstanding debts, discretionary benefits received by or on behalf of the party from Commonwealth, State or Territory, as well as (for political campaigners only) the total amount of electoral expenditure incurred by/with the authority of campaigner.

⁸⁶ *Commonwealth Electoral Act 1918* (Cth), s 309.

⁸⁷ *Commonwealth Electoral Act 1918* (Cth), s 314AB.

Associated entities must also, within 16 weeks of the financial year, lodge an annual return.⁸⁸ Again, returns must include: amounts received, paid, outstanding debt and discretionary benefits. In addition, *third parties* must provide annual returns within 20 weeks of the financial year.⁸⁹ Returns must be in the approved form and include details of electoral expenditure incurred and a statement that the third party complied with obligations relating to foreign donors.

(b) Victoria

In **Victoria** (at the **State level**) disclosure of electoral expenditure is a precondition for public and administrative funding for parties, associated entities, third party campaigners and nominated entities.

Registered political parties must disclose expenditure by way of statement to the VEC within 20 weeks of polling day.⁹⁰ The statement must include: details of expenditure spent or incurred, and entitlement to public funding.

Registered political parties, associated entities, third party campaigners and nominated entity must also lodge annual returns to the VEC within 16 weeks of each financial year.⁹¹ Returns must be in the approved form and include details of electoral expenditure and entitlement to administrative funding. Annual returns must include: details of amounts received, paid, outstanding debt, and a statement that there is no reason to believe information in the statement is not correct.

There are no disclosure requirements relating to expenditure for *candidates or groups*.

In **Victoria** (at the **Local Government level**) there are no disclosure requirements relating to political expenditure.

(c) New South Wales

In **New South Wales** (at the **State and Local Government level**) *parties, elected members, candidates, groups and associated entities* are required to disclose electoral expenditure by way of disclosure to the NSWEC within 12 weeks of the end of each financial year.⁹² Disclosure must provide details of

⁸⁸ *Commonwealth Electoral Act 1918* (Cth), s 314AEA.

⁸⁹ *Commonwealth Electoral Act 1918* (Cth), s 314AEB.

⁹⁰ *Electoral Act 2002* (Vic), s 208.

⁹¹ *Electoral Act 2002* (Vic), ss 217I, 217J, 217K, 217L.

⁹² *Electoral Funding Act 2018* (NSW), ss 16, 18, 20.

amounts received, expenditure incurred and whether it exceeded relevant expenditure caps.

Similarly, *third parties* must also disclose expenditure by way of disclosure to the NSWEC within 12 weeks of the end of the financial year.⁹³ Third party disclosures must include: details of political donations received by third party for the purposes of incurring electoral expenditure, and details of expenditure and whether it exceeded the relevant expenditure caps.

(d) Queensland

In **Queensland** (at the **State level**) *registered political parties, candidates, associated entities, registered third parties, other third parties* must disclose electoral expenditure by way of return to the QEC within 15 weeks of polling day.⁹⁴ Returns must include: the name and address of persons who supplied the goods and services to which the expenditure relates, a description of goods and services received, the amount of expenditure and when it was incurred. Returns must also be accompanied by relevant bank statements. Where expenditure relates to advertising and publishing electoral matters, broadcasters and publishers must also provide returns within 8 weeks of polling day with the required details.⁹⁵

In **Queensland** (at the **Local Government level**) *candidates and groups of registered political parties and associated entities* must disclose expenditure of \$500 or more by way of return to the QEC by the deadline published by the authority.⁹⁶ Returns must include: names and business addresses of persons who supplied the goods or services to which expenditure relates, the amount, when the expenditure was incurred, and the purpose for incurring the expenditure.

Candidates and groups of registered political parties and associated entities must also disclose general expenditure by way of summary return to the QEC by the deadline published by the authority.⁹⁷ Summary returns must include: total amount of electoral expenditure incurred during the disclosure period and be accompanied by bank statements for the dedicated accounts for expenditure.⁹⁸

⁹³ *Electoral Funding Act 2018* (NSW), s 16.

⁹⁴ *Electoral Act 1992* (Qld), s 263.

⁹⁵ *Electoral Act 1992* (Qld), s 285.

⁹⁶ *Local Government Electoral Act 2011* (Qld), s 117.

⁹⁷ *Local Government Electoral Act 2011* (Qld), s 118.

⁹⁸ The disclosure period end date is 30 days after polling day.

Third parties must also disclose expenditure of more than \$500 by way of return to the QEC by the deadline published by the authority.⁹⁹ Returns must include: the name and business address of persons who supplied goods or services to which the expenditure relates, a description of the goods and services, the value of the expenditure, the purpose for incurring expenditure, if the expenditure was incurred to benefit, support or oppose a particular candidate/group/political party (including name) and if the expenditure was incurred to support or oppose a particular issue (describing issue). Third parties must also furnish a general return detailing the total amount of electoral expenditure incurred in the disclosure period.

(e) Western Australia

In **Western Australia** (at the **State level**), *political parties, candidates and groups* must disclose expenditure by way of return to the WAEC within 15 weeks of polling day.¹⁰⁰ *Persons not under the authority of these groups* must also disclose expenditure of more than \$500 by way of return to the WAEC within 15 weeks of polling day.¹⁰¹ Returns must be in the approved form published by the commissioner.

In **Western Australia** (at the **Local Government level**) there are no disclosure requirements relating to political expenditure.

(f) South Australia

In **South Australia (State level)** *registered political parties, candidates, groups or third parties* that incur electoral expenditure of an amount more than \$5,000 must disclose expenditure by way of return to the SAEC within 60 days of polling day.¹⁰² Returns must set out the details of political expenditure incurred for the purposes of the election.¹⁰³

Third parties that incur expenditure of an amount more than \$10,000 must also disclose this expenditure by way of annual return to the SAEC within 12 weeks of the end of the financial year.¹⁰⁴ *Others* (not third parties or members of the House of Assembly or Legislative Council) must also disclose expenditure of an amount more than \$5,000 by way of annual return to the SAEC within 12 weeks of the end of the financial year. Annual returns must be in a form approved by the

⁹⁹ *Local Government Electoral Act 2011* (Qld), s 118A.

¹⁰⁰ *Electoral Act 1907* (WA), ss 175SA, 175SB, 175SC.

¹⁰¹ *Electoral Act 1907* (WA), s 175SD.

¹⁰² *Electoral Act 1985* (SA), ss 130ZR, 130ZN.

¹⁰³ No further specifications listed. See *Electoral Act 1985* (SA), s130ZQ.

¹⁰⁴ *Electoral Act 1985* (SA), ss 130ZR, 130ZP.

Electoral Commissioner.¹⁰⁵ Where no there is no relevant expenditure to disclose, returns must nevertheless be lodged and specify that there is no relevant expenditure to disclose.

In **South Australia** (at the **Local Government level**) there are no disclosure requirements relating to political expenditure.

(g) Tasmania

In **Tasmania** (at the **State level**), candidates must disclose electoral expenditure by way of election expenditure return to the TEC within 60 days of the result of Legislative Council elections, or within such an extended period as the TEC may allow.¹⁰⁶ Returns must include particulars of all expenditure paid by the candidate or on their behalf, all disputed and unpaid claims relating to electoral expenditure and must be accompanied by invoice accounts or receipts in respect of each item over \$20. Returns must also include signed declarations.

In **Tasmania** (at the **Local Government level**), there are no disclosure requirements relating to political expenditure.

(h) Northern Territory

In the **Northern Territory** (at the **Territory level**), *candidates, registered parties, associated entities and third parties* must disclose electoral expenditure by way of return to the NTEC within 60 days of the election day.¹⁰⁷ Returns must include details of expenditure incurred during the relevant period. Where there is no relevant expenditure to disclose, returns must nevertheless be lodged and specify that there is no relevant expenditure to disclose.

Candidates, registered parties and associated entities must also disclose electoral expenditure by way of annual return to the NTEC within 60 days of the end of the financial year. For parties, return must include: amount received by or on behalf of the party during the financial year, the amount paid on behalf of the party in the financial year, the outstanding debts incurred by the party and the relevant particulars.¹⁰⁸

¹⁰⁵ No further specifications listed. See *Electoral Act 1985* (SA), s130ZY.

¹⁰⁶ *Electoral Act 2004* (Tas), s 161.

¹⁰⁷ Specific period for third parties. Capped expenditure period for all others. See *Electoral Act 2004* (NT), s 200.

¹⁰⁸ Amounts and where applicable details of associations (and names/addresses of executive committee), details of trusts (fund title, trustees), or names and addresses of others.

In the **Northern Territory (Local Government)** there are no disclosure requirements relating to political expenditure.

(i) *Australian Capital Territory*

In the **Australian Capital Territory (Territory level)** *parties, non-party members of the legislative assembly, associated entities, non-party candidate groupings and third party campaigners* must disclose returns by way of return to the ACTEC within 60 days after polling day.¹⁰⁹ Where no there is no relevant expenditure to disclose, returns must nevertheless be lodged and specify that there is no relevant expenditure to disclose. Where expenditure relates to advertising and publishing electoral matters, broadcasters and publishers must also provide returns within 8 weeks of polling day with the required details.¹¹⁰

Parties, non-party members of the legislative assembly and associated entities must also disclose electoral expenditure by way of annual return to the ACTEC not later than 31 August after each financial year.¹¹¹ Annual returns must include amounts received or paid and outstanding debts incurred during the financial year and the defined particulars.¹¹²

6 Summary of Expenditure Disclosure Requirements

Disclosure Requirements (Expenditure)

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|---------------------|---|---|
| Commonwealth | | |
| | Expenditure incurred by political parties is disclosed at the end of the year. Agent of each person who was a candidate will provide the electoral expenditure of each candidate within 15 weeks of polling day. | Part XX Division 5 S 307A 309(2) & 309(3) |

STATES

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|---------------------|--|---------------------|
| Victoria | | |
| <u>State</u> | Statement of Expenditure Required. Annual Returns Required. | Part 12 Division 3C |
| <u>Local</u> | N/A | |
| NSW | | |
| <u>State</u> | Annual disclosure required. | Part 3 Division 2 |
| <u>Local</u> | As above. | |
| Queensland | | |
| <u>State</u> | Disclosure required 15 weeks after election | Part 11 Division |

¹⁰⁹ *Electoral Act 1992* (ACT), ss 230, 231.

¹¹⁰ *Electoral Act 1992* (ACT), s 226.

¹¹¹ *Electoral Act 1992* (ACT), s 224.

¹¹² Amounts and where applicable details of associations (and names/addresses of executive committee), details of trusts (fund title, trustees), or names and addresses of others.

| | | |
|-------------------------------------|--|----------------------------------|
| | | 10 |
| Local | Electoral expenditure of total \$500 or more must be disclosed. | |
| Western Australia | | |
| State | Disclosure required 15 weeks after election. Disclosure must be verified, records must be kept. | Part IV Division 4 |
| Local | No disclosure required for expenditure. | |
| South Australia | | |
| State | Expenditure of more than \$5,000 must be disclosed within 60 days of election. Annual returns also required. | Part 13A Division 8 |
| Local | No disclosure required for expenditure. | Part 14 Division 1 |
| Tasmania | | |
| State | Disclosure required 30 days after election. | Part 6 Division 2 |
| Local | No disclosure required for expenditure. | |
| TERRITORIES | | |
| Jurisdiction | Summary | Legislation |
| Northern Territory | | |
| Territory | All electoral expenditure must be disclosed in election return. All electoral expenditure must be disclosed in annual return. | Part 10 Division 4 subdivision 2 |
| Local | No disclosure required for expenditure. | |
| Australian Capital Territory | | |
| Territory | Expenditure must be disclosed within 60 days of election. | Division 14.5 S 224 |

B Caps on Donations

A major method to entrench political equality is to impose a yearly cap on donations from each individual, union and corporation.¹¹³

1 Rationale and Scope of Caps on Donations

Caps on donations that are set at a relatively low level promote the principle of political equality, as they ensure that people do not have a larger political voice in terms of access and influence to politicians just because they are wealthy and are able to donate large amounts of money to political parties. This in turn ensures that government decision-making and policy-making is not skewed towards those who have made large donations to the political parties.

First, there is a question about the scope of the caps on donations, that is, whether it should apply beyond political parties, to their associated entities and third party

¹¹³ This part discusses general yearly caps on donations, while specific bans on donations on certain sectors and bans on foreign donations are discussed in the following parts.

campaigners that make contributions. As Tham argued, if caps only apply to political parties, then money may be channelled to associated entities and third party campaigners, which may then create 'a preference for pressure group politics over party politics, as political groups engage in independent third-party activity rather than become members of political parties'.¹¹⁴ Tham contended that this would 'favour issue politics over the broader and more inclusive forms of politics that are more likely to emerge through political parties'.¹¹⁵ There is thus justification for subjecting political parties, associated entities and third party campaigners to the cap.

There are also questions as to whether the donations cap should apply to membership subscriptions and affiliation fees, which has a particular impact on unions that charge a membership fee. Party affiliation fees are fees paid by a union to a political party as a condition of taking out organisational membership of the party.¹¹⁶

Tham has argued that membership subscriptions and affiliation fees for trade unions should be exempt from caps, as they represent public participation and are a form of political association.¹¹⁷ This exemption has been adopted in all Australian jurisdictions that impose donations caps.

The legislative scheme should be carefully designed to avoid circumvention of the rules. For example, to avoid people disaggregating donations, e.g. donating multiple amounts of \$999 to avoid a \$1,000 cap, there needs to be a legislative aggregation provision that specifies that multiple donations from the same donor to the same recipient are aggregated for the purpose of the caps. The rules should apply to all parts of party organisation, and require national branch to be legally responsible to report all donations.

In addition, caps should target individuals and corporations to help ensure that money cannot be channelled through shady corporate structures or 'associated entities' to evade the rules, and also apply to loans.

Despite these legislative safeguards, money can still be channelled through business associates, employees, and family members to circumvent the caps. Further, the more lax regulation at the federal level allows State donation caps to be circumvented by channelling donations to the federal branch of political parties.

¹¹⁴ Tham, *Money and Politics* (n 4) 112.

¹¹⁵ Ibid.

¹¹⁶ Joo-Cheong Tham, 'Contribution Limits: A Case for Exempting Trade Union Affiliation Fees' in Keith Ewing, Jacob Rowbottom and Joo-Cheong Tham, *The Funding of Political Parties: Where Now?* (Routledge, 2012), ch 3.

¹¹⁷ Tham, *Money and Politics* (n 4) 110-9; Joo-Cheong Tham, 'Contribution Limits: A Case for Exempting Trade Union Affiliation Fees' (n 116).

2 Caps on Donations in Australia

A general yearly cap on political donations only exists in **NSW** and **Victoria**.

Queensland will have a cap on donations commencing on the first general election to be held after 1 July 2022.¹¹⁸

The **Commonwealth**, **Western Australia**, **South Australia**, **Tasmania**, **NT** and the **ACT** do not have general donation caps.

(a) New South Wales

NSW has an aggregated yearly donations cap of \$6,100 per registered party or group and \$2,700 for unregistered parties, elected members, candidates, third-party campaigners, or associated entities, at **both the State and Local Government level**.¹¹⁹ A separate aggregation is applied for local government elections.¹²⁰ Donors are required to disclose related corporation donors.¹²¹

The donation caps do not apply to party membership subscriptions and affiliation fees below \$2,000.¹²² Donations to third-party campaigners that are not paid into the campaign account, are not subject to the donation cap.¹²³

It is unlawful for a person to make or accept political donations (whether for a State or local government election) to more than three third-party campaigners in the same financial year.¹²⁴

A person who makes a donation with the intention of causing the donation to be accepted in breach of the donations cap is guilty of an offence, with the maximum penalty of 400 penalty units or 2 years' imprisonment, or both.¹²⁵

A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement on donations is guilty of an offence, with a maximum penalty (on conviction on indictment) of 10 years' imprisonment.¹²⁶

¹¹⁸ *Electoral Act 1992* (Qld), s 443.

¹¹⁹ *Electoral Funding Act 2018* (NSW), s 23.

¹²⁰ *Electoral Funding Act 2018* (NSW), s 23(3).

¹²¹ *Electoral Funding Act 2018* (NSW), s 24(6).

¹²² Membership or subscription fees exceeding \$2,000 are considered as part of the cap. *Electoral Funding Act 2018* (NSW), s 26.

¹²³ *Electoral Funding Act 2018* (NSW), s 24(4).

¹²⁴ *Electoral Funding Act 2018* (NSW), s 25(1).

¹²⁵ *Electoral Funding Act 2018* (NSW), s 143.

¹²⁶ *Electoral Funding Act 2018* (NSW), s 144.

(b) Victoria

In Victoria, there is a cap on aggregated donations by individuals, unions and corporations of \$4,000 over a four-year parliamentary term that applies **at the State but not local government level**.¹²⁷

This cap applies to registered political parties, candidates, groups, elected members, nominated entities of a registered political party, associated entities, and third party campaigners.¹²⁸ A contribution by a candidate at an election or an elected member to their own election campaign is not included in the general cap for that candidate or member.¹²⁹

Donations to associated entities and third-party campaigners that are not intended to be used for political expenditure, and are not paid into the campaign account, are not subject to the donation cap.¹³⁰ For associated entities and third-party campaigners, expenditure will only be political expenditure if it is incurred during the election campaigning period (from 1 October to 6pm on the election day), unless the material refers to a candidate or a registered political party and how a person should vote at an election.¹³¹ As long as membership fees and affiliation fees to parties, third-party campaigners and associated entities are not paid into campaign accounts, these fees are not subject to the donation cap.¹³²

It is unlawful for a donor to make political donations to more than six third-party campaigners during the election period.¹³³

A political donation that is accepted in breach of the cap is forfeited to the State.¹³⁴

(c) Queensland

Queensland will implement a cap on donations at **both the State and Local Government level** commencing on the first general election to be held after 1 July 2022.¹³⁵

¹²⁷ *Electoral Act 2002* (Vic), ss 206, 217D, 217E.

¹²⁸ *Electoral Act 2002* (Vic), s 217D.

¹²⁹ *Electoral Act 2002* (Vic), s 217D(5).

¹³⁰ *Electoral Act 2002* (Vic), s 217D(8).

¹³¹ *Electoral Act 2002* (Vic), s 206 (definition of 'political expenditure').

¹³² *Electoral Act 2002* (Vic), s 207F.

¹³³ *Electoral Act 2002* (Vic), s 217F.

¹³⁴ *Electoral Act 2002* (Vic), s 217G.

¹³⁵ *Electoral Act 1992* (Qld), s 443.

The proposed cap was that an individual or organisation would not be able to donate more than \$10,000 in each four-year term of parliament. Of that amount:

- donations to each political party cannot exceed \$4,000;
- donations to candidates of a given political party cannot exceed \$6,000; and
- donations to each third party cannot exceed \$4,000, and a person cannot donate to more than six third parties.¹³⁶

Membership and affiliation fees paid to political parties are not considered to be a donation under the legislation and are not included in the cap.¹³⁷

The maximum penalty for breach will be 200 penalty units.¹³⁸

Unlawful donations exceeding the cap can be recovered by the State.¹³⁹

Queensland Attorney-General Yvette D'Ath stated that the deferral of the donations cap until 2022 was as a result of the economic implications stemming from the COVID-19 pandemic, to allow the state government to prioritise economic recovery from the health crisis.¹⁴⁰

Queensland previously introduced donation caps in 2011, but these were repealed in 2014.¹⁴¹

3 Summary

Caps on donations for Australian jurisdictions are summarised in the table below.

| Jurisdiction | Summary | Legislation |
|---------------------|---|--------------------|
| Commonwealth | | |
| | None | |
| STATES | | |
| Jurisdiction | Summary | Legislation |
| Victoria | | |
| State | Donations must not exceed \$4,000 (general cap) for the | Part 12 Division |

¹³⁶ Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld), ss 252-9.

¹³⁷ Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld), cl 12 (proposed s 201 (definition of 'gift')).

¹³⁸ Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld), cl 20 (proposed s 254-6).

¹³⁹ Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Qld), cl 20 (proposed s 259A).

¹⁴⁰ Sonia Kohlbacher and Aaron Bunch, 'Queensland will Cap Political Donations but not until after the Election', *Brisbane Times* (online, 19 June 2020)

<<https://www.brisbanetimes.com.au/politics/queensland/queensland-will-cap-political-donations-but-not-until-after-the-election-20200619-p5545g.html>>.

¹⁴¹ *Electoral Reform Amendment Act 2014* (Qld).

| | | |
|--------------------------|--|------------------------|
| | election period (this includes collective or separate donations). Donors must not make donations to more than 6 third-party campaigners during the election period. | 1 s 206 S 217F |
| Local | None | |
| NSW | | |
| State | Donations are capped to: <ul style="list-style-type: none"> - \$6100 as a donation to or for benefit of a registered party or group - \$2700 for a candidate, third party campaigner, elected member, non-registered party, associated entity Note: a candidate's own contribution to their own campaign is not a political donation. | Part 3 Division 3 s 23 |
| | Donors must not make donations to more than 3 third-party campaigners. | S 25 |
| Local | As above | |
| Queensland | | |
| State | Caps on donations will be introduced in 2022 | |
| Local | Caps on donations will be introduced in 2022 | |
| Western Australia | | |
| State | None | |
| Local | None | |
| South Australia | | |
| State | None | |
| Local | None | |
| Tasmania | | |
| State | None | |
| Local | None | |

TERRITORIES

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|--|-----------------------|---------------------------|
| <u>Northern Territory</u> | | |
| <u>Territory</u> | None | |
| <u>Local</u> | None | |
| <u>Australian Capital Territory</u> | | |
| <u>Territory</u> | None | |

C Caps on Expenditure

One form of regulatory response to entrench equity between the political players is to impose caps on expenditure, that is, limiting the amount that each political party can spend in their election campaigns.

1 Rationale and Scope of Caps on Expenditure

A crucial question about funding political parties is how to regulate their election

spending, with concerns about a ‘cost explosion’ in electoral spending leading to what has been described as an ‘arms race’ between the major parties in fundraising to finance increasing expensive and sophisticated election campaigns.¹⁴² As the established political parties have a stronger presence, broader institutional knowledge and organisational resources, they have an enhanced ability to raise and money to promote their political platforms and agendas, compared to minor parties and independents without similar resources and media presence, who are thus comparatively disadvantaged.¹⁴³

In this regard, caps on expenditure level the playing field between political parties, by removing the ability of parties to mount expensive electoral campaigns.¹⁴⁴ By disassociating the amount of funds raised by parties from the ability to spend these funds to pursue political campaigns, expenditure caps ensure that minor parties and independents are not disproportionately disadvantaged in their ability to promote their political agenda.

Further, the capping of electoral expenditure will also reduce the pressure on parties to spend a disproportionate amount of time and resources on fundraising, which may thus reduce the susceptibility of parties to accepting donations that may lead to corruption or unfair influence. As Senator Faulkner noted, the ‘arms race’ by major parties has ‘heighten[ed] the danger that fundraising pressures on political parties and candidates will open the door to donations that might attempt to buy access and influence’.¹⁴⁵

Despite expenditure caps, there is the risk of astroturfing to avoid expenditure limits, i.e. campaign groups set up artificially to exploit multiple expenditure caps and to disguise the true source of spending and communication.¹⁴⁶

2 Expenditure Caps in Australia

Caps on expenditure only exist in **NSW, Queensland, South Australia, Tasmania, NT,** and the **ACT**.

¹⁴² Malcolm Anderson and Joo-Cheong Tham, ‘Dynamics of Electoral Expenditure and the ‘Arms Race’ Thesis: The Case of New South Wales’ (2014) 49(1) *Australian Journal of Political Science* 85.

¹⁴³ Jennifer Rayner, ‘More Regulated, More Level? Assessing the Impact of Spending and Donation Caps on Australian State Elections’ in Anika Gauja and Marian Sawyer, *Party Rules: Dilemmas of Political Party Regulation in Australia* (ANU Press, 2016) 147, 147-9, 155, 162.

¹⁴⁴ A study showed that ‘the introduction of caps has somewhat narrowed the financial gulf between the two major parties and their minor counterparts’ on the spending side. See Jennifer Rayner, ‘More Regulated, More Level? Assessing the Impact of Spending and Donation Caps on Australian State Elections’ in Anika Gauja and Marian Sawyer, *Party Rules: Dilemmas of Political Party Regulation in Australia* (ANU Press, 2016) 147, 147-9, 155, 162.

¹⁴⁵ Australian Government, *Electoral Reform Green Paper: Donation, Funding and Expenditure* (Australian Government Publishing Service, 2008) 1.

¹⁴⁶ Graeme Orr, *The Law of Politics: Elections, Parties and Money in Australia* (2nd ed, Federation Press, 2018) 249.

Western Australia has introduced a bill that will implement expenditure caps, which has yet to pass both Houses of Parliament.¹⁴⁷

The **Commonwealth, Victoria and Western Australia** do not have expenditure caps.

(a) New South Wales

NSW has a separate cap on expenditure at **both the State and Local Government level**.

At the **NSW State level**, the expenditure caps are as follows:

- *(Parties) Legislative Assembly / Legislative Council* - \$122,900 multiplied by the number of electoral districts in which a candidate is so endorsed.
- *(Parties) Legislative Council only* - \$1,288,500.
- *(Independent Groups) Legislative Assembly / Legislative Council* - \$1,288,500.
- *(Party Candidates) Legislative Assembly* - \$122,900.
- *(Independent Candidates) Legislative Assembly* - \$184,200.
- *(Candidates) By-election* - \$184,200.
- *(Third Party Campaigners) General State election:*
 - \$500,000 if the third-party campaigner was registered under the Act before the commencement of the capped State expenditure period for the election; or
 - \$250,000 in other cases.
- *(Third Party Campaigners) By-election* - \$20,000 per by-election.
- *(Party) Individual Assembly Seats, Additional Cap* - \$61,500.
- *(Third Party Campaigner) Individual Assembly Seats* - \$24,700 for each electoral district.¹⁴⁸

At the **NSW local government level**,¹⁴⁹ the expenditure caps are as follows:

Parties with candidates

- *(Parties) Legislative Assembly / Legislative Council* - \$122,900 multiplied by the number of electoral districts in which a candidate is so endorsed.
- *(Parties) Legislative Council only* - \$1,288,500.
- *(Independent Groups) Legislative Assembly / Legislative Council* - \$1,288,500.

¹⁴⁷ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SI-SL).

¹⁴⁸ *Electoral Funding Act 2018* (NSW), ss 27, 29.

¹⁴⁹ *Electoral Funding Act 2018* (NSW), ss 28, 31.

- *(Party Candidates) Legislative Assembly* - \$122,900.
- *(Candidates) By-election* - \$184,200.
- *(Party) Individual Assembly Seats, Additional Cap* - \$61,500.

Candidates and groups (other than groups including mayoral candidates):

- \$6,000— where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or fewer, and
- \$10,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 5,000 but fewer than 10,001, and
- \$18,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 10,000 but fewer than 20,001, and
- \$25,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 20,000 but fewer than 30,001, and
- \$36,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 30,000 but fewer than 50,001, and
- \$46,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 50,000 but fewer than 75,001, and
- \$63,500— where the number of enrolled electors for the local government area or ward concerned for the election is more than 75,000 but fewer than 125,001, and
- \$72,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 125,000.

Mayoral candidates (and groups including mayoral candidates)

- where the local government area concerned is divided into wards—the sum of the following—
 - 100% of the applicable cap for a candidate for election as councillor in a ward of the local government area,
 - 25% of the applicable cap for a candidate for election as councillor in each of the other wards of the local government area, and
- where the local government area concerned is not divided into wards—
 - 125% of the applicable cap for a candidate for election as a councillor of the local government area (other than a candidate for mayor).

Third-party campaigners

- one-third of the applicable cap for a candidate for election as councillor (other than mayor) for the local government area or ward election

concerned, but if the amount is not a whole number multiple of \$10, the amount is to be rounded up to the nearest whole number multiple of \$10.

There are aggregation provisions of electoral expenditure in respect of an election in an electoral district in which there are two or more candidates endorsed by the same party.¹⁵⁰

Electoral expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.¹⁵¹

It is unlawful for a party, group, candidate, third-party campaigner or associated entity, a third-party campaigner acting in concert with another person or other persons, to incur electoral expenditure that exceeds the cap.¹⁵²

A person who makes a donation with the intention of causing the donation to be accepted in breach of the expenditure cap is guilty of an offence, with the maximum penalty of 400 penalty units or 2 years' imprisonment, or both.¹⁵³

A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement on electoral expenditure is guilty of an offence, with a maximum penalty (on conviction on indictment) of 10 years' imprisonment.¹⁵⁴

(b) Queensland

In Queensland, expenditure limits apply during the final 12 months of a parliamentary term (**at the State but not local government level**). During that period, the maximum amount that can be spent is:

- endorsed candidate: \$58,000;
- independent candidate: \$87,000;
- party, \$92,000 in any single electorate in which it endorses a candidate;
- by-election, endorsed candidate: \$87,000; and
- third party, \$87,000 in any single electorate and no more than \$1 million in aggregate.¹⁵⁵

¹⁵⁰ *Electoral Funding Act 2018* (NSW), ss 30 (State), 32 (local government).

¹⁵¹ *Electoral Funding Act 2018* (NSW), s 34.

¹⁵² *Electoral Funding Act 2018* (NSW), ss 33, 35.

¹⁵³ *Electoral Funding Act 2018* (NSW), s 143.

¹⁵⁴ *Electoral Funding Act 2018* (NSW), s 144.

¹⁵⁵ *Electoral Act 1992* (Qld), s 281C-E.

Electoral expenditure is incurred when the goods or services for which the expenditure is incurred are supplied or provided, regardless of when the amount of the expenditure is invoiced or paid.¹⁵⁶

(c) South Australia

South Australia has the following expenditure caps (**at the State but not local government level**):

- *Registered political party, Legislative Council district only*: \$500,000 (indexed).
- *Registered political party that endorses candidates for election in 1 or more House of Assembly districts*: \$75,000 (indexed) multiplied by the number of electoral districts in which the party endorses a candidate (as at the hour of nomination) less the sum of the amounts allocated to candidates¹⁵⁷ (as at the end of the capped expenditure period in relation to the party for the election); PLUS if the party also endorses candidates for election in the Legislative Council district, \$100,000 (indexed) multiplied by the number of candidates endorsed (as at the end of the capped expenditure period in relation to the party for the election but only up to a maximum of 5).
- *Candidate for election in a House of Assembly district who is endorsed by a registered political party*: same as registered political party.
- *Candidate for election in a House of Assembly district not endorsed by a registered political party*: \$100,000 (indexed).
- *Candidate in a Legislative Council election not endorsed by a registered political party*: \$125,000 (indexed).
- *Group of candidates in a Legislative Council election whose members are not endorsed by a registered political party*: \$500,000 (indexed).¹⁵⁸

If a person applies enters into an agreement or arrangement with a third party such that the third party will incur political expenditure in breach of the expenditure cap, the person is guilty of an offence, with a maximum penalty of \$25,000.¹⁵⁹

(d) Northern Territory

The NT caps electoral expenditure as follows (**at the State but not local government level**):

- *Registered party that endorses candidates for election*: 40,000 monetary units multiplied by the number of divisions where a candidate is endorsed

¹⁵⁶ *Electoral Act 1992* (Qld), s 281.

¹⁵⁷ This is the amount agreed between the candidate and the agent of the party (being not more than \$100,000); or if no amount is agreed \$40,000.

¹⁵⁸ *Electoral Act 1985* (SA), s 130Z.

¹⁵⁹ *Electoral Act 1985* (SA), s 130ZC.

- *Candidate not endorsed by any registered party*: 40,000 monetary units.¹⁶⁰

A candidate commits an offence if the candidate intentionally and recklessly incurs expenditure exceeding the cap, with a maximum penalty of 300 penalty units or 18 months' imprisonment, or both.¹⁶¹ A party or associated entity also commits an offence if it intentionally and recklessly incurs expenditure exceeding the cap, with a maximum penalty of 1,500 penalty units.¹⁶²

(e) Australian Capital Territory

The ACT caps electoral expenditure at \$40,000 (indexed from 2016).¹⁶³

(f) Western Australia

Western Australia has introduced a bill that will implement expenditure caps for **State but not local government** elections, which has yet to pass both Houses of Parliament.¹⁶⁴ The bill provides for the following expenditure caps:

Political party:

- *Conjoint election*: \$125,000 x number of regions where the party endorses 1 or more candidates + \$125,000 x number of districts the party endorses a candidate.
- *General election for Council (other than election held as part of conjoint election)*: \$125,000 x number of regions where the party endorses 1 or more candidates.
- *General election for Assembly (other than election held as part of conjoint election)*: \$125,000 x number of Assembly districts in which the party endorses a candidate in the election.
- *By-election*: \$300,000.

Candidate (other than endorsed candidate or candidate in group)

- *General election*: \$125,000.
- *By-election*: \$300,000.

Group (other than party group)

- *General election*: \$125,000.
- *By-election*: \$300,000.

¹⁶⁰ *Electoral Act 2004* (NT), s 203B.

¹⁶¹ *Electoral Act 2004* (NT), s 203C.

¹⁶² *Electoral Act 2004* (NT), s 203C.

¹⁶³ *Electoral Act 1992* (ACT), ss 205D-E.

¹⁶⁴ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SI-SL).

Person (other than political party, candidate or group)

- *Conjoint election or general election:* \$2,000,000.
- *By-election:* \$50,000.

An amount equal to twice the amount by which the electoral expenditure exceeds the expenditure cap will be payable to the State by the political party, candidate, group or person and may be recovered by the State as a debt due to the State.¹⁶⁵

The bill will introduce criminal offences for a contravention of expenditure caps. The maximum penalty for the aggravated offence (i.e. exceeding the expenditure cap by more than 20%) is two years' imprisonment and a maximum fine equal to three times the exceeded amount or \$36,000, if three times the exceeded amount is less than \$36,000.¹⁶⁶ In cases not involving an aggravated offence, the maximum penalty is a fine of an amount equal to twice the exceeded amount or \$24,000, if three times the exceeded amount is less than \$24,000.¹⁶⁷ If a body corporate commits the aggravated offence, it is liable to a fine of five times the maximum fine that could be imposed on a natural person convicted of the same offence.¹⁶⁸

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|---------------------|---|------------------------|
| Commonwealth | | |
| | None | |
| STATES | | |
| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
| Victoria | | |
| State | None | |
| Local | None | |
| NSW | | |
| State | (Parties) Legislative Assembly / Legislative Council - \$122,900 multiplied by the number of electoral districts in which a candidate is so endorsed. (Parties) Legislative Council only - \$1,288,500. (Independent Groups) Legislative Assembly / Legislative Council - \$1,288,500. (Party Candidates) Legislative Assembly - \$122,900. (Independent Candidates) Legislative Assembly - \$184,200. (Candidates) By-election - \$184,200. (Third Party Campaigners) General State election: <ul style="list-style-type: none"> • \$500,000 if the third-party campaigner was registered under the Act before commencement of capped State expenditure period for election; or • \$250,000 in other cases. (Third Party Campaigners) By-election - \$20,000 per by-election. (Party) Individual Assembly Seats, Additional Cap - \$61,500. (Third Party Campaigner) Individual Assembly Seats - \$24,700 for each electoral district. | Part 3 Division 4 s 27 |

¹⁶⁵ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SN).

¹⁶⁶ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SO).

¹⁶⁷ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SO).

¹⁶⁸ Electoral Amendment Bill 2020 (WA), Second Reading Speech.

| | | |
|---------------------|---|--|
| <p>Local</p> | <p>As above for party candidates.</p> <p><i>Candidates and groups (other than groups including mayoral candidates):</i></p> <ul style="list-style-type: none"> • \$6,000— where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or fewer, and • \$10,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 5,000 but fewer than 10,001, and • \$18,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 10,000 but fewer than 20,001, and • \$25,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 20,000 but fewer than 30,001, and • \$36,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 30,000 but fewer than 50,001, and • \$46,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 50,000 but fewer than 75,001, and • \$63,500— where the number of enrolled electors for the local government area or ward concerned for the election is more than 75,000 but fewer than 125,001, and • \$72,000— where the number of enrolled electors for the local government area or ward concerned for the election is more than 125,000. <p><i>Mayoral candidates (and groups including mayoral candidates)</i></p> <ul style="list-style-type: none"> • where the local government area concerned is divided into wards—the sum of the following— <ul style="list-style-type: none"> ○ 100% of the applicable cap for a candidate for election as councillor in a ward of the local government area, ○ 25% of the applicable cap for a candidate for election as councillor in each of the other wards of the local government area, and • where the local government area concerned is not divided into wards— <ul style="list-style-type: none"> ○ 125% of the applicable cap for a candidate for election as a councillor of the local government area (other than a candidate for mayor). <p><i>Third-party campaigners</i></p> <ul style="list-style-type: none"> • one-third of the applicable cap for a candidate for election as councillor (other than mayor) for the local government area or ward election concerned, but if the amount is not a whole number multiple of \$10, the amount is to be rounded up to the nearest whole number multiple of \$10. | |
|---------------------|---|--|

| | | |
|--------------------------|--|----------------------------------|
| Queensland | | |
| State | <ul style="list-style-type: none"> endorsed candidate: \$58,000. independent candidate: \$87,000. party, \$92,000 in any single electorate in which it endorses a candidate. third party, \$87,000 in any single electorate and no more than \$1 million in aggregate. | Part 11 Division 9 subdivision 1 |
| Local | None | |
| Western Australia | | |
| State | Bill introduced proposing expenditure caps. | |
| Local | None | |
| South Australia | | |
| State | <ul style="list-style-type: none"> <i>Registered political party, Legislative Council district only: \$500,000 (indexed).</i> <i>Registered political party that endorses candidates for election in 1 or more House of Assembly districts: \$75,000 (indexed) multiplied by the number of electoral districts in which the party endorses a candidate (as at the hour of nomination) less the sum of the amounts allocated to candidates in accordance with subsection (2) (as at the end of the capped expenditure period in relation to the party for the election); PLUS if the party also endorses candidates for election in the Legislative Council district, \$100,000 (indexed) multiplied by the number of candidates endorsed (as at the end of the capped expenditure period in relation to the party for the election but only up to a maximum of 5).</i> <i>Candidate for election in a House of Assembly district who is endorsed by a registered political party: same as registered political party.</i> <i>Candidate for election in a House of Assembly district not endorsed by a registered political party: \$100,000 (indexed).</i> <i>Candidate in a Legislative Council election not endorsed by a registered political party: \$125,000 (indexed).</i> <i>Group of candidates in a Legislative Council election whose members are not endorsed by a registered political party: \$500,000 (indexed).</i> | Part 13A Division 7 |
| Local | None | |
| Tasmania | | |
| State | Expenditure limit \$17,500 as at 2020 for candidates of the Legislative Council. No expenditure limit in Legislative Assembly. | |
| Local | Expenditure on advertising must not exceed value calculated by formula. | |

TERRITORIES

| Jurisdiction | Summary | Legislation |
|---------------------------|---|----------------------------------|
| Northern Territory | | |
| Territory | <ul style="list-style-type: none"> <i>Registered party that endorses candidates for election: 40,000 monetary units multiplied by the number of divisions where a candidate is endorsed.</i> <i>Candidate not endorsed by any registered party: 40,000 monetary units.</i> Monetary unit \$1.02 (2020-2021) | Part 10 Division 4 subdivision 3 |
| Local | None | |

| | | |
|--|---|-----------------------|
| <u>Australian Capital Territory</u> | | |
| <u>Territory</u> | Amount is capped at \$40,000 (indexed from 2016). | Division 14.2B s 205D |

D *Bans on Donations from Certain Sectors*

Another form of restriction is having bans on donations from certain high risk sectors.

1 *Rationale and Scope of Sector Donations Ban*

Sector donations bans may be justified if there are certain sectors that are perceived to represent a higher risk of corruption or undue influence. In certain Australian jurisdictions, there have been bans of donations from property developers, or the gambling, liquor or tobacco industries. These are higher risk industries as the commercial interests of these industries are directly affected by the exercise of public power, which gives these industries a strong incentive to influence government in their self-interest.

The NSW property developer ban has been ruled as lawful and consistent with the constitutional implied freedom of political communication by the High Court in *McCloy v NSW*.¹⁶⁹ A High Court majority held that the degree of dependence of property developers on decisions of government about the zoning of land and development approvals distinguishes them from actors in other sectors of the economy.¹⁷⁰ Noting that the NSW Independent Commission Against Corruption (“ICAC”) and other bodies have published eight adverse reports between 1990 to 2015 concerning land development applications,¹⁷¹ the High Court remarked that:

Given the difficulties associated with uncovering and prosecuting corruption of this kind, the production of eight adverse reports in this time brings to light the reality of the risk of corruption and the loss of public confidence which accompanies the exposure of acts of corruption.¹⁷²

Therefore, the significant commercial incentives for property developers to influence government decisions and the history of corruption relating to that industry provides justification for specifically regulating property developers as a higher risk industry. The same arguments can be advanced for those in the gambling, liquor and tobacco industries.

¹⁶⁹ *McCloy v New South Wales* (2015) 257 CLR 178, [49]-[50].

¹⁷⁰ *Ibid* [49]-[50].

¹⁷¹ *Ibid* [51].

¹⁷² *Ibid*.

Sector donation bans are less necessary if general yearly donation caps at a low threshold apply to that jurisdiction.

2 Sector Donation Bans in Australia

Bans on donations from specific sectors only exist in **NSW** and **Queensland**.

The **ACT** has introduced legislation seeking to ban gifts and loans from property developers and their close associates in certain circumstances that takes effect from July 2021.

The **Commonwealth, Victoria, Western Australia, South Australia, Tasmania,** and the **NT** do not have sector donation bans.

(a) New South Wales

NSW bans political donations, loans or indirect campaign contributions at **both the State and Local Government level** from (a) property developers; (b) tobacco industry or business entities; (c) liquor or gambling industry business entities, and any close associates of these persons, representatives or entities.¹⁷³

A person may apply to the Electoral Commission for a determination by the Commission that the applicant or another person is not a prohibited donor, which may be later revoked by the Commission.¹⁷⁴ The Commission has to publicly publish the register on a website maintained by the Commission.¹⁷⁵

If a person accepts a political donation, loan or indirect campaign contribution that is unlawful from a prohibited donor, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if the person knew that it was unlawful) is payable by that person to the State and may be recovered by the Electoral Commission as a debt due to the State.¹⁷⁶

(b) Queensland

Queensland bans donations at **both the State and Local Government level** from property developers and industry representative organisations (the majority of whose members are property developers).¹⁷⁷

¹⁷³ *Electoral Funding Act 2018* (NSW), ss 48, 51.

¹⁷⁴ *Electoral Funding Act 2018* (NSW), s 56.

¹⁷⁵ *Electoral Funding Act 2018* (NSW), s 56(6).

¹⁷⁶ *Electoral Funding Act 2018* (NSW), s 58.

¹⁷⁷ *Electoral Act 1992* (Qld), ss 273-9; *Local Government Electoral Act 2011* (Qld), s 113.

A person may apply to the Electoral Commission for a determination by the Commission that the applicant or another person is not a prohibited donor, which may be later revoked by the Commission.¹⁷⁸ These determinations must be published on a public register.¹⁷⁹

The penalty for a person accepting a prohibited donation is an amount twice the value of the prohibited donation if the person knew it was unlawful to accept the prohibited donation, or otherwise equal to the value of the prohibited donation.¹⁸⁰

A person who knowingly makes or accepts a political donation from a prohibited donor (or who ought to have reasonably known) commits an offence, which is a misdemeanour, with a maximum penalty of 400 penalty units (\$53,380) or 2 years' imprisonment.¹⁸¹

It is also a criminal offence to knowingly participate directly or indirectly in a scheme to circumvent prohibitions on particular political donations, with a maximum penalty of 1,500 penalty units (\$200,175) or 10 years' imprisonment.¹⁸²

(d) The ACT

The ACT has introduced legislation seeking to ban gifts and loans from property developers and their close associates in certain circumstances (with effect from July 2021).¹⁸³

The property developer ban only applies when:

- at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
- in the 7-year period before the 1 gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

If an unlawful donation is made to a property developer, the giver of the gift must pay to the ACT government an amount equal to the amount of the gift.¹⁸⁴

¹⁷⁸ *Electoral Act 1992* (Qld), ss 277; *Local Government Electoral Act 2011* (Qld), s 113D.

¹⁷⁹ *Electoral Act 1992* (Qld), ss 279; *Local Government Electoral Act 2011* (Qld), s 113F.

¹⁸⁰ *Electoral Act 1992* (Qld), s 276(1); *Local Government Electoral Act 2011* (Qld), s 113C.

¹⁸¹ *Electoral Act 1992* (Qld), s 307A; *Local Government Electoral Act 2011* (Qld), s 194A.

¹⁸² *Electoral Act 1992* (Qld), s 307B; *Local Government Electoral Act 2011* (Qld), s 194B.

¹⁸³ *Electoral Amendment Act 2020* (ACT), s 11.

¹⁸⁴ *Electoral Amendment Act 2020* (ACT), s 11.

3 Summary Table of Sector Donation Bans in Australia

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|-------------------------------------|--|---|
| Commonwealth | | |
| | None | |
| STATES | | |
| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
| Victoria | | |
| | None | |
| NSW | | |
| | Unlawful for party/candidates to make or accept donations to candidates that are NOT endorsed by said party. | Part 3 Division 6 s 48 |
| | No donations are accepted from: <ul style="list-style-type: none"> - Property developers - Tobacco industry business entity - Liquor or gambling industry entity The prohibition extends to representatives of the organisations. | Part 3 Division 6 s 51 |
| | It is unlawful for a prohibited donor to make a donation or solicit another to make the donation. | Part 3 Division 6 s 52 |
| Queensland | | |
| | No donations are accepted from: <ul style="list-style-type: none"> - Property developers The prohibition extends to representatives of the organisations the majority of whose members are property developers. | Part 11 Division 8 sub division 4 (s 273) |
| Western Australia | | |
| | None | |
| South Australia | | |
| | None | |
| Tasmania | | |
| | None | |
| TERRITORIES | | |
| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
| Northern Territory | | |
| | None | |
| Australian Capital Territory | | |
| | With effect from July 2021, ban gifts and loans from property developers and their close associates if: <ul style="list-style-type: none"> - at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or - in the 7-year period before the 1 gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications. | S 11 |

E *Foreign Donations Bans*

Another type of regulation is a ban on foreign donations, that is, a prohibition on donations from foreign individuals or entities.

1 *Rationale of Foreign Donation Bans*

The rationale for banning foreign donations is to stop the threat of foreign interests undermining Australian democracy.¹⁸⁵ This type of ban is founded in the concern that citizens should be aware when their elected officials are being influenced by actors whose primary interests do not lie in the overall health of their political processes. In other words, decisions regarding the direction of one's nation should be driven by those who will ultimately be affected by those decisions: citizens and residents. The language often employed is that of preserving a country's self-determination and national sovereignty.¹⁸⁶ Two-thirds of countries internationally ban foreign political donations, including comparable liberal democracies such as the UK, US and Canada.¹⁸⁷

Banning foreign donations enhances public integrity by reducing the ability of foreign entities to influence Australian policy and decision-making. In turn, this will reduce both actual corruption and the perception of corruption in politics. Ultimately, this may improve public confidence in the Australian political system.

2 *Scope of Foreign Donation Bans*

Tham identified several criteria used in restrictions for foreign donations: foreign geographical source (e.g. bans on gifts of foreign property), the legal right to vote (e.g. restricting donations to those who are on the electoral roll); migrant status (e.g. restricting donations to those who are citizens or permanent residents); and business connection (e.g. having a business link through a business registered in the jurisdiction).¹⁸⁸

In Australia, limiting donations based on the legal right to vote is not possible, as a law restricting donations to those who are on the electoral roll (thus excluding

¹⁸⁵ See Joo-Cheong Tham, 'Of Aliens, Money and Politics: Should Foreign Political Donations be Banned?' (2017) 28(2) *King's Law Journal* 262; Graeme Orr, 'Is My Foreign Yours? The Concept of Foreignness in the Regulation of Political Finance' (2019) 55(2) *Representation* 179.

¹⁸⁶ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Second Interim Report on the Inquiry into the Conduct of the 2016 Federal Election: Foreign Donations* (2017) ix.

¹⁸⁷ According to the International IDEA Political Finance Database, 112 out of 180 countries ban foreign political donations. See <<https://www.idea.int/data-tools/question-view/527>>.

¹⁸⁸ Tham, 'Of Aliens, Money and Politics: Should Foreign Political Donations be Banned?' (n 185) 266-7.

corporations, unions and non-citizens from donating) was struck down as breaching the implied freedom of political communication in the *Constitution*.¹⁸⁹

The Commonwealth, Victoria and NSW have adopted approaches based on a combination of migrant status (Australian citizenship and permanent residence), and business connection (having a business link with Australia through an Australian Business Number (ABN)). On the other hand, Queensland has imposed a ban based on geographical source, in disallowing the receipt of foreign gifts.

Nevertheless, these bans can be circumvented by a foreign individual or entity channelling money through an Australian citizen or permanent resident, or through an Australian business.

3 Foreign Donation Bans in Australia

Bans on foreign donations only exist in the **Commonwealth, Victoria and NSW. Queensland** bans gifts of foreign property.

Western Australia has introduced a bill banning foreign donations in 2020, which has yet to pass both Houses of Parliament.¹⁹⁰

South Australia, Tasmania, NT and ACT do not have provisions regarding foreign donations in their relevant electoral legislation.

(a) Commonwealth

Most foreign donations are banned at Commonwealth level, although the amounts differ depending on the circumstances. Firstly, donations of more than \$1,000 to *third parties* from foreign donors that are used for the purposes of incurring electoral expenditure or for the dominant purpose of creating or communicating an electoral matter are considered unlawful unless the recipient takes acceptable action.¹⁹¹

In addition, donations of more than \$100 to *third parties, political entities, or financial controllers of campaigners* from foreign donors where the gift recipient knows that the donor intended the donation to be used for incurring electoral expenditure or for the dominant purpose of creating or communicating an

¹⁸⁹ *Unions NSW v New South Wales* (2019) 363 ALR 1, striking down s 96D of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW).

¹⁹⁰ Electoral Amendment Bill 2020 (WA).

¹⁹¹ *Commonwealth Electoral Act 1918* (Cth), ss 217A, 302D, 302E. Acceptable action means transferring donation to the Commonwealth, returning donation to donor, or returning amount equal to the gift back to donor.

electoral matter, or accepts the donation intending to use the donation in such a way are also considered unlawful unless the recipient takes acceptable action.¹⁹²

Foreign donors are defined as foreign governments, foreign public enterprises and entities and foreign entities that are not incorporated in Australia or without a head office or principal place of activity in Australia.¹⁹³ Certain New Zealand citizens and Australian permanent residents are excluded from the category of foreign donor, as are Australian citizens and Australian-based entities.¹⁹⁴

The Australian federal foreign donations ban is broader than many other comparable jurisdictions as it extends beyond electioneering, to political campaigning more generally, and ‘seeks to limit the ability of locally-based third parties, like lobby groups and charities, from sourcing funds overseas for any significant advocacy campaign that might impact electoral behaviour’, and seeks to disallow foreign money flowing to these third party groups.¹⁹⁵

(b) Victoria

Foreign donations are also banned in Victoria (**at the State but not local government level**), which requires donors to either be an Australian citizen or resident (where a natural person) or have a relevant business number (where not a natural person).¹⁹⁶

(c) New South Wales

Similarly, donations ‘must have a legitimate link with Australia’ in NSW (**at the State but not local government level**), which requires donors to either be enrolled (State/Federal/Local Government elections), or if not enrolled, supplied full name and Australian residential address to the NSWEC, or where an entity, provided a relevant business number (ABN or similar) or the name and Australian residential address of the principal or executive officer to the NSWEC.¹⁹⁷

¹⁹² *Commonwealth Electoral Act 1918* (Cth), ss 302F. Acceptable action means transferring donation to the Commonwealth, returning donation to donor, or returning amount equal to the gift back to donor.

¹⁹³ *Commonwealth Electoral Act 1918* (Cth), s 287AA.

¹⁹⁴ New Zealand citizens holding a Subclass 444 (Special Category) visa under the *Migration Act 1958* (Cth) are not classified as foreign donors. *Ibid.*

¹⁹⁵ Graeme Orr, *The Law of Politics: Elections, Parties and Money in Australia* (2nd ed, Federation Press, 2018) 187.

¹⁹⁶ *Electoral Act 2002* (Vic), s 217A.

¹⁹⁷ *Electoral Funding Act 2018* (NSW), s 46.

(d) Queensland

Queensland bans gifts of foreign property (**at the State but not local government level**).¹⁹⁸

If an unlawful foreign gift is received, the equal amount to the value of the gift must be repaid by the recipient, whether it is the political party, an agent of the political party or the candidate or their agent.¹⁹⁹

(e) Western Australia

Western Australia has introduced a bill banning foreign donations in 2020 (**at the State but not local government level**).²⁰⁰ The bill makes it unlawful for a political party, candidate, group or their representatives, to accept a political donation unless the donor is an Australian citizen or permanent resident, or has a relevant ABN.²⁰¹

If an unlawful foreign gift is received, the equal amount to the value of the gift must be repaid by the recipient, whether it is the political party, an agent of the political party or the candidate or their agent.²⁰²

At the time of writing, the Bill had passed the Lower House of Parliament.²⁰³

4 Summary of Foreign Donation Bans in Australia

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|---------------------|--|--------------------|
| Commonwealth | | |
| | Foreign donors are limited to gifts of <\$1,000. | Part XX s 302E |
| | Foreign donors are limited to \$100 on electoral expenditure. | |
| STATES | | |
| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
| Victoria | | |
| State | Donations must be by: <ul style="list-style-type: none"> - Australian Citizen/Resident OR - Holder of a relevant business number (in case of a non-natural person). | S 217A |

¹⁹⁸ *Electoral Act 1992* (Qld), ss 267-70.

¹⁹⁹ *Electoral Act 1992* (Qld), s 270.

²⁰⁰ Electoral Amendment Bill 2020 (WA).

²⁰¹ Electoral Amendment Bill 2020 (WA), cl 13.

²⁰² Electoral Amendment Bill 2020 (WA), cl 13(5).

²⁰³ Western Australia Parliament, *Electoral Amendment Bill 2020 Inquiry* (2020)

<[https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(EvidenceOnly\)/12BC282183799A06482585E0002379A1?opendocument](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/12BC282183799A06482585E0002379A1?opendocument)>.

| | | |
|-------------------------------------|---|----------------------------|
| Local | None | |
| NSW | | |
| State | Donations must be by: <ul style="list-style-type: none"> - An individual enrolled on the electoral roll OR - has supplied to the electoral commission identification showing the individual's name and Australian residential address OR - Holder of a relevant business number (in case of a non-natural person). | Part 3 Division 6 s 46 (1) |
| Local | None | |
| Queensland | | |
| State | Candidates and political parties are not permitted to receive donations or gifts of foreign property is prohibited. | Part 3 Division 6 s 46 (1) |
| Local | None | |
| Western Australia | | |
| State | A bill banning foreign donations has been introduced. | |
| Local | None | |
| South Australia | | |
| State | None | |
| Local | None | |
| Tasmania | | |
| State | None | |
| Local | None | |
| TERRITORIES | | |
| Jurisdiction | Summary | Legislation |
| Northern Territory | | |
| Territory | None | |
| Local | None | |
| Australian Capital Territory | | |
| Territory | None | |
| Local | None | |

F Political Funding Streams and Funding Rates

Another key element of electoral regulation is determining political funding streams and funding rates. The question is what the balance should be between public and private funding. As discussed in Part II, private funding from large donors such as individuals and corporations poses the risk of corruption and undue influence. Public funding, on the other hand, represents 'clean', 'no strings attached' money from the State.

1 Rationale of Public Funding

There are several reasons to publicly fund political parties. The first is to ensure parties are adequately resourced in an era of declining party membership and increasingly expensive political campaigns.²⁰⁴

Another reason to publicly fund political parties is to enhance political integrity and equality. As Briffault stated:

Public funding is necessary to bring our campaign finance system more in line with our central value of political equality ... Public funding can break the tie between private wealth and electoral influence while simultaneously supplementing campaign resources. Money from the public fisc comes from everyone and, thus, from no one in particular.²⁰⁵

Ideally, public funding, particularly if accompanied by spending limits, will reduce party dependence on rich donors.²⁰⁶

A further aim of public funding is also to provide fairer contests than would occur if private sources alone funded parties and candidates,²⁰⁷ thus enhancing the freedom to engage in the political process.²⁰⁸ As Minister Beazley explained:

Ensuring meaningful access to the public arena may require compensating steps, such as public funding so that the electoral contest is open to 'worthy parties and candidates [that] might not [otherwise] be able to afford the considerable sums necessary to make their policies known'.²⁰⁹

However, it has been suggested that public funding may potentially 'risk corrosion of the internal vitality of parties as forums for political participation', as overreliance on an external form of funding (whether by donors or public funding) may 'exacerbate the atrophy of parties' grassroots connections'.²¹⁰ This has led Ewing to suggest that public funding should be used to 'encourage parties to recruit, retain and engage members and supporters', applicable to all parties that 'represent significant sections

²⁰⁴ Graeme Orr, 'Putting the Cartel before the House? Public Funding of Parties in Queensland' in Anika Gauja and Marian Sawyer (eds), *Party Rules?: Dilemmas of Political Party Regulation in Australia* (ANU Press, 2016) 123.

²⁰⁵ Richard Briffault, 'Public Funding and Democratic Elections' (1999) 148 *University of Pennsylvania Law Review* 563, 577–8.

²⁰⁶ Queensland Electoral and Administrative Review Committee, *Investigation of Public Registration of Political Donations* (1992) paras 4.9, 4.15.

²⁰⁷ *Tham Money and Politics* (n 4) 22.

²⁰⁸ *Ibid* 127.

²⁰⁹ Commonwealth, House of Representatives (1983) Parliamentary Debates, Kim Beazley, 2nd Reading Speech to Commonwealth Electoral Legislation Amendment Bill 1983, 2215.

²¹⁰ Graeme Orr, 'Full Public Funding: Cleaning up Parties or Parties Cleaning Up?' in Jonathan Mendilow and Edward Eric Phélippeau (eds), *Handbook of Political Party Funding* (Edward Elgar Publishing, 2018) 84, 96.

of the community', and 'linked to requirements they operate democratic internal procedures'.²¹¹

2 Public Funding Rates

Public funding for elections in Australia has typically been available on a 'dollars per vote' basis, i.e. a fixed-dollar amount for every first preference vote received subject to a minimum vote share, and is thus proportional to electoral support.²¹²

There is a question as to the appropriate level and rate of public funding of elections in Australia. To be most effective in its objectives of limiting the influence of funds from donors, ideally public funding should be combined with caps on electoral expenditure, in which case public funding can be set at a higher rate. Without caps on electoral expenditure, public funding will not be effective in dampening the parties' desire for money to fund expensive campaigns.²¹³

Whilst the preponderant model is a set-amount-per-vote-received,²¹⁴ South Australia has adopted a different approach, by paying a 'higher fixed-dollar amount for the first tranche of the vote a party attracts, than for the rest of the vote share it wins'.²¹⁵ As Orr argues:

This provides an element of affirmative action, because it weights public funding towards minor parties. Such parties, being less likely to wield executive power, attract fewer wealthy or corporate donors.²¹⁶

The level of public funding for national parties covers about half of election campaign

²¹¹ Ewing (n 4).

²¹² There are other mechanisms of indirect funding of elections. One involves income tax deductions for donations— a federal rule to encourage smaller-scale donations as a form of political participation and help ensure parties are adequately funded: *Income Tax Assessment Act 1997* (Cth), Div 30-DA. However, Tham has argued that tax subsidies are inefficient and inequitable, as the eligibility for tax deductions is not based on the size of the contribution and membership of a political party, and discriminates against those who do not have to pay tax. In addition, tax relief benefits the wealthier sections of society. Tham, *Money and Politics* (n 4) 138-9. Another mechanism, which regulated political advertising during election campaigns, and required broadcasters to broadcast political advertisements free of charge at other times, was struck down as infringing the implied freedom of political communication in the Australian *Constitution*. *Australian Capital Television v Commonwealth* (1992) 177 CLR 106.

²¹³ Graeme Orr, 'Party Finance Law in Australia: Innovation and Elevation' (2016) 15 *Election Law Journal* 58.

²¹⁴ Another involves an equalitarian model, no longer adopted in Australian jurisdictions, where each registered party, large or small, receives funding on a sliding scale. The scale varies, so that the first 10 per cent of expenditure up to the cap on campaign costs is fully reimbursed. The next 80 per cent of spending is reimbursed at 75 per cent of full value. The last 10 per cent is reimbursed at a half rate. Such scales have previously been used in New South Wales and Queensland. Orr, 'Full Public Funding: Cleaning up Parties or Parties Cleaning Up?' (n 210) 92.

²¹⁵ *Ibid.*

²¹⁶ *Ibid* 92.

costs, and does not offer any annual 'administrative' funding for parties.²¹⁷ By contrast, in several other jurisdictions such as the ACT, NSW and Queensland, the level of public funding now approaches full funding of election campaigns.²¹⁸

On top of this, several States such as NSW, Victoria, Queensland and South Australia also provide annual funding for parties, through an administration fund or policy development fund.

To avoid political parties deriving a benefit, funding must be linked to actual electoral expenditure; otherwise there is a risk of profiteering from public funding. For example, candidates associated with Pauline Hanson, leader of the One Nation Party received almost \$200,000 in election funding for the 2007 federal election but only spent \$35,427 on campaigning: the implication is that the difference was 'pocketed' by Hanson.²¹⁹ This loophole has since been rectified at the federal level.

4 Public Funding in Australia

Public funding to political parties exists in the **Commonwealth, Victoria, Western Australia, South Australia, NSW, Queensland** and the **ACT**.

There is **no public funding at the local government** level in all jurisdictions.

Tasmania and the **NT** do not provide public funding.

(a) Commonwealth

The Commonwealth provides election funding for registered political parties, endorsed candidates and unendorsed candidates of \$2.73454 per first preference vote.²²⁰

Automatic election funding of \$10,000 (as indexed) is payable in relation to any candidate who received more than 4% of the total first preference votes cast in the election.²²¹ Election funding is paid as soon as practicable 20 days after the polling day for the election or elections. However, a claim must be made for election funding of more than \$10,000 to be paid.²²²

²¹⁷ Ibid 124-5.

²¹⁸ The ACT scheme is so generous that the public funding at the 2016 ACT election equated to between 82 and 97 per cent of the campaign costs incurred by the major parties at the previous election. This is even higher than the minimum 80 per cent share of campaign costs guaranteed by the sliding scale scheme, which applies in New South Wales and Queensland. Ibid 124-5.

²¹⁹ Tham, *Money and Politics* (n 4) 134.

²²⁰ *Commonwealth Electoral Act 1918* (Cth), ss 293-5.

²²¹ *Commonwealth Electoral Act 1918* (Cth), s 296.

²²² *Commonwealth Electoral Act 1918* (Cth), s 297.

The amount of election funding is worked out by reference to the number of formal first preference votes received by the candidate. However, for an amount of election funding that is more than \$10,000 (as indexed), the amount is capped at the amount of actual expenditure incurred by the candidate or the registered political party endorsing the candidate.²²³

(b) Victoria

In Victoria (**at the State but not local government level**), for candidates who achieve at least 4% of total first preference votes, the sum of \$1.20 is payable for each first preference vote given for a candidate in the election held on 24 November 2018.²²⁴ The sum of \$6 is payable for each first preference vote given for a candidate for election to the Assembly in an election held after 24 November 2018, while \$3 is payable for each first preference vote given for a candidate for election to the Council.²²⁵

An eligible registered political party is entitled to an annual payment of policy development funding equal to the greater of the sum of \$1.00 for each first preference vote given for a candidate who was endorsed by the registered political party at the previous general election or \$25,000.²²⁶

In addition, independent elected members and registered political parties are eligible to receive an annual amount of administrative expenditure funding as follows—

- for an independent elected member, an amount of \$200,000;
- for a registered political party, an amount of—
 - \$200,000 for the first elected member; and
 - \$70,000 for the second elected member; and
 - \$35,000 for each of the third to the forty-fifth elected members.

(c) New South Wales

In NSW (**at the State but not local government level**), candidates or parties in an election who received more than 6% of the total first preference votes cast in the election are eligible for election funding.²²⁷

²²³ *Commonwealth Electoral Act 1918* (Cth), s 298.

²²⁴ *Electoral Act 2002* (Vic), s 211.

²²⁵ *Electoral Act 2002* (Vic), s 211.

²²⁶ *Electoral Act 2002* (Vic), s 215A.

²²⁷ *Electoral Funding Act 2018* (NSW), ss 67-8.

For eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding), the amount of funding is the lesser of:

- \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or
- the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party.²²⁸

For parties eligible for payments, the amount of funding is the lesser of:

- \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or
- the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party.²²⁹

If a party is eligible for payments because it meets the eligibility criteria in the periodic Council election but not the Assembly general election, the amount of funding is:

- in the case of a party that had 10 or more endorsed candidates in the Assembly general election—the amount under subsection (1)(a) is to include \$4 for each first preference vote in relation to the Assembly general election (in addition to \$3 for each first preference vote in relation to the periodic Council election), or
- in any other case—the amount under subsection (1)(a) is to be calculated at the rate of \$4.50 (instead of \$3) for each first preference vote in relation to the periodic Council election (and by excluding any votes received in the Assembly general election).²³⁰

In NSW, political parties with at least one MP and independent elected members are also eligible for public funding to a party 'Administration Fund' and payments are made to parties without MPs, based on their vote share, under a 'New Parties Fund'.

Parties are eligible for a quarterly amount to be distributed from the Administration Fund to the amount of the actual administrative expenditure incurred by or on behalf of the party during the quarter to which the payment relates, but not exceeding—

²²⁸ *Electoral Funding Act 2018 (NSW)*, s 69.

²²⁹ *Electoral Funding Act 2018 (NSW)*, s 67.

²³⁰ *Electoral Funding Act 2018 (NSW)*, s 67.

- \$87,500 if there is only one elected member endorsed by the party, or
- \$150,000 if there are only 2 elected members endorsed by the party, or
- \$187,500 if there are only 3 elected members endorsed by the party, or
- \$187,500 if there are more than 3 elected members endorsed by the party plus \$30,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.²³¹

Independent members are entitled to public funding for administrative expenditure.²³² The quarterly amount to be distributed from the Administration Fund to any such eligible elected independent member is the amount of actual administrative expenditure incurred by or on behalf of the elected member during the quarter to which the payment relates, but not exceeding \$56,450.²³³

Parties that are not eligible for payments from the Administration Fund are, eligible for annual payments, on a calendar year basis, from the New Parties Fund.²³⁴ The funding is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the relevant maximum amount of payment in relation to the party.²³⁵ The relevant maximum amount of an annual payment in relation to an eligible party is 63 cents for each first preference vote received by any candidate at the previous State election who was endorsed by the party.²³⁶ The relevant maximum amount is zero if no such first preference votes were received.²³⁷ During the first eight calendar years after a party first becomes a registered party, the relevant maximum amount is \$12,300 if the amount referred to in subsection (4) is less than \$12,300.²³⁸

(d) Queensland

In Queensland (**at the State but not local government level**), for a candidate or party in an election who received more than 6% of the total first preference votes cast in the election is entitled to election funding.²³⁹

The amount of election funding to which the party or candidate is entitled is the lesser of—

²³¹ *Electoral Funding Act 2018* (NSW), s 87.

²³² *Electoral Funding Act 2018* (NSW), s 89.

²³³ *Electoral Funding Act 2018* (NSW), s 89.

²³⁴ *Electoral Funding Act 2018* (NSW), s 93.

²³⁵ *Electoral Funding Act 2018* (NSW), s 93.

²³⁶ *Electoral Funding Act 2018* (NSW), s 93.

²³⁷ *Electoral Funding Act 2018* (NSW), s 93.

²³⁸ *Electoral Funding Act 2018* (NSW), s 93.

²³⁹ *Electoral Act 1992* (Qld), ss 223-4.

- the amount of electoral expenditure claimed in relation to the registered political party for all elections held that day; and accepted by the commission, or
- the election funding amount for each formal first preference vote given for a candidate, calculated as follows:
 - if the entity entitled to the funding is a registered political party— \$2.90; or
 - if the entity entitled to the funding is a candidate— \$1.45; or
 - for each subsequent financial year, the election funding amount is adjusted for each financial year on 1 July to 3 decimal places using the formula—

$$\frac{A \times B}{C}$$

C

where—

A is the election funding amount immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.²⁴⁰The amount cannot be lower than a previous year.²⁴¹

In Queensland, a 'Policy Development' pool of \$3 million is distributed annually to all parties with at least one MP.²⁴² A registered political party is eligible for a policy development payment of the amount worked out using the following formula—

$$\frac{A \times B}{C}$$

C

where—

A is the amount prescribed under a regulation for this definition.

B is the total number of formal first preference votes given to each relevant candidate endorsed by the political party in the last general election occurring in or before the financial year (the last election).

C is the total number of formal first preference votes given to all relevant candidates endorsed by eligible registered political parties in the last general election.²⁴³

²⁴⁰ *Electoral Act 1992* (Qld), s 225.

²⁴¹ *Electoral Act 1992* (Qld), s 225.

²⁴² Orr, 'Full Public Funding: Cleaning up Parties or Parties Cleaning Up?' (n 210) 93.

²⁴³ *Electoral Act 1992* (Qld), s 240.

(e) Western Australia

In **Western Australia** (at the **State but not local government level**), election funding reimbursement is \$1.39413 per eligible vote (indexed).²⁴⁴

(f) South Australia

In **South Australia** (at the **State but not local government level**), election funding for each eligible vote given to the candidate or group that falls within the range of 0% to 10% of the total primary vote is \$3.50 (indexed); and for each eligible vote given to the candidate or group that falls within the range of 10.01% to 100% of the total primary vote is \$3.00 (indexed).²⁴⁵

The Act provides for special assistance funding to be paid on a half yearly basis to compensate political parties for the cost of complying with the reporting obligations in the funding, expenditure and disclosure scheme.²⁴⁶ It also allows for an additional one-off amount of special assistance funding to be paid to registered political parties to assist with the initial costs associated with complying with the funding, expenditure and disclosure scheme.²⁴⁷ For parties with five or fewer members, the one-off payment is up to a maximum of \$56,000. For parties with six or more members, the one-off payment is up to a maximum of \$96,000.²⁴⁸

(g) Tasmania

In **Tasmania** (at **both State and local government level**), there is no public funding for elections.

(h) Northern Territory

In the **Northern Territory** (at **both Territory and local government level**), there is no public funding for elections.

(i) Australian Capital Territory

In the **Australian Capital Territory**, a prescribed amount is payable for each eligible vote cast for a candidate or party in an election who received more than 4% of the total first preference votes cast in the election. The prescribed amount

²⁴⁴ *Electoral Act 1907* (WA), s 175LC.

²⁴⁵ *Electoral Act 1985* (SA), s 130P.

²⁴⁶ *Electoral Act 1985* (SA), s 130U.

²⁴⁷ *Electoral Act 1985* (SA), s 130UA.

²⁴⁸ Second Reading Speech, Electoral (Funding, Expenditure and Disclosure) Amendment Bill 2016.

for an election held in the 6-month period beginning on 1 July 2016 is \$8 (indexed).²⁴⁹

4 Summary of Public Funding

| Jurisdiction | Summary | Legislation |
|---------------------|--|----------------------------------|
| Commonwealth | | |
| | Election funding for registered political parties, endorsed candidates and unendorsed candidates. (\$2.73454 per first preference vote) Automatic election funding for candidates with more than 4% of first preference votes= \$10,000. Claim needed for electoral expenditure above \$10,000. | Part XX Division 3 Subdivision A |

STATES

| Jurisdiction | Summary | Legislation |
|---------------------|---|---------------------|
| Victoria | | |
| State | For candidates with more than 4% of first preference votes: (2) The sum of \$1.20 is payable for each first preference vote given for a candidate in the election held on 24 November 2018. (2A) The sum of: (a) \$6 is payable for each first preference vote given for a candidate for election to the Assembly in an election held after 24 November 2018 (b) \$3 is payable for each first preference vote given for a candidate for election to the Council in an election held after 24 November 2018. (2) An eligible registered political party is entitled to an annual payment of policy development funding equal to the greater of— (a) the sum of \$1.00 for each first preference vote given for a candidate who was endorsed by the registered political party at the previous general election; or (b) \$25,000. Independent elected members and registered political parties are eligible to receive an annual amount of administrative expenditure funding. | Part 12 Division 1C |
| Local | None | |
| NSW | | |
| State | For eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding), the amount of funding is the lesser of: <ul style="list-style-type: none"> • \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or • the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party. | Part 4 S67(1) |

²⁴⁹ *Electoral Act 1992 (ACT)*, s 207-8.

| | | |
|--------------|--|----------------------------------|
| | <p>For parties eligible for payments, the amount of funding is the lesser of:</p> <ul style="list-style-type: none"> • \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or • the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party. <p>If a party is eligible for payments because it meets the eligibility criteria in the periodic Council election but not the Assembly general election—</p> <p>(a) in the case of a party that had 10 or more endorsed candidates in the Assembly general election—the amount under subsection (1)(a) is to include \$4 for each first preference vote in relation to the Assembly general election (in addition to \$3 for each first preference vote in relation to the periodic Council election), or</p> <p>(b) in any other case—the amount under subsection (1)(a) is to be calculated at the rate of \$4.50 (instead of \$3) for each first preference vote in relation to the periodic Council election (and by excluding any votes received in the Assembly general election).</p> <p>Political parties with at least one MP and independent elected members are also eligible for public funding to a party 'Administration Fund' and payments are made to parties without MPs, based on their vote share, under a 'New Parties Fund'.</p> | <p>Part 4 S67(1) (2)</p> |
| Local | None | |

| | | |
|-------------------|--|----------------------|
| Queensland | | |
| State | <p>(i) if the entity entitled to the funding is a registered political party— \$2.90; or</p> <p>(ii) if the entity entitled to the funding is a candidate— \$1.45; or</p> <p>(b) for each subsequent financial year, the amount worked out (to 3 decimal places) under subsection (2).</p> <p>(2) The election funding amount is adjusted for each financial year on 1 July using the formula—</p> $\frac{A \times B}{C}$ <p>where—</p> <p>A is the election funding amount immediately before 1 July in a year.</p> <p>B is the CPI number published for the March quarter in the year.</p> <p>C is the CPI number published for the March quarter in the previous year.</p> <p>3) amount cannot be lower than a previous year.</p> <p>A registered political party is eligible for a policy development payment of the amount worked out using the following formula—</p> $\frac{A \times B}{C}$ <p>where—</p> <p>A is the amount prescribed under a regulation for this</p> | <p>Part 11 s 225</p> |

| | | |
|--------------------------|---|--|
| | <p>definition.</p> <p>B is the total number of formal first preference votes given to each relevant candidate endorsed by the political party in the last general election occurring in or before the financial year (the last election).</p> <p>C is the total number of formal first preference votes given to all relevant candidates endorsed by eligible registered political parties in the last general election.</p> | |
| Local | None | |
| Western Australia | | |
| State | Election funding reimbursement is \$1.39413 per eligible vote - indexed. | Part VI Division 2A |
| Local | None | |
| South Australia | | |
| State | <p>(a) for each eligible vote given to the candidate or group that falls within the range of 0% to 10% of the total primary vote—\$3.50 (indexed);</p> <p>(b) for each eligible vote given to the candidate or group that falls within the range of 10.01% to 100% of the total primary vote—\$3.00 (indexed).</p> <p>Special assistance funding to be paid on a half yearly basis to compensate political parties for the cost of complying with the reporting obligations in the funding, expenditure and disclosure scheme.</p> <p>Additional one-off amount of special assistance funding to be paid to registered political parties to assist with the initial costs associated with complying with the funding, expenditure and disclosure scheme</p> | <p>Part 13A Division 4</p> <p>S 130U</p> <p>S130UA</p> |
| Local | None | Part 14 Division 1 |
| Tasmania | | |
| State | None | |
| Local | None | |

TERRITORIES

| Jurisdiction | Summary | Legislation |
|-------------------------------------|---|----------------------------------|
| Northern Territory | | |
| Territory | None | Part 10 Division 4 subdivision 2 |
| Local | None | |
| Australian Capital Territory | | |
| Territory | <p>(2) The prescribed amount is—</p> <p>(a) for an election held in the 6-month period beginning on 1 July 2016—\$8; and</p> <p>(b) for an election held in a subsequent 6-month period—the prescribed amount for the period worked out under this section.</p> | Division 14.3 S 207 (2) |

G Indexation

Another factor in political finance regulation is indexation of funding, expenditure or capped amounts.

1 Rationale of Indexation

Indexation of funding, expenditure or capped amounts is required to adjust for inflation and the consumer price index (CPI), and to ensure that funding amounts do not become obsolete.

2 Indexation in Australia

Indexation exists in the **Commonwealth, Victoria, New South Wales, Western Australia, South Australia** and the **ACT**.

There is no indexation in the **NT**.

(a) Commonwealth

The Commonwealth, there is indexation of *public funding* and the *disclosure threshold*.

Public Funding

For indexation of Election Funding (only where the index factor is more than 1): the election funding amount is multiplied by the index factor (calculated to 3 decimal places).²⁵⁰

Disclosure Threshold

For the indexation of disclosure threshold (only where the index factor is more than 1): the relevant amount is multiplied by the index factor for the indexation year (rounded to the nearest \$100).²⁵¹

The indexation factor for the indexation year is the amount worked out using the following formula:

$$\frac{\text{March index amount for the previous financial year}}{\text{March index amount for the year before the previous financial year}}$$

²⁵⁰ *Commonwealth Electoral Act 1918* (Cth), s 321.

²⁵¹ *Commonwealth Electoral Act 1918* (Cth), s 321A.

Index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.²⁵²

(b) Victoria

In Victoria (**at the State but not local government level**), the following amounts are indexed: *Donation Caps, Small Contributions, Administrative Expenditure Funding, Public Funding, Policy Development Funding, Disclosure Threshold, Anonymous Donation Limit.*

All amounts in dollars specified must be varied, in respect of the financial year beginning on 1 July 2019 and each subsequent financial year, in accordance with the formula

$$A \times \frac{B}{C} \text{ where—}$$

A is the amount specified in column 2, or if that amount has been previously indexed, then the amount as last so varied.

B is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.²⁵³

(c) New South Wales

In NSW (**at the State but not local government level**), the following amounts are indexed: *Donations Caps, Expenditure Caps, Public Funding, Administrative Funding and New Parties Fund.*

Donation Caps

For the 2018-2019 financial year, the indexed amount is calculated by multiplying the adjustable amounts by the annual increase in the CPI during the previous financial year.²⁵⁴

²⁵² *Commonwealth Electoral Act 1918* (Cth), s 321.

²⁵³ *Electoral Act 2002* (Vic), s 217Q.

²⁵⁴ *Electoral Funding Act 2018* (NSW), sch 1, cl 2.

For subsequent financial years, the indexed amount is calculated by multiplying the adjustable amounts that applied for the previous financial year by the annual increase in the CPI during that previous financial year.²⁵⁵

Expenditure Caps

For the 2018-2019 financial year, each of the adjustable amounts applies for the first election period that is current when the provision commences and is then to be adjusted for inflation for subsequent election periods as provided by this clause.²⁵⁶

For subsequent financial years, the adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the CPI during that previous election period.²⁵⁷

Public Funding

For the 2019 State general election, the adjustable amounts are determined by multiplying the adjustable amounts specified by the increase in the CPI during the election period commencing on the date of the return of the writs of the 2015 State general election and ending on the date of the return of the writs of the 2019 State general election.²⁵⁸

For subsequent election periods, the adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the CPI during the previous election period.²⁵⁹

Administrative Funding and New Parties Fund

The adjustable amounts for the 2019 calendar year are determined by multiplying the adjustable amounts specified by the annual increase in the CPI during the previous calendar year.²⁶⁰

The adjustable amounts that are to apply for a subsequent calendar year are to be determined by multiplying the adjustable amounts that applied for the previous

²⁵⁵ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 2.

²⁵⁶ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 3.

²⁵⁷ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 3.

²⁵⁸ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 4.

²⁵⁹ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 4.

²⁶⁰ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 5.

calendar year by the annual increase in the CPI during that previous calendar year.²⁶¹

For all amounts, the annual increase in the CPI during a calendar year is to be calculated as:

$\frac{B}{A}$ where—

A

A is the CPI number for the last quarter for which such a number was published before the start of the calendar year.

B is the CPI number for the last quarter for which such a number was published before the end of the calendar year.

If $\frac{B}{A}$ is less than 1 (as a result of deflation), $\frac{B}{A}$ is deemed to be 1.²⁶²

(d) Queensland

In Queensland (**at the State but not local government level**), *public funding* and *expenditure caps* are indexed.

Public Funding

The election funding amount for each formal first preference vote given for a candidate, calculated as follows:

- if the entity entitled to the funding is a registered political party— \$2.90; or
- if the entity entitled to the funding is a candidate— \$1.45; or
- for each subsequent financial year, the election funding amount is adjusted for each financial year on 1 July to 3 decimal places using the formula—

$$\frac{A \times B}{C}$$

where—

A is the election funding amount immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.²⁶³

The amount cannot be lower than a previous year.²⁶⁴

²⁶¹ *Electoral Funding Act 2018 (NSW)*, sch 1, cl 5.

²⁶² *Electoral Funding Act 2018 (NSW)*, sch 1, cl 2-5.

²⁶³ *Electoral Act 1992 (Qld)*, s 225.

²⁶⁴ *Electoral Act 1992 (Qld)*, s 225.

Expenditure Caps

The amount of an election participant's expenditure cap for an election is adjusted 30 days after the polling day for a general election and as adjusted applies for each election that is held until the amount is next adjusted.

The election participant's expenditure cap is adjusted to the amount worked out using the following formula:

$$A \times \frac{B}{C}$$

where:

A means the amount of the expenditure cap immediately before it is adjusted under this section.

B means the CPI number published for the last quarter that ended before the polling day for the recent general election.

C means the CPI number for the last quarter that ended before the polling day for the previous general election.²⁶⁵

(e) Western Australia

In **Western Australia** (at the **State but not local government level**), *public funding* is indexed.

The election funding reimbursement amount is taken to have been adjusted on 1 July 2006 and is to be adjusted for each subsequent financial year on 1 July of that financial year is the amount worked out, to 5 decimal places, using the formula —

$$\frac{A \times B}{C}$$

where —

A is the election funding reimbursement amount immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.²⁶⁶

CPI means the all groups consumer price index for Perth published by the Australian Statistician referred to in section 5 of the Australian Bureau of *Statistics Act 1975* (Cth).

²⁶⁵ *Electoral Act 1992* (Qld), s 281F.

²⁶⁶ *Electoral Act 1907* (WA), s 175LC.

(f) South Australia

In **South Australia** (at the **State but not local government level**), the following are indexed: *Public Funding, Expenditure Caps, Gift Disclosure Threshold and Expenditure Threshold*.

All monetary amounts are to be adjusted on 1 July of each financial year by multiplying the stated amount by a proportion obtained by dividing the CPI for the March quarter of the immediately preceding financial year by the CPI for the March quarter 2014.²⁶⁷

(g) Tasmania

In **Tasmania** (at **State level**), the *expenditure cap* is indexed. The expenditure limit is \$10,000 in 2005 and increases by an additional \$500 each subsequent year.²⁶⁸

In **Tasmania** (at **local government level**), the *advertising expenditure cap* is indexed.

The total advertising expenditure cap is calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

A is the total expenditure cap for the relevant financial year being calculated.

B is the relevant amount for the candidate in respect of whom the total expenditure is being calculated.

C is the CPI figure for Hobart for the March quarter immediately preceding the relevant financial year in which the total expenditure is to apply.

D is the CPI figure for Hobart for the March quarter 2018.²⁶⁹

CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* (Cth).

(h) Northern Territory

²⁶⁷ *Electoral Act 1985* (SA), s 130A(8).

²⁶⁸ *Electoral Act 2004* (Tas), s 160.

²⁶⁹ Local Government (General) Regulations 2015 (Tas), reg 22A.

In the **Northern Territory** (at **both Territory and local government level**), there is no indexation of funding amounts.

(i) Australian Capital Territory

In the **Australian Capital Territory**, the following amounts are indexed: *Expenditure Cap*, *Administrative Funding*, and *Public Funding*.

Public Funding

In terms of public funding, the prescribed amount:

- for an election held in the 6-month period beginning on 1 July 2016 is \$8;²⁷⁰ and
- for an election held in a subsequent 6-month period, the prescribed amount for the period worked out as follows:
 - for a 6-month period beginning on 1 January— $P \times \text{INSINM}$
 - for a 6-month period beginning on 1 July— $P \times \text{INMINS}$ ²⁷¹

INM means the index number for the previous March quarter.

INS means the index number for the previous September quarter.

P means the prescribed amount for the previous 6-month period.

Expenditure Cap

The indexation must be worked out as follows:

$EC + (EC \times \text{CPI percentage increase})$

CPI percentage increase, for a year, means the annual percentage increase in the CPI from the September quarter of the previous year to the September quarter of the year the calculation is made.

EC means the expenditure cap for the year the calculation is made.

If the calculation results in a reduction of the expenditure cap, the amount declared must be the same amount as the expenditure cap in the previous year.

²⁷⁰ *Electoral Act 1992* (ACT), ss 207-8.

²⁷¹ *Electoral Act 1992* (ACT), s 207.

CPI means the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian statistician.²⁷²

Administrative Funding

The commissioner must declare a quarterly amount for a year. The quarterly amount is worked out as follows:

$$P \times (\text{INS1} / \text{INS2})$$

INS1 means the index number published for the September quarter in the preceding year.

INS2 means the index number published for the September quarter in the year immediately before the preceding year.

P means—

- for 2013— \$5000; and
- for a later year— the amount worked out under this subsection for the preceding year. However, if for a particular year the amount is less than P, the amount for the year is P.²⁷³

4 Summary of Indexation

COMMONWEALTH

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Formula</u> |
|---------------------|--|--|
| Commonwealth | | |
| | Election Funding Disclosure Threshold | <p>Election Funding <i>Indexation of Election Funding</i> = (only where the index factor is more than 1) the election funding amount is multiplied by the index factor (calculated to 3 decimal places).</p> <p>Disclosure Threshold <i>Indexation of disclosure threshold</i> = (only where the index factor is more than 1) the relevant amount is multiplied by the index factor for the indexation year (rounded to the nearest \$100).</p> |

STATES

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Formula</u> |
|---------------------|--|---|
| Victoria | | |
| State | Donation Caps Small Contributions Administrative Expenditure Funding Public Funding Policy Development Funding Disclosure threshold Anonymous Donation limit | <p>All amounts in dollars specified must be varied, in respect of the financial year beginning on 1 July 2019 and each subsequent financial year, in accordance with the formula A x (B/C) where—</p> <p>A is the amount specified in column 2, or if that amount has been previously indexed, then the amount as last so varied;</p> |

²⁷² *Electoral Act 1992* (ACT), s 205E.

²⁷³ *Electoral Act 1992* (ACT), s 215F.

| | | |
|---------------------|------------------|--|
| | | <p>B is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;</p> <p>C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.</p> |
| <u>Local</u> | N/A | N/A |
| <u>NSW</u> | | |
| <u>State</u> | Donations Caps | <p>Donation Caps (2018–2019) indexed amount = multiplying the adjustable amounts by the annual increase in the CPI during the previous financial year.</p> <p>(2019- onwards) indexed amount = multiplying the adjustable amounts that applied for the previous financial year by the annual increase in the CPI during that previous financial year.</p> |
| | Expenditure Caps | <p>Expenditure Caps (2018-2019) Each of the adjustable amounts applies for the first election period that is current when the provision commences and is then to be adjusted for inflation for subsequent election periods as provided by this clause.</p> <p>(2019 - onwards) The adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the CPI during that previous election period.</p> |
| | Public Funding | <p>Public Funding (2019 State general election) = multiplying the adjustable amounts specified by the increase in the CPI during the election period commencing on the date of the return of the writs of the 2015 State general election and ending on the date of the return of the writs of the 2019 State general election.</p> <p>(Future) The adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the CPI during the previous election period.</p> |

| | | |
|--------------------------|--|---|
| | Administrative Funding New Parties Fund | <p>Administrative Funding and New Parties Fund (2019 calendar year) = multiplying the adjustable amounts specified by the annual increase in the CPI during the previous calendar year.</p> <p>(Future) The adjustable amounts that are to apply for a subsequent calendar year are to be determined by multiplying the adjustable amounts that applied for the previous calendar year by the annual increase in the CPI during that previous calendar year.</p> <p>For all amounts, the annual increase in the CPI during a calendar year is to be calculated as B/A where— A is the CPI number for the last quarter for which such a number was published before the start of the calendar year. B is the CPI number for the last quarter for which such a number was published before the end of the calendar year. If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.</p> |
| Local | N/A | N/A |
| Queensland | | |
| State | Public Funding Expenditure Caps | <p>Election Funding The election funding amount is adjusted for each financial year on 1 July using the formula (A X B)/ C where: A is the election funding amount immediately before 1 July in a year. B is the CPI number published for the March quarter in the year. C is the CPI number published for the March quarter in the previous year. BUT: if, for a particular financial year, adjustment of the election funding amount would reduce the amount, the amount is not to be adjusted for the year.</p> <p>Expenditure Caps The amount of an election participant's expenditure cap for an election is adjusted 30 days after the polling day for a general election and as adjusted applies for each election that is held until the amount is next adjusted.</p> <p>The election participant's expenditure cap is adjusted to the amount worked out using the following formula A x (B/C) where: A means the amount of the expenditure cap immediately before it is adjusted under this section. B means the CPI number published for the last quarter that ended before the polling day for the recent general election. C means the CPI number for the last quarter that ended before the polling day for the previous general election.</p> |
| Local | N/A | N/A |
| Western Australia | | |
| State | Public Funding | <p>Election Funding The election funding reimbursement amount is taken to have been adjusted on 1 July 2006 and is to be adjusted for each subsequent financial year on 1 July of that financial year using the formula: (A x B) / C where: A is the election funding reimbursement amount immediately before 1 July in a year; and B is the CPI number published for the March quarter in the year; and</p> |

| | | |
|------------------------|--|---|
| | | <p>C is the CPI number published for the March quarter in the previous year.</p> <p>CPI means the all groups consumer price index for Perth published by the Australian Statistician referred to in section 5 of the <i>Australian Bureau of Statistics Act 1975</i> (Cth).</p> |
| Local | N/A | |
| South Australia | | |
| State | Public Funding Expenditure Caps Gift Disclosure Threshold Expenditure Threshold | <p>All amounts Monetary amounts to be adjusted on 1 July of each financial year by multiplying the stated amount by a proportion obtained by dividing the CPI for the March quarter of the immediately preceding financial year by the CPI for the March quarter 2014.</p> |
| Local | N/A | N/A |
| Tasmania | | |
| State | Expenditure Cap | The expenditure limit is \$10 000 in the year 2005 and increases by an additional \$500 each subsequent year. |
| Local | Advertising Expenditure Cap | <p>Advertising Cap The total expenditure cap is calculated in accordance with the following formula: $A = B \times (C/D)$ where:</p> <p>A is the total expenditure cap for the relevant financial year being calculated;</p> <p>B is the relevant amount for the candidate in respect of whom the total expenditure is being calculated;</p> <p>C is the CPI figure for Hobart for the March quarter immediately preceding the relevant financial year in which the total expenditure is to apply;</p> <p>D is the CPI figure for Hobart for the March quarter 2018.</p> <p>CPI figure for Hobart means the Consumer Price Index All Groups Index Number for Hobart published by the Australian Statistician under the authority of the <i>Census and Statistics Act 1905</i> (Cth).</p> |

TERRITORIES

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Formula</u> |
|--|-----------------------|--|
| <u>Northern Territory</u> | | |
| <u>Territory</u> | N/A | N/A |
| <u>Local</u> | N/A | N/A |
| <u>Australian Capital Territory</u> | | |
| <u>Territory</u> | Expenditure Cap | <p>Expenditure Cap The indexation must be worked out as follows: $EC + (EC \times \text{CPI percentage increase})$</p> <p>CPI percentage increase, for a year, means the annual percentage increase in the CPI from the September quarter of the previous year to the September quarter of the year the calculation is made.</p> <p>EC means the expenditure cap for the year the calculation is made.</p> <p>If the calculation results in a reduction of the expenditure cap, the amount declared must be the same amount as the expenditure cap in the previous year.</p> <p>CPI means the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian statistician.</p> |

| | | |
|--|------------------------|--|
| | Public Funding | <p>Public Funding The prescribed amount:</p> <ul style="list-style-type: none"> • for an election held in the 6-month period beginning on 1 July 2016 is \$8; and • for an election held in a subsequent 6-month period, the prescribed amount for the period worked out as follows: <ul style="list-style-type: none"> ○ for a 6-month period beginning on 1 January— $P \times \text{INSINM}$ ○ for a 6-month period beginning on 1 July— $P \times \text{INMINS}$ <p>INM means the index number for the previous March quarter. INS means the index number for the previous September quarter. P means the prescribed amount for the previous 6-month period.</p> |
| | Administrative Funding | <p>Administrative Funding The commissioner must declare a quarterly amount for a year. The quarterly amount is worked out as follows: $P \times (\text{INS1} / \text{INS2})$</p> <p>INS1 means the index number published for the September quarter in the preceding year.</p> <p>INS2 means the index number published for the September quarter in the year immediately before the preceding year.</p> <p>P means— (a) for 2013— \$5,000; and (b) for a later year— the amount worked out under this subsection for the preceding year. However, if for a particular year the amount is less than P, the amount for the year is P.</p> |

H *Enforcement*

Another regulatory tool is enforcement mechanisms available to the regulator to prosecute offences and impose sanctions.

1 *Rationale of Enforcement*

Having an elaborate set of rules is insufficient. This must be coupled with effective enforcement by the Electoral Commissions. It is incumbent on the Electoral Commissions to vigilantly monitor compliance with the rules and prosecute any breaches.

In this vein, the enforcement mechanisms available to the Commissions is of importance. Enforcement of electoral law offences will punish those who transgress the law and serve as a deterrent for future offenders.

2 Enforcement in Australia

(a) Commonwealth

The Commonwealth provides for certain offences for contravening political finance regulations including:

- Contravening disclosure of gifts: the higher of 60 penalty units or 3 times the amount (civil penalty).²⁷⁴
- Contravening foreign donation regulations: the higher of 200 penalty units or 3 times the amount (civil penalty).²⁷⁵
- Contravening gift or offences by foreign donors: 100 penalty units.²⁷⁶
- Failure to register as a third party campaigner or associated entity: the higher of 200 penalty units or 3 times the amount (civil penalty).²⁷⁷
- Failure to provide accurate returns of electoral expenditure: the higher of 60 penalty units or 3 times the amount (civil penalty).²⁷⁸
Failure to accurately provide the annual return by political parties and political campaigners: the higher of 120 penalty units or 3 times the actual or estimated value of amount (civil penalty).²⁷⁹
- Failure to accurately provide the annual return by associated entities or third parties: the higher of 60 penalty units or 3 times the actual or estimated value of amount (civil penalty).²⁸⁰

(b) Victoria

In **Victoria**, at the **State level**, there are the following offences for contravening political finance regulations including:

- If a candidate or registered officer of a political party gives a false or misleading statement: 300 penalty units and/or 2 years' imprisonment.²⁸¹
- Knowingly accepting or making an unlawful political donation: penalty 300 penalty units and/or 2 years' imprisonment.²⁸²
- Prosecution can be started within 3 years after the alleged offence occurred.²⁸³
- Failure to provide disclosure return/annual statement: 200 penalty units.²⁸⁴

²⁷⁴ *Commonwealth Electoral Act 1918* (Cth), ss 304, 305A, 305B.

²⁷⁵ *Commonwealth Electoral Act 1918* (Cth), s 302D.

²⁷⁶ *Commonwealth Electoral Act 1918* (Cth), s 302G.

²⁷⁷ *Commonwealth Electoral Act 1918* (Cth), ss 287F, 287H.

²⁷⁸ *Commonwealth Electoral Act 1918* (Cth), s 309.

²⁷⁹ *Commonwealth Electoral Act 1918* (Cth), s 314AB.

²⁸⁰ *Commonwealth Electoral Act 1918* (Cth), ss 314AEA, 314AEB.

²⁸¹ *Electoral Act 2002* (Vic), s 218.

²⁸² *Electoral Act 2002* (Vic), s 218.

²⁸³ *Electoral Act 2002* (Vic), s 218.

²⁸⁴ *Electoral Act 2002* (Vic), s 218A.

- Providing false or misleading return statement: 300 penalty units and/or 2 years' imprisonment.²⁸⁵
- Entering into, or carrying out, a scheme with the intention of circumventing a prohibition or requirement regarding election expenditure and political donations: 10 years' imprisonment.²⁸⁶

In **Victoria**, at the **local government level**, there is a penalty for giving a false or misleading statement: 600 penalty units or 5 years' imprisonment.²⁸⁷

(c) New South Wales

In NSW, at the **State and local government level**, there are the following offences:

- Failure to lodge declaration within time: 200 penalty units.²⁸⁸
- Failure to provide complete declaration: 200 penalty units.²⁸⁹
- Offences relating to assisting others lodging claims or disclosures: 400 penalty units or 2 years' imprisonment, or both.²⁹⁰
- A person who does unlawful acts regarding the caps on donations and expenditure is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful: 400 penalty units or 2 years' imprisonment, or both.²⁹¹
- A person who makes a donation with the intention of causing the donation to be accepted in contravention of the caps on donations is guilty of an offence: 400 penalty units or 2 years' imprisonment, or both.²⁹²
- A person who enters into a scheme to circumvent political donation or expenditure prohibitions or restriction: (on conviction on indictment): 10 years' imprisonment.²⁹³
- Other offences relating to political donations and electoral expenditure: 400 penalty units or 2 years' imprisonment, or both.²⁹⁴
- A person must keep the following for a period of at least 3 years a record made by the person relating to a reportable political donation, any other record that is required by the regulations to be kept by the person: party, 200 penalty units or in any other case, 100 penalty units.²⁹⁵

²⁸⁵ *Electoral Act 2002* (Vic), s 218A.

²⁸⁶ *Electoral Act 2002* (Vic), s 218B.

²⁸⁷ *Local Government Act 2020* (Vic), s 293.

²⁸⁸ *Electoral Funding Act 2018* (NSW), s 141.

²⁸⁹ *Electoral Funding Act 2018* (NSW), s 141.

²⁹⁰ *Electoral Funding Act 2018* (NSW), s 141.

²⁹⁰ *Electoral Funding Act 2018* (NSW), s 142.

²⁹¹ *Electoral Funding Act 2018* (NSW), s 143.

²⁹² *Electoral Funding Act 2018* (NSW), s 143.

²⁹³ *Electoral Funding Act 2018* (NSW), s 144.

²⁹⁴ *Electoral Funding Act 2018* (NSW), s 145.

²⁹⁵ *Electoral Funding Act 2018* (NSW), s 145.

- False or misleading information: 400 penalty units or 2 years' imprisonment, or both.²⁹⁶

(d) Queensland

In **Queensland**, at the **State level**, there are the following offences:

- Failure to disclose source of gift of loan more than \$1,000: 20 penalty units.²⁹⁷
- Electoral expenditure must be kept separate: 200 penalty units.²⁹⁸
- Failure to give return within time: if by party's agent 100 penalty units or 20 penalty units.²⁹⁹
- Agent of political party knowingly providing a misleading return: 200 penalty units.³⁰⁰
- Agent of candidate/associated entity knowingly providing a misleading return: 100 penalty units.³⁰¹
- A person or a person acting behalf of a person who accepts an unlawful gift: 1 year imprisonment or 240 penalty units.³⁰²
- A person who knowingly participates in a scheme to circumvent prohibition on particular political donations or electoral expenditure: 1,500 penalty units or 10 years' imprisonment.³⁰³
- A person who makes an unlawful prohibited donation if the person knows or ought reasonably to know it is unlawful: 400 penalty units or 2 years' imprisonment (this offence is a misdemeanour).³⁰⁴
- A person who gives the commissioner information to make a determination that the entity is not a prohibited donor that the person knows is false or misleading in a material particular: 400 penalty units or 2 years' imprisonment (this offence is a misdemeanour).³⁰⁵
- A person who publishes information about a gift made to, or received by, a candidate in an election, registered political party or third party that the person knows is false or misleading in a material particular: 20 penalty units.³⁰⁶

²⁹⁶ *Electoral Funding Act 2018 (NSW)*, s 146.

²⁹⁷ *Electoral Act 1992 (Qld)*, s 205B.

²⁹⁸ *Electoral Act 1992 (Qld)*, s 215.

²⁹⁹ *Electoral Act 1992 (Qld)*, s 307.

³⁰⁰ *Electoral Act 1992 (Qld)*, s 307.

³⁰¹ *Electoral Act 1992 (Qld)*, s 307.

³⁰² *Electoral Act 1992 (Qld)*, s 307.

³⁰³ *Electoral Act 1992 (Qld)*, s 307B.

³⁰⁴ *Electoral Act 1992 (Qld)*, s 307A.

³⁰⁵ *Electoral Act 1992 (Qld)*, s 307C.

³⁰⁶ *Electoral Act 1992 (Qld)*, s 307D.

In **Queensland**, at the **local government level**, there are the following offences:

- Failure to disclose source of gift of loan more than \$500: 20 penalty units.³⁰⁷
- Providing false or misleading information: 7 years' imprisonment.³⁰⁸
- Failure to give return within time: 20 penalty units.³⁰⁹
- Knowingly providing a misleading return: 100 penalty units.³¹⁰
- Agent of candidate/associated entity knowingly providing a misleading return: 100 penalty units.³¹¹
- A person who knowingly participates in a scheme to circumvent prohibition on particular political donations or electoral expenditure: 1,500 penalty units or 10 years' imprisonment.³¹²
- A person who makes an unlawful prohibited donation if the person knows or ought reasonably to know it is unlawful: 400 penalty units or 2 years' imprisonment (this offence is a misdemeanour).³¹³
- A person who gives the commissioner information to make a determination that the entity is not a prohibited donor that the person knows is false or misleading in a material particular: 400 penalty units or 2 years' imprisonment (this offence is a misdemeanour).³¹⁴
- A person who publishes information about a gift made to, or received by, a candidate in an election, registered political party or third party that the person knows is false or misleading in a material particular: 20 penalty units.³¹⁵

(e) Western Australia

In **Western Australia**, at the **State level**, there are the following penalties:

- Failure to lodge within required time: \$7,500 by an agent of a political party or \$1,500 in other cases.³¹⁶
- Failure to lodge a complete report: \$1,500 penalty.³¹⁷
- False or misleading reports: \$15,000 penalty.³¹⁸

³⁰⁷ *Local Government Electoral Act 2011* (Qld), s 121B.

³⁰⁸ *Local Government Electoral Act 2011* (Qld), s 169.

³⁰⁹ *Local Government Electoral Act 2011* (Qld), s 195.

³¹⁰ *Local Government Electoral Act 2011* (Qld), s 195.

³¹¹ *Local Government Electoral Act 2011* (Qld), s 195.

³¹² *Local Government Electoral Act 2011* (Qld), s 194B.

³¹³ *Local Government Electoral Act 2011* (Qld), s 194A.

³¹⁴ *Local Government Electoral Act 2011* (Qld), s 194C.

³¹⁵ *Local Government Electoral Act 2011* (Qld), s 195A.

³¹⁶ *Electoral Act 1907* (WA), s 175U.

³¹⁷ *Electoral Act 1907* (WA), s 175U.

³¹⁸ *Electoral Act 1907* (WA), s 175U.

(f) South Australia

In **South Australia**, at the **State level**, there are the following offences:

- Failure to lodge return within time: \$10,000 by agent of a political party or \$5,000 in other cases.³¹⁹
- Failing to provide a return – penalty \$5,000.³²⁰
- Providing incomplete information – penalty \$1,500.³²¹
- Providing false or misleading information or returns – penalty \$10,000.³²²
- Person who is guilty of an offence for election funding, expenditure of disclosure for which no penalty specifically provided – penalty \$7,500.³²³

In South Australia, at the **local government level**, the following offences apply:

- Failure to provide return on time: \$10,000 penalty.³²⁴
- Providing false or misleading information: \$10,000 penalty.³²⁵

(g) Tasmania

In **Tasmania**, at the **State level**, the following penalties apply:

- Contravening s 159 (who may incur expenditure) and s 162 (party not to incur election expenditure): 200 penalty units and/or 6 months' imprisonment.³²⁶
- Failing to comply with s 161 (lodgement of candidate's election expenditure return) – 200 penalty units.³²⁷
- Filing a candidate's election expenditure return which is incomplete/misleading – 100 penalty units and/or 3 months' imprisonment.³²⁸
- Failure to comply with request for information from Commission: 200 penalty units and/or 6 months' imprisonment.³²⁹
- A contravening candidate who exceeds the expenditure limit by less than \$1,000 is penalised 0.05 penalty unit for each \$1.³³⁰
- A contravening candidate who exceeds by any amount exceeding \$1 000 in excess of the expenditure limit: Fine not exceeding 150 penalty units.³³¹

³¹⁹ *Electoral Act 1985* (SA), s 130ZZE.

³²⁰ *Electoral Act 1985* (SA), s 130ZZE.

³²¹ *Electoral Act 1985* (SA), s 130ZZE.

³²² *Electoral Act 1985* (SA), s 130ZZE.

³²³ *Electoral Act 1985* (SA), s 130ZZE.

³²⁴ *Local Government (Elections) Act 1999* (SA), s 85.

³²⁵ *Local Government (Elections) Act 1999* (SA), s 14.

³²⁶ *Electoral Act 2004* (Tas), s 199.

³²⁷ *Electoral Act 2004* (Tas), s 199.

³²⁸ *Electoral Act 2004* (Tas), s 199.

³²⁹ *Electoral Act 2004* (Tas), s 199.

³³⁰ *Electoral Act 2004* (Tas), s 199.

³³¹ *Electoral Act 2004* (Tas), s 199.

In Tasmania, at the **local government level**, the following penalties apply:

- Candidate who receives gifts or donations and fails to notify general manager: 10 penalty units.³³²

(h) Northern Territory

In the **Northern Territory**, at the **Territory level**, the following penalties apply:

- Candidate contravening expenditure cap: 300 penalty units and/or 18 months imprisonment.³³³
- Party/associated entity contravening expenditure cap: 1,500 penalty units.³³⁴
- Scheming to circumvent expenditure cap: 10 years' imprisonment.³³⁵
- Failure to keep records: 200 penalty units or 1 year imprisonment; or for a body corporate – 1000 penalty units.³³⁶
- Failure to provide return: 200 penalty units or 1 year imprisonment; or for a body corporate – 1000 penalty units.³³⁷
- Failure to provide a complete return to Commissioner: 200 penalty units or 1 year imprisonment; or for a body corporate - 1000 penalty units.³³⁸

In the NT, at the **local government level**, a person must not make a misleading statement to an authorised officer in connection with an election, with a maximum penalty of 50 penalty units.³³⁹

(i) Australian Capital Territory

In the **Australian Capital Territory**, the following penalties apply:

- Failure to lodge return in time: if a reporting agent of party 50 penalty units; for others 20 penalty units.³⁴⁰
- Incomplete report: 20 penalty units.³⁴¹
- Failure to keep complete records 20 penalty units.³⁴²
- Providing false statements to the Commissioner 50 penalty units and/or 6 months' imprisonment.³⁴³

³³² *Local Government Act 1993* (Tas), s 56A.

³³³ *Electoral Act 2004* (NT), s 203C.

³³⁴ *Electoral Act 2004* (NT), s 203C.

³³⁵ *Electoral Act 2004* (NT), s 203D.

³³⁶ *Electoral Act 2004* (NT), s 215.

³³⁷ *Electoral Act 2004* (NT), s 215.

³³⁸ *Electoral Act 2004* (NT), s 215.

³³⁹ *Local Government Electoral Regulations* (NT), s 59.

³⁴⁰ *Electoral Act 1992* (ACT), s 236.

³⁴¹ *Electoral Act 1992* (ACT), s 236.

³⁴² *Electoral Act 1992* (ACT), s 236.

³⁴³ *Electoral Act 1992* (ACT), s 236.

4 Summary of Enforcement

| Enforcement | | |
|---------------------|---|---|
| Jurisdiction | Summary | Legislation |
| Commonwealth | <p>Contravening disclosure of gifts: the higher of 60 penalty units or 3 times the amount (civil penalty).</p> <p>Contravening foreign donation regulations: the higher of 200 penalty units or 3 times the amount (civil penalty).</p> <p>Contravening gift or offences by foreign donors: 100 penalty units.</p> <p>Failure to register as a third party campaigner or associated entity: the higher of 200 penalty units or 3 times the amount (civil penalty).</p> <p>Failure to provide accurate returns of electoral expenditure: the higher of 60 penalty units or 3 times the amount (civil penalty).</p> <p>Failure to accurately provide the annual return by political parties and political campaigners: the higher of 120 penalty units or 3 times the actual or estimated value of amount (civil penalty).</p> <p>Failure to accurately provide the annual return by associated entities or third parties: the higher of 60 penalty units or 3 times the actual or estimated value of amount (civil penalty).</p> | Part XX Division 3A Subdivision B |

| STATES | | |
|---------------------|--|--|
| Jurisdiction | Summary | Legislation |
| Victoria | | |
| State | <p>If a candidate or registered officer of a political party gives a false or misleading statement: 300 penalty units and/or 2 years' imprisonment.</p> <p>Knowingly accepting or making an unlawful political donation: penalty 300 penalty units and/or 2 years' imprisonment.</p> <p>Prosecution can be started within 3 years after the alleged offence occurred.</p> <p>Failure to provide disclosure return/annual statement: 200 penalty units.</p> <p>Providing false or misleading return statement: 300 penalty units and/or 2 years' imprisonment.</p> <p>Entering into, or carrying out, a scheme with the intention of circumventing a prohibition or requirement regarding election expenditure and political donations: 10 years' imprisonment.</p> | Part 12 Division 3D |
| Local | <p>Giving a false or misleading statement: 600 penalty units or 5 years' imprisonment.</p> | Part 8 - Electoral Provisions Division 9 - Electoral Offences s 293 |

| | | |
|--------------------------|---|---------------------|
| <u>NSW</u> | | |
| <u>State</u> | <p>Failure to lodge declaration within time: 200 penalty units.</p> <p>Failure to provide complete declaration: 200 penalty units.</p> <p>Offences relating to assisting others lodging claims or disclosures: 400 penalty units or 2 years' imprisonment, or both.</p> <p>Person who does unlawful acts regarding the caps on donations and expenditure if the person was, at the time of the act, aware of the facts that result in the act being unlawful: 400 penalty units or 2 years' imprisonment, or both.</p> <p>Person who makes a donation with the intention of causing the donation to be accepted in contravention of the caps on donations is guilty of an offence: 400 penalty units or 2 years' imprisonment, or both.</p> <p>Person who enters into a scheme to circumvent political donation or expenditure prohibitions or restriction: (on conviction on indictment): 10 years' imprisonment.</p> <p>Other offences relating to political donations and electoral expenditure: 400 penalty units or 2 years' imprisonment, or both.</p> <p>Failure to keep for at least 3 years a record made by the person relating to a reportable political donation, any other record that is required by the regulations to be kept by the person: party, 200 penalty units or in any other case, 100 penalty units.</p> <p>False or misleading information: 400 penalty units or 2 years' imprisonment, or both.</p> | Part 10 Division 1 |
| <u>Local</u> | As above | |
| <u>Queensland</u> | | |
| <u>State</u> | <p>Failure to disclose source of gift of loan >\$1,000: 20 penalty units.</p> <p>Electoral expenditure must be kept separate: 200 penalty units.</p> <p>Failure to give return within time: if by party's agent 100 penalty units or 20 penalty units.</p> <p>Agent of political party knowingly providing a misleading return: 200 penalty units.</p> <p>Agent of candidate/associated entity knowingly providing a misleading return: 100 penalty units.</p> <p>A person or a person acting behalf of a person who accepts an unlawful gift: 1-year imprisonment or 240 penalty units.</p> <p>A person who knowingly participates, directly or indirectly, in a scheme to circumvent prohibition on particular political donations or electoral expenditure: 1,500 penalty units or 10 years' imprisonment.</p> | Part 11 Division 10 |

| | | |
|-------------------------------------|---|-----------------------|
| | <p>A person who makes an unlawful prohibited donation if the person knows or ought reasonably to know it is unlawful: 400 penalty units or 2 years' imprisonment (misdemeanour).</p> <p>A person who gives the commissioner information to make a determination that the entity is not a prohibited donor that the person knows is false or misleading in a material particular: 400 penalty units or 2 years' imprisonment.</p> <p>A person who publishes information about a gift made to, or received by, a candidate in an election, registered political party or third party that the person knows is false or misleading in a material particular: 20 penalty units.</p> | |
| <u>Local</u> | <p>Failure to disclose source of gift of loan >\$500: 20 penalty units.</p> <p>Providing false or misleading information: 7 years' imprisonment.</p> <p>Failure to give return within time: 20 penalty units.</p> <p>Knowingly providing a misleading return: 100 penalty units. Agent of candidate/associated entity knowingly providing a misleading return: 100 penalty units.</p> <p>Person who knowingly participates in a scheme to circumvent prohibition on particular political donations or electoral expenditure: 1,500 penalty units or 10 years' imprisonment.</p> <p>Person who makes an unlawful prohibited donation when the person knows or ought reasonably to know it is unlawful: 400 penalty units or 2 years' imprisonment (misdemeanour).</p> <p>Person who gives the commissioner information to make a determination that the entity is not a prohibited donor that the person knows is false or misleading in a material particular: 400 penalty units or 2 years' imprisonment (misdemeanour).</p> <p>Person who publishes information about a gift made to, or received by, a candidate in an election, registered political party or third party that the person knows is false or misleading in a material particular: 20 penalty units.</p> | 121B Part 9 169 |
| <u>Western Australia</u> | | |
| <u>State</u> | <p>Failure to lodge within required time: \$7,500 by an agent of a political party or \$1,500 in other cases.</p> <p>Failure to lodge a complete report: \$1,500 penalty.</p> <p>False or misleading reports: \$15,000 penalty.</p> | Part IV Division 5 |
| <u>Local</u> | N/A | |
| <u>South Australia</u> | | |
| <u>State</u> | <p>Failure to lodge return within time: \$10,000 by agent of a political party or \$5,000 in other cases.</p> <p>Failing to provide a return – penalty \$5,000.</p> | 130ZZE |

| | | |
|-----------------|---|----------------------------|
| | <p>Providing incomplete information – penalty \$1,500.</p> <p>Providing false or misleading information or returns – penalty \$10,000.</p> <p>Person who is guilty of an offence of election funding, expenditure of disclosure for which no penalty specifically provided– penalty \$7,500.</p> | |
| Local | <p>Failure to provide return on time: \$10,000 penalty.</p> <p>Providing false or misleading information \$10,000 penalty.</p> | Part 14 Division 1 S 85 |
| Tasmania | | |
| State | <p>Contravening s 159 (who may incur expenditure) and s 162 (party not to incur election expenditure): 200 penalty units and/or 6 months’ imprisonment.</p> <p>Failing to comply with s 161 (lodgement of candidate’s election expenditure return) – 200 penalty units.</p> <p>Filing a candidate’s election expenditure return which is incomplete/misleading – 100 penalty units and/or 3 months’ imprisonment.</p> <p>Failure to comply with request for information from Commission: 200 penalty units and/or 6 months’ imprisonment.</p> <p>A contravening candidate who exceeds the expenditure limit by less than \$1,000 is penalised 0.05 penalty unit for each \$1.</p> <p>A contravening candidate who exceeds by any amount exceeding \$1,000 in excess of the expenditure limit: Fine not exceeding 150 penalty units.</p> | Part 6 Division 2 199 |
| Local | <p>Candidate who receives gifts or donations and fails to notify general manager: 10 penalty units.</p> | Part 5A 56A |

TERRITORIES

| <u>Jurisdiction</u> | <u>Summary</u> | <u>Legislation</u> |
|----------------------------|---|---------------------------|
| Northern Territory | | |
| <u>Territory</u> | <p>Candidate contravening expenditure cap: 300 penalty units and/or 18 months imprisonment.</p> <p>Party/associated entity contravening expenditure cap: 1,500 penalty units.</p> <p>Scheming to circumvent expenditure cap: 10 years’ imprisonment.</p> <p>Failure to keep records: 200 penalty units or 1 year imprisonment; or for a body corporate – 1,000 penalty units.</p> <p>Failure to provide return: 200 penalty units or 1 year imprisonment; or for a body corporate – 1,000 penalty units.</p> <p>Failure to provide a complete return to Commissioner: 200</p> | Part 10 Division 5A |

| | | |
|--|--|---------------------------|
| | penalty units or 1 year imprisonment; or for a body corporate - 1,000 penalty units. | |
| <u>Local</u> | A person must not make a misleading statement to an authorised officer in connection with an election. Maximum penalty: 50 penalty units. | <u>Part 5 s 59</u> |
| <u>Australian Capital Territory</u> | | |
| <u>Territory</u> | Failure to lodge return in time: if a reporting agent of party 50 penalty units; for others 20 penalty units. Incomplete report: 20 penalty units. Failure to keep complete records 20 penalty units. Providing false statements to the Commissioner: 50 penalty units and/or 6 months' imprisonment. | Division 14.5 s 224 |

V POLITICAL FINANCE LAWS ACROSS THE JURISDICTIONS: OPPORTUNITIES FOR HARMONISATION

This section will identify similarities in political finance laws between the jurisdictions, including opportunities for joined-up evaluation, reporting and policy harmonisation between jurisdictions.

The previous section shows that there is a distinct lack of uniformity in the regulation of political finance in Australian jurisdictions at the Commonwealth, State and local government levels in all nine regulatory dimensions: disclosure requirements (donations and expenditure), caps on donations, caps on expenditure, indexation, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, and enforcement. There are thus ample opportunities for law reform and harmonisation across jurisdictions.

A Transparency Measures: Disclosure Requirements

The most basic form of regulation of political finance is providing transparency about who is donating to parties and the amounts of such donations, as well as the amounts parties are expending in their election campaigns.

Most Australian jurisdictions adopt the most basic form of regulation of political finance, that is, the disclosure of donations. However, there remain jurisdictions such as Tasmania at the State level and NT at the local government level that do not even have this basic disclosure requirement. However, in Tasmania the Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2020 (Tas) has been introduced into the Legislative Assembly on 15 October 2020, which will introduce a donations disclosure scheme in Tasmania.³⁴⁴ This signals an interest in more robust regulation of political finance in Tasmania, which is currently the most 'light touch' jurisdiction with minimal regulation.

The timing and frequency of the disclosure of donations does vary across the jurisdictions, with Queensland being the exemplar with real time disclosure of their donations on a highly accessible website with visualisations through a map and the ability to filter for donors.³⁴⁵ In this regard, **there is thus opportunity for administrative harmonisation across jurisdictions in terms of website**

³⁴⁴ Electoral Amendment Bill 2019 (Tas) Consultation Draft
<https://www.justice.tas.gov.au/__data/assets/pdf_file/0020/453332/Electoral-Amendment-Bill-2019_consultation-draft.pdf>.

³⁴⁵ See Electoral Commission Queensland, Electronic Disclosure System
<<https://disclosures.ecq.qld.gov.au>>.

functionality and visualisations for disclosures utilising user-friendly interfaces.

In addition, although the legislative requirements differ across jurisdictions, **there are opportunities to streamline the timing of disclosures as well, which should ideally be contemporaneous.** Real time disclosures enhance transparency and give more timely information to voters in order to make their choices for the election. Disclosures that occur after an election are less effective in this regard, as the electoral choice has already been made without the relevant information disclosed.

In terms of the second transparency measure, the disclosure of expenditure by political parties, the Commonwealth and all States require disclosure of electoral expenditure either annually or a certain period after the elections. However, most local government jurisdictions, apart from Queensland and NSW do not provide for this disclosure. Again the Queensland website provides for user-friendly expenditure disclosures.³⁴⁶ Once again, **there is opportunity for administrative harmonisation in terms of the format, accessibility and timing of disclosures of electoral expenditure.**

B Regulation of Supply and Demand of Money in Politics: Caps and Bans on Donations and Expenditure

Beyond the basic disclosure requirements, there are more stringent measures that limit the supply and demand for money in politics. Supply-side restrictions include caps on donations, bans on donations from certain sectors, and bans on foreign donations, while demand restrictions include caps on expenditure. In this regard, most Australian jurisdictions have adopted more limited approaches, with NSW, Victoria and Queensland having the most robust regulation of political finance.

Donations caps still remain rare across the jurisdictions. A general yearly cap on political donations only exists in NSW and Victoria, with Queensland implementing a cap on donations commencing on the first general election held after 1 July 2022.³⁴⁷ As donations caps promote political equality, **consideration should be given towards broader adoption of donations caps in Australian jurisdictions.**

Caps on expenditure are relatively more common than donations caps in Australia, and exist in NSW, Queensland, South Australia, Tasmania, NT, and the ACT. Western Australia has introduced a bill that will implement expenditure caps, which

³⁴⁶See Electoral Commission Queensland, Expenditure Table <<https://disclosures.ecq.qld.gov.au/Expenditures>>.

³⁴⁷ *Electoral Act 1992* (Qld), s 443.

has yet to pass both Houses of Parliament.³⁴⁸ As caps on expenditure enhance the equality between political parties and reduces the demands by parties for electoral funds, **there should be policy harmonisation of adoption of caps on expenditure for all Australian jurisdictions.**

Sector donations bans are also rare and only exist in NSW and Queensland, while the ACT has introduced a bill seeking to ban gifts and loans from property developers and their close associates in certain circumstances. Sector donations bans may be justified if there are certain sectors that are perceived to represent a higher risk of corruption or undue influence, but are less necessary if there is a general low cap on donations. It is suggested that low general caps on donations are a better mechanism for preventing corruption and undue influence.

Bans on foreign donations only exist in the Commonwealth, Victoria and NSW. Queensland bans gifts of foreign property. Western Australia has introduced a bill banning foreign donations in 2020, which has yet to pass both Houses of Parliament.³⁴⁹ As bans on foreign donations enhance public integrity by reducing the ability of foreign entities to influence Australian policy and decision-making, there should be **consideration of broader adoption of bans on foreign donations across Australian jurisdictions.**

C Public Funding

All jurisdictions apart from Tasmania and the NT provide public funding at the Commonwealth and State level for elections. There is no public funding at the local government level in all jurisdictions.

Public funding for elections for most jurisdictions in Australia is available on a 'dollars per vote' basis, i.e. a fixed-dollar amount for every first preference vote received subject to a minimum vote share. However, South Australia has adopted a more progressive approach, by paying a higher fixed-dollar amount for the first tranche of the vote a party attracts, than for the rest of the vote share it wins. This is a preferable approach as it weights public funding towards minor parties. **Thus consideration should be given towards adopting the progressive model of paying a higher fixed-dollar amount for the first tranche of the vote a party attracts, than for the rest of the vote share it wins.**

The level of public funding varies considerably across jurisdictions, with about half of election campaign costs covered at the Commonwealth level, while in the ACT, NSW and Queensland, the level of public funding has approached full funding of election

³⁴⁸ Electoral Amendment Bill 2020 (WA), cl 15 (inserting s 175SI-SL).

³⁴⁹ Electoral Amendment Bill 2020 (WA).

campaigns.³⁵⁰ **There is thus opportunity for policy harmonisation that streamlines the level of public funding across jurisdictions, provided that this is coupled with electoral expenditure caps.** As discussed in Part III above, expenditure caps are necessary to dampen the parties' desire for funds to mount expensive election campaigns.

On top of this, several States such as NSW, Victoria and Queensland also provide annual funding for parties, through an administration fund or policy development fund. **There is thus opportunity for policy harmonisation in providing annual funding for parties, including new parties, to ensure that parties are adequately funded to promote their policy platforms.**

D *Indexation*

All jurisdictions at the Commonwealth, State or Territory level, apart from the NT, provide some level of indexation of donations, funding amounts, expenditure and caps. However, all local government jurisdictions apart from Tasmania do not provide for indexation. In addition, there is variation across jurisdictions about what categories of donations, funding amounts and expenditures that are indexed. **Ideally the indexation categories should be harmonised across jurisdictions in terms of disclosure thresholds, donation caps, expenditure caps, and public funding.**

The methodology for indexation appear to be relatively similar across jurisdictions, in adjusting for the CPI for the relevant jurisdictions, **although the quarter of disclosures could potentially be harmonised.**

E *Enforcement*

All jurisdictions, apart from WA local government, empower the Electoral Commissions to penalise those who do not comply with the requirements relating to donations disclosure and caps. These requirements tend to be different between the State and local governments.

Ideally the categories of offences should be harmonised across jurisdictions in terms of breach of disclosure requirements, donation caps and bans, and expenditure caps.

In all jurisdictions, the penalties for breaches of political finance law incorporate fines for individuals and political parties that breach the requirements. However, the majority of jurisdictions include penalties of imprisonment, i.e. Victoria, NSW,

³⁵⁰ Orr, 'Full Public Funding: Cleaning up Parties or Parties Cleaning Up?' (n 210) 124-5.

Queensland, Tasmania, NT, and the ACT. Arguably imposing penalties of imprisonment is too harsh for breaches of electoral laws, and financial penalties are more appropriate. Thus, **penalties for breaches should be confined to fines or civil penalties, rather than imprisonment or criminal penalties.**

F Summary

In short, the following areas are ripe for joined-up evaluation, reporting and policy harmonisation between jurisdictions:

Transparency Measures: Disclosure Requirements

- administrative harmonisation across jurisdictions in terms of website functionality and visualisations for disclosures utilising user-friendly interfaces.
- administrative harmonisation in terms of the format, accessibility and timing of disclosures of electoral expenditure.

Regulation of the Supply and Demand of Money in Politics

- consideration should be given towards broader adoption of donations caps in Australian jurisdictions to promote political equality.
- there should be policy harmonisation of adoption of caps on expenditure for all Australian jurisdictions to promote equality between the parties and dampen the demand for electoral money.
- consideration of broader adoption of bans on foreign donations across Australian jurisdictions to enhance public integrity.

Public Funding

- consideration should be given towards adopting the SA public funding model of paying a higher fixed-dollar amount for the first tranche of the vote a party attracts, than for the rest of the vote share it wins.
- policy harmonisation that streamlines the level of public funding across jurisdictions, provided that this is coupled with electoral expenditure caps.
- policy harmonisation in providing annual funding for parties, including new parties, to ensure that parties are adequately funded to promote their policy platforms.

Indexation

- indexation categories should be harmonised across jurisdictions in terms of disclosure thresholds, donation caps, expenditure caps, and public funding.
- harmonisation of the quarter of CPI adjustment across jurisdictions.

Enforcement

- categories of offences should be harmonised across jurisdictions in terms of breach of disclosure requirements, donation caps and bans, and expenditure caps.
- penalties for breaches should be confined to fines or civil penalties, rather than imprisonment or criminal penalties.

VI CONCLUSION

This paper has identified nine key elements of political finance regulation: disclosure requirements (donations and expenditure), caps on donations, caps on expenditure, indexation, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, and enforcement. An effective scheme of political regulation would adopt a mixture of these regulatory approaches towards preventing corruption and enhancing political equality in our democratic system.

Australian jurisdictions have gradually evolved their political finance regulation to encompass varying aspects of these regulatory methods. However, the regulation of money in politics in Australia remains a messy patchwork of disparate regulation across the federation. There is ample scope for harmonisation across the jurisdictions, as well as a consistent approach between State and local governments. It is hoped that this paper provides a framework for more robust, consistent and principled regulation of political finance in Australia.