

RESEARCH REPORT

POLITICAL DONATIONS

BY

AUSTRALIAN COMPANIES

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POLITICAL DONATIONS BY AUSTRALIAN COMPANIES

EXECUTIVE SUMMARY

I. Introduction

- Corporate political donations are of interest for several reasons including:
 - ◇ a concern that commercial interests can be advanced by donating funds to political parties; and
 - ◇ in the case of public companies, that the funds being donated are not those of the directors of the company who make the decision to donate the funds but are the funds of the company's shareholders.

II. Topicality

- The UK Government has announced that it will amend its Companies Act to require that any company wishing to make a donation to a political party in the UK must obtain the prior approval of its shareholders.
- In Australia, concern has been expressed about inadequate disclosure requirements for political donations. In January 2000 the Australian Democrats outlined reform proposals:
 - ◇ to require shareholder approval of 'donation policies' of public companies; and
 - ◇ to require 'full donations disclosure' in a public company's annual report.

III. Motivations for giving

- There are a number of possible motivations why directors may have their company make a political donation. They include altruism; management self-promotion or self-dealing; corporate social responsibility; promotion of political free speech and profit maximisation.

IV. Legal regulation in Australia

- Australian corporate law does not contain any disclosure rules specifically aimed at political donations but disclosure may be required where, for example, a director of a company has a material personal interest in a proposed political donation by the company.
- A political donation by a company where the company receives no benefit from the donation may mean that the directors of the company have breached their legal duties.
- The Electoral Act requires disclosure of political donations. However, disclosure under this Act is inadequate because it does not require disclosure of all political donations and neither does it require disclosure of 'financial benefits' other than donations and loans made to political parties. For example, it may not catch a bank forgiving a loan made to a political party.

V. The study

- The data for the study was derived from the annual returns lodged with the Australian Electoral Commission of the major political parties for 1995/96, 1996/97 and 1997/98.
- Over this 3 year period, total corporate donations were \$29 million. Of this amount:
 - ◇ 64% was donated to the Liberal Party while 23% was donated to the ALP;
 - ◇ over \$17 million was donated by public companies (with 63% of this going to the Liberal Party and 29% to the ALP); and
 - ◇ more than \$11.6 million was donated by private companies (with 65% of this going to the Liberal Party and 15.5% to the ALP).
- With respect to donations by ASX-listed companies, most donations were by companies in the banking and finance sector (which donated almost \$3 million over the 3 year period). This was followed by:
 - ◇ companies in the tourism and leisure sector which donated a total of \$1.7 million over the three 3 period;
 - ◇ companies in the developers and contractors sector which donated a total of \$1.4 million over the 3 year period;
 - ◇ companies in the diversified industrial sector which donated a total of \$1.05 million over the 3 year period;
 - ◇ companies in the insurance sector which donated a total of \$1.03 million over the 3 year period; and
 - ◇ companies in the retail sector which donated a total of \$966,000 over the 3 year period.
- Combining donations made to all major political parties, over the three-year period studied, the Top 10 ASX-listed company donors were:

◇ Westpac	\$1,272,346
◇ Village Roadshow	\$1,124,800
◇ Santos	\$833,800
◇ WMC	\$778,500
◇ Coles Myer	\$687,730
◇ Lend Lease	\$669,500
◇ Amcor	\$640,000
◇ HIH	\$462,000
◇ National Australia Bank	\$445,330
◇ Boral	\$420,000

I. INTRODUCTION

Corporate political donations are a highly topical issue in several countries. In January 2000 the Australian Democrats called for greater disclosure of donations made by companies to political parties, and for the introduction of a shareholder-approval rule where the donor is a public company. According to Democrat Senator Andrew Murray, ‘ever since the first political donation changed hands, money has been used to influence electoral outcomes and the process of government’.¹

The problems potentially associated with political donations are probably as old as democracy itself. Where the institution of democracy is coupled with and gives its imprimatur to relatively-free-market economics, the market for votes takes on characteristics not unlike those of the markets for goods and services.² Free commerce and free elections give rise to the possibility of political exploitation and manipulation. Where political power depends on commercial attractiveness, commercial interests can be advanced by contributing funds to those political interests which promise the best commercial returns. Consequently, allegations of vote-buying by wealthy citizens – corporate or otherwise – are not uncommon where their capacity to donate to political parties (and the parties’ correspondent capacity to accept) is relatively unhindered.

This Research Report examines donations to political parties made by corporations.³ While donations by individuals are also worthy of analysis, the tendency for commercial power to vest increasingly in corporations highlights the importance of an analysis from a corporate perspective.

In a competitive environment, companies can be expected jealously to guard their spending. Consequently, it is not unreasonable to suspect that, when companies make donations (political or otherwise), they do so for reasons other than mere generosity.⁴ As Fisch has asked: ‘if corporations exist to maximise profits, and donations reduce profits, why do corporations donate money to charity?’⁵ Green has similarly asked:

¹ Australian Democrats, ‘Open the Books – Call for Political Donations Transparency’ (Media Release 00/19, 20 January 2000).

² Geoff Gallop, ‘From Government in Business to Business in Government’ (1997) 83 *Canberra Bulletin of Public Affairs* 81, 85: ‘[T]he development of a market for government functions creates a market for government favours. Influence has the potential to become a commodity in ways unknown to a more traditional balance between public and private sectors. The reason for this is simple – government contracts have become a major part of the balance sheets of many private [sector] corporations.’

³ Of principal interest are public companies – especially those with a widely held shareholder base. Most of these companies are listed on the stock exchange. The reason why widely held public companies are the focus of attention is that agency costs are much more likely to accompany the making of political donations by these companies compared to closely held companies (see Section III for discussion of agency costs). Nevertheless, for comparative purposes, this Report examines data for both public and proprietary companies.

⁴ Jill E Fisch, ‘Questioning Philanthropy from a Corporate Governance Perspective’ (1997) 41 *New York Law School Law Review* 1091, 1101-2.

⁵ Ibid 1094, citing Nancy J Knauer, ‘The Paradox of Corporate Giving: Tax Expenditures, the Nature of the Corporation, and the Social Construction of Charity’ (1994) 44 *DePaul Law Review* 1, 4.

[W]hy do these non-human entities – business corporations – give to charity and how can such philanthropy be reconciled with the most basic aspect of a business corporation, ie: the object of making money for its investors?⁶

While both political donations and charitable donations are worthy of analysis, political donations present more interesting issues of corporate governance to justify distinguishing them. Whereas charitable donations might, at best, only indirectly benefit the donor, the political donation is likely to confer a more direct benefit because, in Australia, political parties form governments which can then, colloquially speaking, return the favour. The Fitzgerald Inquiry into corruption in Queensland in the 1980s noted that:

Practices which were adopted with respect to donations included a propensity to accept large sums in cash, not infrequently from those who had benefited, or hoped to benefit from dealings with the Government... [T]here were other occasions when persons or organizations engaged in business with the Government or seeking business from it, made substantial donations to its political party.⁷

A link between corporate donations and political leverage has also been suggested by Gallop,⁸ who surmises that the underlying political economy determines the size and nature of corporate political donations. Citing the example of the Labor Government in Western Australia in the 1980s, and commencing with the proposition that that Government saw its role as one of support for business, Gallop inferred that the Government had overplayed its hand in developing structures to promote business. What became known as WA Inc:

took the Government into the world of business and commerce and led to the emergence of important relationships between particular entrepreneurs and the Government. ...[A] type of system emerged in which support and money passed from the Government to business and, at the same time, healthy donations found their way into the coffers of the ALP. ...What proved to be controversial and debatable about this system was the interpenetration of private and public interests. As the two sectors became linked, it was inevitable that questions would be asked about conflicts of interest and the potential for corruption, of process if not of persons.⁹

In the 1990s, according to Gallop, the political landscape changed in response to the risks posed by the 1980s style of government. It seems that during the 1990s there was a change in perspective as government sought to distance itself as much as possible from business by privatising government business enterprises and contracting-out services. But similar problems emerged:

[N]ew and powerful partnerships develop between government and business. Failure of government to renew contracts can become fatal and support from government, including ministers, becomes crucial. Although the theory has government in charge, the practice may very well see governments adjusting and responding to the needs of its private contractors, some of whom may be party benefactors.¹⁰

This Report begins by examining some of the more recent and topical responses to the phenomenon of corporate political donations. It then examines the motivations which

⁶ Shelby D Green, 'Corporate Philanthropy and the Business Benefit: The Need for Clarity' (1990) 20 *Golden Gate University Law Review* 239, 240.

⁷ *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct: Report* (1989).

⁸ Gallop, above n 2.

⁹ *Ibid* 81-2, referring to *Royal Commission into Commercial Activities of Government and Other Matters: Report* (1992).

¹⁰ *Ibid* 83.

apparently underpin corporate giving. While this is largely informed by American literature on charitable donations, some peculiarly Australian differences are highlighted. Indeed, Australian law still requires that anything done with company funds be done for the benefit of the company;¹¹ with respect to philanthropy, this requirement has been removed in many US States.¹² The Report then analyses the legal framework within which corporations may pursue philanthropy, which comprises corporate and electoral regulation, both under statute and at common law. This is followed by a presentation and analysis of the results of an empirical study of corporate donations to Australian political parties during the three years 1995/96 to 1997/98. The Report concludes by outlining some options for law reform.

¹¹ *Hutton v West Cork Railway Co* (1883) 23 Ch D 654 (*Hutton*). The case is discussed in Section III below.

¹² Faith Kahn, 'Pandora's Box: Managerial Discretion and the Problem of Corporate Philanthropy' (1997) 44 *UCLA Law Review* 579, 583-4, 602-3 and notes thereto, 604-5. See the discussion in Section III below.

II. TOPICALITY

A. United Kingdom

In 1985, a UK working party established by the Constitutional Reform Centre and the Hansard Society for Parliamentary Government recommended that 'companies should consider their political donation policy seriously and seek the consent of shareholders to political giving'.¹³ The working party felt that a decision to give to a political party is a decision 'distinct in kind from other decisions of management and requires special validation'.¹⁴ Noting that 'it would be illiberal and ineffective to prevent company donations',¹⁵ the working party recommended a voluntary code of conduct for companies with respect to political donations. Under the code, companies would be required to disclose to their shareholders why a donation was in the company's best interests and to obtain shareholder approval for political donations at the company's annual general meeting at least once during the life of a Parliament.¹⁶ The editorial in *Business Law Review* noted that the working party's recommendations were:

eminently sensible. But they really do little more than scratch the surface of a very deep malaise. ...the time has come for more radical solutions.¹⁷

Those more radical solutions have been over a decade in the making. In late 1997, the UK Prime Minister extended the terms of reference of the Committee on Standards in Public Life (Neill Committee) to encompass a study of political party funding in the UK. The Neill Committee's report to the Prime Minister¹⁸ reflected an 'increasing concern by both the public and shareholders that many corporate political donations appear to reflect the directors' personal political affiliations rather [than] the interests of the company'.¹⁹ In March 1999, the UK Department of Trade and Industry ('DTI') issued a consultative document titled *Political Donations by Companies*.²⁰ In the same vein as the Neill Report, the DTI paper observed:

In recent years there has been growing concern about directors' accountability to shareholders in relation to political donations by companies. This concern is due in part to the scope for conflict between a director's personal wishes or interests and his [or her] duty to the company. Moreover, the Companies Act, by requiring all donations in excess of £200 to be declared in the directors' report and the recipients identified, already recognises that even small political donations may cause justifiable concern to shareholders and cannot be treated as routine business expenditure. The very low threshold for disclosure suggests that the key issue is not whether the sums are material to the company's finances but whether the donation is in the company's interest.²¹

¹³ 'Report Urges Democratic Control of Company Political Donations' (1985) 6 *Company Lawyer* 196.

¹⁴ Rt Hon Edmund Dell (chair), *Company Donations to Political Parties: A Suggested Code of Practice*, cited in (1985) 6 *Company Lawyer* 196.

¹⁵ Ibid; 'Political Donations' (editorial) (1985) 6(10) *Business Law Review* 269.

¹⁶ Ibid.

¹⁷ 'Political Donations' (editorial) (1985) 6(10) *Business Law Review* 269.

¹⁸ Committee on Standards in Public Life (Lord Neill of Bladen, chair) ('Neill Committee'), *The Funding of Political Parties in the United Kingdom*, (1998) Cm 4057-I ('Neill Report').

¹⁹ Department of Trade and Industry, *Political Donations by Companies: A Consultative Document* (1999) (URN 99/757; <http://www.dti.gov.uk/cld/condocs.htm>), 3 (Foreword by Stephen Byers, Secretary of State for Trade and Industry).

²⁰ Ibid.

²¹ Ibid para 1.2.

In the DTI paper, the UK government accepted the recommendations in the Neill Report that companies should be required to obtain prior shareholder approval to make any type of donation or provide any form of financial benefit to a political party or organisation.²² The government also indicated its intention to amend the Companies Act 1985 (UK) to require companies to disclose annually in the directors' report all forms of financial benefit – direct or indirect – to political parties.²³

In addition, the UK government sought comments on the possibility of requiring a director to disclose in the directors' report any connection with a political party that might give rise either to a conflict of interest or to the perception of a conflict of interest.²⁴ The motivation for this type of proposal seems to stem from a recognition that shareholders can often do little to rectify conflicts of interest, especially *after* they have become apparent.²⁵ The suggestion seems to be that, due to the limited avenues of redress, the least that can be done (and at relatively low cost) is to require companies to make prior disclosure so that shareholders at least have the opportunity to make an informed decision when exercising their voting rights,²⁶ and even in evaluating their investment decision *before* they agree to become shareholders. These and other reform proposals are evaluated more fully later in this Report.

B. Australia

In Australia, there is no single legislative provision governing corporate political donations. The Corporations Law contains no provision dealing expressly with donations, although s 19(a) of the old 'uniform' Companies Acts gave companies power 'to make donations for patriotic or for charitable purposes'.²⁷ The legal regime currently applying to corporate political donations in Australia is discussed in detail in Section IV below. The remainder of this section outlines reform proposals that have been made in Australia recently.

1. Current Bill

There is currently before the Commonwealth Parliament the Taxation Laws Amendment (Political Donations) Bill 1999. This Bill was reintroduced after lapsing at the last prorogation of the Parliament on the calling of the 1998 election. The purpose of the Bill is to amend the Income Tax Assessment Act 1997 (Cth):

- to increase the current deductibility limit for donations from \$100 per annum to \$1,500 per annum; and

²² Ibid paras 2.6, 3.7, 4.18; Neill Report, above n 18, Recommendation 34.

²³ Ibid paras 2.6, 5.9.

²⁴ Ibid para 5.10.

²⁵ Neill Report, above n 18, para 6.29.

²⁶ Ibid para 6.35.

²⁷ See, for example, Companies Act 1961 (Vic), s 19(a).

- to extend deductibility to corporations.²⁸

The Explanatory Memorandum to the Bill infers that it is desirable that companies now have access to a deductibility regime for political donations.²⁹

The Bill was introduced in response to a report by the Joint Standing Committee on Electoral Matters (JSCEM) on the 1996 federal election.³⁰ The Digest to the Bill explains that the Liberal Party proposed a deductibility limit of \$10,000, while the ALP submitted that the limit should be \$1,500. Both parties, it seems, were prepared to endorse the following view of the JSCEM:

An increase in the maximum deduction would encourage small to medium donations, thereby increasing the number of Australians involved in the democratic process and decreasing the parties' reliance on a smaller number of large donations.³¹

However, the findings presented later in this Report do not reveal any need to increase the number of small and medium donations – at least as far as corporate donations are concerned. Our empirical study shows that there are already significant numbers of these smaller donations (particularly from corporations). Therefore, the absence of a significant deductibility regime appears not to have been an impediment to corporate political philanthropy. Indeed, the Digest to the Bill notes that deductibility probably makes no difference to the decision to donate. Perhaps the raising of the deductibility limit and its extension to corporations is intended to encourage current donors to maintain (or even increase) their levels of giving.

2. *Wider concerns*

The *Australian Financial Review* reported in a February 1999 editorial that 'the release of the latest political donations by the Australian Electoral Commission has once again highlighted the major deficiencies that exist in our funding disclosure law'.³² Specifically, the concern was with political parties which relied on 'associated entities' to make donations en masse on behalf of benefactors who wished to remain anonymous.

The issue raised in the editorial is one of transparency, both in terms of representative government in a democracy and in terms of shareholder dominion in widely held companies. The underlying concern is that corporate donors wishing to remain anonymous do so either because they wish to avoid the perception that they are buying government influence, or

²⁸ The Bill will insert a new subdivision 30-DA in the Income Tax Assessment Act 1997; the new s 30-243 will provide for the \$1,500 deductibility limit. The current provisions dealing with deductibility of political donations are: Income Tax Assessment Act 1997 (Cth), s 30-15; Income Tax Assessment Act 1936 (Cth), ss 78(9) and (10).

²⁹ Taxation Laws Amendment (Political Donations) Bill 1999 – Explanatory Memorandum, paras 1.36, 1.38, 1.44. Interestingly, in the US deductions for political donations are no longer allowed. See Kahn, above n 12, 640-4, referring to the Revenue Reconciliation Act of 1993, which amended s 162(e) of the Internal Revenue Code to deny deductions: 'With the exception of expenses attributable to lobbying local government, the Revenue Reconciliation Act of 1993 eliminated the deduction for expenses incurred in direct attempts to influence legislation, expenses attributable to communicating with high federal executive office personnel (whether or not in connection with specific legislation), trade association dues attributable to state and federal lobbying, and grass roots lobbying expenses': at 644.

³⁰ JSCEM, *The 1996 Federal Election: Report of the Inquiry into all Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto* (1997).

³¹ Ibid 103.

³² 'Donations Law Needs Overhaul' *Australian Financial Review*, 6-7 February 1999, 20.

because they wish to avoid alerting their shareholders that they are giving away company property, particularly where the gift is of doubtful benefit to the company's shareholders.

3. The recent Australian Democrats' proposals

In January 2000 the Australian Democrats' Accountability spokesperson, Senator Andrew Murray, outlined reform proposals:

- to require shareholder approval of 'donation policies' of public companies; and
- to require 'full donations disclosure' in a public company's annual report.³³

The first proposal is in line with the UK proposals discussed above. The second proposal is unsurprising given that a major Australian bank – a publicly listed company – forgave a large loan (overdraft balance) to an Australian political party after the 1996 federal election, without disclosure. The nature of the financial benefit (forgiving a loan) meant that no disclosure was considered necessary under the rules in the Commonwealth Electoral Act.³⁴ However, for a financial benefit of this magnitude to be given to a political party without any form of disclosure certainly appears contrary to the spirit of the Commonwealth Electoral Act. An appropriately drafted disclosure rule would catch this kind of financial benefit.

4. Senator Brown's proposal

Australian Greens Senator for Tasmania, Bob Brown, has recently referred to corporate political donations as 'a growing wave of corporate largesse that is eating at the fabric of [Australia's] democracy [and] a cancer that must be cut out'.³⁵ Senator Brown has recommended that:

- corporate donations to political parties should be banned; and
- donations should instead be diverted into a 'Democracy Trust Fund' to be distributed to political parties according to their relative electoral success.³⁶

The Report returns to options for law reform in Section VI below. The Report now examines what motivates companies to donate corporate funds to political parties.

³³ Australian Democrats, above n 1.

³⁴ Disclosure was made at a later stage, after an Electoral Commission audit: see below n 117.

³⁵ Bob Brown MP, 'Corporate Donations are a Cancer on Australian Politics' (Media Release, 14 April 2000).

³⁶ Ibid.

III. MOTIVATIONS FOR GIVING

The use of corporate funds for philanthropic purposes is *in some circumstances* an agency cost of running a company. The concept of agency costs in the corporate context goes back at least as far as Adam Smith.³⁷ Agency costs arise where a party (the shareholders of a company) appoints another party (the directors) to be its delegate or agent in a particular transaction or series of transactions (overseeing the management of the company's business). As Berle and Means observed in relation to the typical widely held US company 70 years ago:

In the corporate system, the 'owner' of industrial wealth is left with a mere symbol of ownership while the power, the responsibility and the substance which have been an integral part of ownership in the past are being transferred to a separate group in whose hands lies control.³⁸

Agency costs arise where the interests of the principal and the agent (or shareholders and directors) diverge:

As residual claimants on the firm's income stream, shareholders want their agents – the firm's managers – to maximize wealth. Because managers cannot capture all of the gains if they are successful, and will not suffer all of the losses should the venture flop, they have less incentive to maximize wealth than if they themselves were the principals. Rather, managers have an incentive to consume excess leisure, perquisites and in general be less dedicated to the goal of wealth maximization than they would if they were not simply agents.³⁹

When managers use company funds other than in the direct course of the company's business, there *may* be a divergence of interests between ownership and management:

[I]t is plain that where corporate managers approve [donations] as a means of furthering their *personal* objectives, such contributions represent a species of agency costs, and are inconsistent with the essential fiduciary fabric of corporate law.⁴⁰

A key aim of corporate governance mechanisms is to minimise the divergences between owners' and managers' interests, and hence minimise agency costs.⁴¹

On the other hand, as discussed below, a corporate donation may be approved by directors/managers with a view to increasing shareholder wealth.⁴² In this situation there is no agency cost problem in the traditional sense, although – depending on the circumstances – there may be other legal issues to contend with. Therefore, whether a donation gives rise to agency costs depends largely on its motive, a question we now turn to examine.

³⁷ Adam Smith, *The Wealth of Nations* (Random House edn, New York, 1937), 699-700. (First published in 1776.)

³⁸ Adolf E Berle Jr and Gardiner C Means, *The Modern Corporation and Private Property* (1932) 68.

³⁹ Daniel R Fischel, 'The Corporate Governance Movement' (1982) 35 *Vanderbilt Law Review* 1259, 1262-3.

⁴⁰ Kahn, above n 12, 610. (Emphasis added.)

⁴¹ An interesting question, at least for American corporate governance scholars, is the extent to which agency costs arising in this area can be minimised in a jurisdiction whose statutory regime unreservedly confers on company controllers the power to make donations: '[I]n affording them full decisional authority in regard to corporate contributions, these laws have conferred extraordinary power and discretion on corporate managers': Kahn, *ibid*, 603-4 (notes omitted).

⁴² See Section III E below.

A. Altruism

US companies are more-or-less prohibited from making overt political contributions.⁴³ It is thought that 'unrestrained corporate campaign spending would pose a substantial threat to the democratic political process, and create at least the appearance of unseemly political quid pro quos'.⁴⁴ However, this has not prevented US corporations from 'pursuing political objectives through technically philanthropic contributions, [so as to] lawfully avoid the limitations and disincentives pertaining to traditional corporate political advocacy'.⁴⁵ The ability of US companies to support political parties in this indirect manner is bolstered by the absence of a 'benefit-to-the-company' test for corporate philanthropy (at least in many States).

The position in many US States 'accords substantial deference to management's judgment. The fact that a perceived benefit is intangible, non-economic, or uncertain will not invalidate a corporate expenditure'.⁴⁶ The 'benefit-to-the-business' test (under which a use of corporate funds is valid only if it benefits the company, at least indirectly) seems to have been abrogated by statute in several States. An example is the Californian Corporation Code, 207(e), which provides authority for charitable donations 'regardless of specific corporate benefit'. Other States limit corporate philanthropy by still adhering to the benefit-to-the-business test, while a large number of States allow corporate contributions for wider purposes either without imposing any express limitations or without expressly waiving the benefit-to-the-business requirement.⁴⁷ Accordingly, in regard to corporate charitable donations, US managers have considerable discretion to choose their beneficiaries, and are permitted to be altruistically motivated, so long as their largesse is not politically-inclined. Nevertheless, as Abzug and Webb have observed, rarely are gifts made by US companies seen to be completely altruistic or completely in the interest of society; rather, they are often thought to be beneficial to others, but still in the interests of the corporation:

Although possible, it is unlikely that corporate executives are completely altruistic. In addition to the benefit that society receives from a donation, the corporation nearly always benefits from the added goodwill it creates, even if the donation is not highly publicized.⁴⁸

Australian corporate directors and managers are not permitted to be as altruistic as their US counterparts. In effect, what the Americans call the benefit-to-the-business test applies in Australia. As Bowen LJ stated in *Hutton's* case (an English decision):

⁴³ Federal Election Campaign Act of 1971, 2 USC 431-455 (1994). See Kahn, above n 12, notes 246-63 and accompanying text.

⁴⁴ Kahn, *ibid*, 642.

⁴⁵ *Ibid* 640-1.

⁴⁶ Fisch, above n 4, 1096, referring to *Levine v Smith* 591 A 2d 194 (1991), 207, and the US common law business judgment rule, which creates a presumption of validity for business decisions made by directors where they act without self-interest, on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.

⁴⁷ For an overview of the legal regulation of corporate charitable donations in the US, see R Franklin Balotti and James J Franks, 'Giving at the Office: A Reappraisal of Charitable Contributions by Corporations' (1999) 54 *Business Lawyer* 965.

⁴⁸ Rikki Abzug and Natalie Webb, 'Rational and Extra-Rational Motivations for Corporate Giving: Complementing Economic Theory with Organization Science' (1997) 41 *New York Law School Law Review* 1035, 1038-9.

They can only spend money which is...the company's, if they are spending it for the purposes which are reasonably incidental to the carrying on of the business of the company. ... The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company. ... It is not charity sitting at the board of directors, because as it seems to me charity has no business to sit at boards of directors qua charity. There is, however, a kind of charitable dealing which is for the interest of those who practise it, and to that extent and in that garb (I admit not a very philanthropic garb) charity may sit at the board, but for no other purpose.⁴⁹

Hutton was decided on corporate capacity grounds; the payment in question was alleged, and found, to have been made *ultra vires* (beyond the company's powers). In *Parke v Daily News Ltd*⁵⁰ – a later English decision which applied *Hutton* – Plowman J based his judgment not only on the doctrine of *ultra vires*, but also on directors' duties grounds.⁵¹ Given the abolition of the *ultra vires* doctrine in Australia,⁵² the relevant legal doctrine is officers' duties – in particular, the general law duty of directors and senior executives to act in good faith in the interests of the company, and the duty of directors and other officers under s 181 of the Corporations Law to exercise their powers and discharge their duties in good faith in the best interests of the corporation.

In summary, sheer altruism (however laudable) would not provide a sufficient legal basis for corporate giving in Australia. The likelihood of a corporate donation being motivated purely by altruism is, however, unlikely. Any political donation that is intended to benefit the company, even indirectly, cannot be charitable in the strict sense. It appears likely that altruism would often only be a co-motivation to other, more-tangible, motivations. Before turning to profit-maximisation (shareholder benefit) as a motivation for corporate giving, we address several other possible motives.

B. Management self-promotion or self-dealing

As noted above, corporate donations (to charities or political parties) may involve agency costs. In some cases, corporate *charitable* donations may be 'a form of self-aggrandising or self-promoting behaviour by management'.⁵³ Abzug and Webb speculate that '[m]anagers may give [company funds to charity] because they...enjoy the prestige associated with being a big giver. ... "[B]usiness contributions...are attempts to acquire status, prestige, and goodwill for management and the firm."⁵⁴ On the other hand, shareholders might take the view that a little philanthropic dealing by managers is indirectly good for the company. That is, if managers are pleased with the prestige that philanthropy attracts, there may in turn be a positive effect on the managers' productivity, and higher gains for shareholders.⁵⁵

⁴⁹ *Hutton* (1883) 23 Ch D 654, 671, 673.

⁵⁰ [1962] Ch 927.

⁵¹ See K W Wedderburn, 'Ultra Vires or Directors' Bona Fides?' (1967) 30 *Modern Law Review* 566.

⁵² See Corporations Law, ss 124, 125.

⁵³ Mike Adams and Philip Hardwick, 'An Analysis of Corporate Donations: United Kingdom Evidence' (1998) 35 *Journal of Management Studies* 641, 641-2, citing O Hart, *An Economist's View of Fiduciary Duty*, LSE Financial Markets Group Discussion Paper No 157 (1993), 16.

⁵⁴ Abzug and Webb, above n 48, 1041, citing Armen A Alchian and Reuben A Kessel, 'Competition, Monopoly and the Pursuit of Pecuniary Gain' in *Aspects of Labor Economics* (1962), 156.

⁵⁵ *Ibid* 1041-2, citing Charles T Clotfelter, *Federal Tax Policy and Charitable Giving* (1985), 184.

Turning from charitable donations to political donations, it is possible that political donations may be explained by managerial self-dealing.⁵⁶ If a manager were to contribute company funds to a political party solely for her or his own personal satisfaction, this would be open to question even in the more liberal donations regime existing in many US States:

[C]orporate managers may authorize donations to politically active charities as a means of furthering their own political and ideological preferences, irrespective of the firm's best interests. When corporate managers approve donations on this self-serving basis, they satisfy the letter of the [US] law, but fail to fulfill their fiduciary obligation to protect corporate shareholders' property interests.⁵⁷

Under Australian corporate law, directors and senior executives must not profit improperly from their position as officers of the company.⁵⁸ A political donation could lead to a breach of this rule if, as a result of a donation, a director was endorsed as a party candidate. As the DTI paper notes, where a director 'was a member of the political party to which a donation was to be given, there could be a conflict between the director's personal interests and [her or] his duty to the company'.⁵⁹

Managerial self-dealing may explain a company's political donations even where no director or senior executive of the company is actively involved in the political party concerned. The donations may result simply from a personal desire among some or all of the directors to assist a particular party. If they were to use their own money this would be completely uncontentious. But where this desire to provide financial support to a political party results in company funds being donated to the political party or a club or foundation supporting the party – or in some other form of financial assistance being given by the company to the political party – matters of corporate law and policy become relevant.

C. Corporate social responsibility⁶⁰

CSR, like altruism, can be viewed as having no intrinsic benefit to the company. There is no universally accepted definition of CSR,⁶¹ but Engel has said:

The term...is most useful if taken to denote the obligations and inclinations, if any, of corporations organized for profit, voluntarily to pursue social ends that conflict with the presumptive shareholder desire to maximize profit.⁶²

CSR is probably interchangeable with terms like 'enlightened self-interest'⁶³ and the corporate governance perspective known generally as 'stakeholder theory'.⁶⁴ The fundamental theme of

⁵⁶ The data examined in the study described later in this Report do not enable any definite conclusions to be drawn. A more detailed study examining the most mobile directors amongst the most politically philanthropic companies would shed more light on this point. Directors who were constantly changing companies would be examined to see whether they took their 'giving-pattern' with them.

⁵⁷ Kahn, above n 12, 611 (notes omitted).

⁵⁸ *Keech v Sandford* (1726) Sel Cas Ch 61; *Furs Ltd v Tomkies* (1936) 54 CLR 583; Corporations Law, ss 182, 183.

⁵⁹ DTI, above n 19, para 2.4.

⁶⁰ 'CSR'.

⁶¹ Kahn, above n 12, 629 (note 191).

⁶² David L Engel, 'An Approach to Corporate Social Responsibility' (1979) 32 *Stanford Law Review* 1, 5-6.

⁶³ Kahn, above n 12, 627 (note 184); Company Law Review Steering Group, *Modern Company Law for a Competitive Economy: The Strategic Framework* (Consultation Document, 1999), ch 5.1.

CSR is that corporate managers should recognise that their prime duty of profit-maximisation for shareholders is to be tempered by an acknowledgement that corporate power is held on trust for the wider community.⁶⁵ This approach seems to have been accepted by some US courts.⁶⁶

In terms of philanthropy, some corporate executives say that supporting philanthropic agencies is a way for the company to 'give something back' to the community.⁶⁷ Unlike a purely altruistic perspective, however, CSR-prompted charity recognises that the corporation does not exist in a social, ethical or moral vacuum.⁶⁸ In fact, the term 'enlightened self-interest' best captures the notion that the CSR-aware company is far from altruistic, and indeed recognises that by being good, it can do well. It could be argued that CSR is simply profit-maximisation with a halo:

Although researchers in economics, sociology, and other fields suggest that social responsibility or duty motivates corporate executives to donate, economists tend to believe that nearly all donations benefit the corporation in some way. ... The benefit to the firm is increased sales or other benefits accruing because the corporation *appears* to be 'socially minded'.⁶⁹

Some of those other benefits include public relations, financial performance and employee productivity.⁷⁰ Abzug and Webb note that, in the US, no studies have conclusively proven causation between higher levels of giving and better financial performance.⁷¹ From the US perspective, this would be of little consequence.⁷² But the Australian position, based on *Hutton*, seems to be that if CSR-prompted charity is of no benefit to the company, then the courts can impeach such contributions. This is precisely the situation that arose in *Parke v Daily News Ltd*.⁷³ A minority shareholder challenged proposed *ex gratia* payments to employees who were facing imminent redundancy as the company had contracted to sell its main business assets. The board considered that it owed 'a very practical obligation to their employees', but the court disagreed: 'the defendants were prompted by motives which, however laudable, and however enlightened from the point of view of industrial relations, were such as the law does not recognise as a sufficient justification'.⁷⁴

⁶⁴ See, for example, E Merrick Dodd Jr, 'For Whom Are Corporate Managers Trustees?' (1932) 45 *Harvard Law Review* 1145; Lord Wedderburn of Charlton, 'The Social Responsibility of Companies' (1985) 15 *Melbourne University Law Review* 4.

⁶⁵ Adolf A Berle Jr, *The Twentieth Century Capitalist Revolution* (1954), 169.

⁶⁶ *AP Smith Mfg Co v Barlow* 98 A 2d 581, 586 (1953); *Theodora Holding Corp v Henderson* 257 A 2d 398, 404 (1969); *Paramount Communications, Inc v Time Inc* 571 A 2d 1140 (1989).

⁶⁷ Abzug and Webb, above n 48, 1039.

⁶⁸ Kahn, above n 12, 629-30 (notes omitted).

⁶⁹ Abzug and Webb, above n 48, 1039-40. (Emphasis added.)

⁷⁰ Dwight F Burlingame, 'Empirical Research on Corporate Social Responsibility: What Does it Tell Us?' (1994) 4 *Nonprofit Management & Leadership* 473, 474, cited in Abzug and Webb, *ibid*, 1039 (note 19).

⁷¹ Abzug and Webb, *ibid*, 1040.

⁷² US managers who operate in a legal environment which has not abrogated the 'benefit-to-the-business' test will still enjoy the protection of the business judgment rule where, in making a donation, they acted on an informed basis, honestly, and in good faith, and the donation was a business decision in the best interests of the company.

⁷³ [1962] Ch 927 (affirming *Hutton*).

⁷⁴ *Ibid* 963 (Plowman J). Later cases in some overseas jurisdictions have made some inroads into the general principles of *Hutton* and *Parke*. For example, in the Canadian case *Teck Corporation Ltd v Millar* (1973) 33 DLR (3d) 288, Berger J said, at 314: 'If today the directors of a company were to consider the interests of its employees no one would argue that in doing so they were not acting bona fide in the interests of the company itself. Similarly, if the directors were to consider the consequences to the community of any policy that the company intended to pursue, and were deflected in their commitment to that policy as a result, it could not be said that they had not considered bona fide the interests of the shareholders.'

Whatever the relative merits and demerits of CSR, it is doubtful whether it can justify the making of political donations. Political parties are hardly the sort of social actors whose interests are furthered by CSR and, moreover, often represent only narrow sectional political interests. Although CSR masquerading as 'enlightened self-interest' could serve to validate a political donation under the strict 'benefit' test, the more appropriate rationalisation would appear to be profit-maximisation.

D. Political free-speech

Another possible motivation for a corporate political donation is a desire by a company's board/management to voice the company's view in a political debate – albeit indirectly. There would, of course, often be other (more direct) means of making the company's view known; for example, by making a formal submission to a parliamentary committee or law reform body. To the extent that a corporate political donation represents an attempt by the company's board or management to exercise the company's right to 'political free-speech', Kahn is strongly opposed:

[B]ecause politicized corporate charitable contributions are a form of corporate political speech, they may impinge on shareholders' speech and associational interests. In light of the fact that shareholders are typically not provided with information regarding the firm's charitable contributions, the investment decision cannot represent a legitimate proxy for shareholder consent to politicized charitable contributions. ...[A] deep conflict exists between the firm's right to promote its political interests and the shareholders' interest in not being compelled to subsidize speech with which they are in disagreement.⁷⁵

E. Profit-maximisation

By definition, pure charity cannot be expected to result in gains for a company because, where 'charity' is used in the true sense of the word, the donor cannot anticipate a net gain from his or her contribution.⁷⁶

There is therefore a widely held view that corporate donations to charitable organisations are motivated primarily by profit-maximisation.⁷⁷ As Adams and Hardwick argue, 'more and more corporations view their contributions as a form of investment rather than classic philanthropy (ie: pure gifts)'.⁷⁸

Corporate donations to political parties may also be motivated by profit-maximisation. The link between the political contribution and the benefit to the business may well be direct and obvious: it may be designed to reduce costs or increase revenues in a fairly direct manner. As far as reducing costs is concerned, contributions could be designed to insulate the company from unfavourable tax or regulatory policies, thereby reducing the company's tax and compliance costs.⁷⁹ As for increasing revenues, contributions may be designed to improve the

⁷⁵ Kahn, above n 12, 637 (notes omitted).

⁷⁶ Ibid, 663-4 (notes omitted).

⁷⁷ Abzug and Webb, above n 48, 1045.

⁷⁸ Adams and Hardwick, above n 53, 641, citing J J Siegfried, K M McElroy and D Biernot-Fawkes, 'The Management of Corporate Contributions' (1983) 5 *Research in Corporate Performance and Policy* 87, 87.

⁷⁹ Usha C V Haley, 'Corporate Contributions as Managerial Masques: Reframing Corporate Contributions as Strategies to Influence Society' (1991) 28 *Journal of Management Studies* 485, 487, 489.

company's chances of winning government business contracts when the political party which is the beneficiary next forms a government.

Alternatively, the link between the contribution and the benefit to the business may be more indirect. An example of a contribution designed to maximise profits indirectly is a contribution aimed at minimising or negating adverse publicity:

Managers also use contributions to stem governmental criticisms of corporate actions, and to ward off attacks by social activists. ...[T]hreats of regulation prompt contributions to civic and political affairs from the utilities.⁸⁰

From the shareholders' perspective, political donations motivated primarily by profit-maximisation are not a source of agency costs. If the company is offered contracts or tenders when its beneficiary obtains government, or is approached more sympathetically by regulators, then many shareholders would have little cause for complaint. On the other hand, political donations of this nature may involve some significant legal and policy issues in areas other than corporate law.

F. The (lack of) evidence on motivation

Much of the preceding argument is speculative in the sense that it is almost impossible accurately to discern why companies make donations. Suspicions can be loosely tested by reference to the contours of the corporate landscape and tax laws, but in the absence of a study directly on point no solid conclusions can be reached.

A 1980 study considered some motivations, but it did not differentiate between political and non-political donations.⁸¹ Of the 101 companies responding to the survey, 96 made donations. The most important factor cited by respondents was a belief in the active support of social programs. The fact that donations provided favourable publicity was mostly claimed to be unimportant. Of the five companies which did not make donations, four refrained because their basic responsibility was to shareholders, while the fact that benefits to the company might not be readily identifiable was claimed to be largely unimportant. Unfortunately, the findings of this study are, for present purposes, largely indeterminate because it did not differentiate between political and non-political donations. Also, the results of surveys in this area must be treated with caution given the possibility of self-serving responses.

The possibility that corporate giving is motivated more by management self-interest (or other factors) rather than profit-maximisation is supported by studies that fail to find a conclusive link between corporate giving and profitability.⁸² However, the failure to find that conclusive link is not necessarily fatal to the proposition.

⁸⁰ Ibid 501, citing J Cohn, *The Conscience of the Corporations: Business and Urban Affairs, 1967-1970* (1971); F Fry and R J Hock 'Who Claims Corporate Responsibility? The Biggest and the Worst' (1976) 18 *Business and Society Review* 62; F K Levy and G M Shatto, 'Social Responsibility in Large Electric Utility Firms: The Case for Philanthropy' in L E Preston (ed), *Research in Corporate Social Performance and Policy* (1980).

⁸¹ A Harris, 'Corporate Donations to Institutions – A Survey of Practice and Disclosure' (1980) 32 (April-June) *Professional Administrator* 97.

⁸² Fisch, above n 4, 1097, citing James R Boatsman and Sanjay Gupta, 'Taxes and Corporate Charity: Empirical

There is some old UK evidence suggesting that corporate political donations make no difference to election outcomes.⁸³ If this remains the case – that is, if contributions make no difference to a party's chances – then a donor company's directors are possibly in breach of the rule in *Hutton*.⁸⁴ If contributions do make a difference, then the rule in *Hutton* is observed, but at the risk of an accusation of vote-buying.⁸⁵

In relation to the US, causal empiricism suggests that political spending is positively related to election outcomes. The restriction on overt political contributions by US companies⁸⁶ inferentially recognises this and the concomitant point that votes can be bought.

The importance of the effect of a contribution – and the motive for making it – cannot be underestimated. Depending on the effect or motive (and it does not seem to matter which), directors and senior executives expose themselves (and their companies) to varying types and degrees of liability. We now consider these legal issues.

Evidence from Micro-Level Panel Data' (1996) 49 *National Tax Journal* 193.

⁸³ David Butler, *The British General Election 1951* (1952), 34, cited in K D Ewing, 'Company Political Donations and the Ultra Vires Rule' (1984) 47 *Law Quarterly Review* 57, 70.

⁸⁴ If the party is already in government, the donation would not run as great a risk of leading to a breach of the rule in *Hutton*. This is because the donation may be designed to influence the government's approach to laws and issues affecting the company, and therefore could be 'profit-maximising'. However, a donation of this nature raises issues over and above corporate law.

⁸⁵ Ewing, above n 83, 71.

⁸⁶ See Section IIIA above.

IV. LEGAL REGULATION IN AUSTRALIA

A. Corporate law

1. Disclosure

The Corporations Law does not contain any disclosure rules specifically aimed at political donations. But a proposed corporate political donation may fall within a general disclosure rule.

If a director has a material personal interest in a proposed political donation by the company, the director must disclose to the other directors as soon as practicable the nature and extent of the interest and the relation of the interest to the affairs of the company.⁸⁷ If it is a public company, the interested director is not allowed to be present while the donation is being considered by the board, and is not allowed to vote on the matter at the board meeting.⁸⁸

Also, if the company is a public company or is controlled by a public company, the related party provisions apply. Under Chapter 2E of the Corporations Law, a public company (or an entity that the public company controls) may give a financial benefit to a 'related party' of the public company only if:

- the public company's shareholders approve in advance – after full disclosure; or
- the giving of the benefit falls within an exception set out in Chapter 2E.

The expression 'related party' is defined to include not only the directors of the public company, and their spouses, parents and children, but also (among others) an entity which acts in concert with a related party (X) on the understanding that X will receive a financial benefit if the public company gives the entity a financial benefit.⁸⁹ If a public-company director is also an office-bearer of a political party, or has some involvement with an organisation that supports a political party, any financial benefit given by the company to the party or the supporting organisation would fall within Chapter 2E if the 'acting in concert' test was satisfied. Giving a financial benefit is defined very broadly – and would catch not only straightforward donations but also, for example, supplying services, forgiving a loan or leasing property to the political party or supporting organisation.⁹⁰

If an exception applies, there is no obligation to obtain prior shareholder approval of the financial benefit. But in the political donations scenario the only exception that might be applicable is the 'arm's length terms' exception. This exception applies where a financial benefit is given on terms that would be reasonable in the circumstances if the public company (or

⁸⁷ Corporations Law, s 191.

⁸⁸ Corporations Law, s 195(1). The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

- identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
- states that those directors are satisfied that the interest should not disqualify the director from voting or being present: s 195(2).

⁸⁹ Corporations Law, s 228.

⁹⁰ Corporations Law, s 229.

controlled entity) and the related party were dealing at arm's length (or on terms that are less favourable to the related party than arm's length terms).⁹¹

If one accepts that regulations governing corporate political donations should be based on the two principles of transparency and accountability, the related party provisions provide a sub-optimal disclosure and approval regime. There is no doubt that the Chapter 2E provisions are very broadly drafted. Indeed, the provisions may well have applied to some cases of corporate political giving over recent years, although neither the directors nor the political party concerned (nor the Australian Securities and Investments Commission) was aware of their applicability. Nevertheless, in some instances a public company could provide a financial benefit to a political party, or an organisation supporting a political party, and Chapter 2E would not apply due to the absence of a 'related party'. And, of course, Chapter 2E applies only to financial benefits given by public companies and entities controlled by public companies. It does not apply to financial benefits given by a proprietary company that is not controlled by a public company. In short, Chapter 2E is not a comprehensive disclosure regime as far as corporate political donations are concerned.

2. *Corporate capacity and officers' authority*

In the UK, the question of a company's capacity to make a political donation arose in *Simmonds v Heffer*.⁹² Mervyn-Davies J considered that the legal capacity of a company to make a donation depended on construing its memorandum and articles of association, and determining whether or not the donation was *ultra vires* the company. But because the doctrine of *ultra vires* has been abolished in Australia,⁹³ the validity of a corporate political donation cannot be challenged on grounds of lack of corporate capacity.⁹⁴

One possible ground for challenging a political donation made by an Australian company is lack of authority in the officer(s) who approved and/or performed the acts constituting the donation. This is a matter for the general law of agency as it has been applied to companies⁹⁵ and the statutory assumptions⁹⁶ which a donee is entitled to make in relation to the contribution.

As a practical matter, however, it would be unlikely that a political party would try to challenge the ability of its benefactor to make donations to it. It is therefore more useful to analyse a political donation in terms of officers' duties,⁹⁷ and any actions which may be brought to enforce those duties.

⁹¹ Corporations Law, s 210.

⁹² May 24, 1983 (unreported).

⁹³ Corporations Law, ss 124, 125.

⁹⁴ As s 125(2) of the Corporations Law states, 'An act of [a] company is not invalid merely because it is contrary to or beyond the objects in the company's constitution'.

⁹⁵ See eg: *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480; *Helby-Hutchinson v Brayhead Ltd* [1968] 1 QB 549; *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising and Addressing Co Pty Ltd* (1975) 133 CLR 72.

⁹⁶ Corporations Law, ss 128, 129.

⁹⁷ The commentary on *Simmonds v Heffer* agrees that donations are more-appropriately challenged under heads of directors' duties, and not the doctrine of *ultra vires*: Ewing, above n 83, 69; Leon Cane, 'Ultra Vires and Political Donations' (1984) *New Law Journal* 749, 750.

3. Directors' and officers' duties

As discussed earlier in the Report, a director or senior executive risks breaching the duty to act in good faith in the interests of the company if he or she authorises a political donation in circumstances where there is no obvious benefit – direct or indirect – for the company's shareholders.⁹⁸ In addition, if a director or senior executive authorises a political donation in circumstances where he or she stands to gain personally – either directly or indirectly – then there is a risk of breaching the fiduciary duty to avoid a conflict between personal interests and duties to the company, and also the statutory duty not to make improper use of position.⁹⁹

These duties may be enforced by the Australian Securities and Investments Commission ('ASIC'),¹⁰⁰ by the company itself¹⁰¹ or, in limited circumstances, by a shareholder under the statutory derivative action provisions.¹⁰²

An action by ASIC is probably unlikely except in extreme circumstances, given ASIC's limited resources and wide range of competing demands on its enforcement arm. It is also unlikely that the company would bring legal proceedings – unless there has been a change of control. This is because (i) a decision to make a political donation will commonly be a 'collective' decision made by the board of directors; and (ii) the power to commence litigation in the company's name is ordinarily a power of the board of directors.¹⁰³ A derivative action by a shareholder in respect of a political donation authorised by the board is also considered unlikely except in extreme circumstances. The incentives for this type of shareholder litigation are particularly weak.¹⁰⁴ Also, a derivative action could commence only if, among other things, the court considered the alleged breach of duty arising from the political donation as sufficiently serious that it was in the best interests of the company that a derivative action be allowed to proceed.¹⁰⁵

⁹⁸ See *Hutton* and Corporations Law, s 181.

⁹⁹ Corporations Law, s 182. For discussion of the legal duties owed by directors and other officers of companies see H A J Ford, R P Austin and I M Ramsay, *Ford's Principles of Corporations Law* (9th ed 1999), Butterworths.

¹⁰⁰ ASIC Law, s 50; Corporations Law, ss 1317J(1), 1324.

¹⁰¹ The company's right to bring legal proceedings in respect of a breach of fiduciary duty by a director or senior executive is an inherent general law power. In relation to a breach of one of the officers' duties in the Corporations Law (eg: s 181 or s 182), the company has power to apply for compensation under s 1317J(2), and would normally be entitled (as 'a person whose interests have been ... affected' by the breach) to apply for an injunction under s 1324.

¹⁰² Corporations Law, Part 2F.1A. A shareholder may also be able to apply for an injunction under s 1324 if a board decision to make a political donation amounts to a breach of one or more of the statutory officers' duties. The approach of Young J in *Mesenberg v Cord Industrial Recruiters Pty Ltd* (1996) 19 ACSR 483 would preclude a shareholder applying for an injunction under s 1324 in respect of an alleged breach of a statutory officers' duty, but this approach was rejected by Einfeld J in *Airpeak Pty Ltd v Jetstream Aircraft Ltd* (1997) 27 ACSR 715.

¹⁰³ See, eg: Corporations Law, s 198A.(a replaceable rule), and equivalent provisions in company constitutions; *John Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB 113.

¹⁰⁴ Ian M Ramsay, 'Corporate Governance, Shareholder Litigation and the Prospects for a Statutory Derivative Action' (1992) 15 *University of New South Wales Law Journal* 149, 162-4.

¹⁰⁵ Corporations Law, s 237(2)(c).

4. *Oppression*

Political donations may form the basis of an oppression application under Part 2F.1 of the Corporations Law. Under Part 2F.1, any member of a company¹⁰⁶ has power to apply to the court for an order under s 233 in respect of an act, omission or course of conduct that is contrary to the interests of the company's members as a whole, or oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

While there has been no reported oppression case in Australia in which the applicant has cited political donations among the allegedly oppressive acts or conduct, the nature of the oppression remedy is such that the possibility of this occurring in the future cannot be ruled out. For example, a member of a small or medium-sized company may build an oppression application around the fact that the company's directors have decided not to pay dividends but instead to donate heavily to a political party. This example reveals a significant limitation of the oppression remedy for present purposes: the oppression provisions have greater scope for application to proprietary companies than to large public companies.¹⁰⁷

5. *Court-ordered winding up*

Under s 461(1)(k) of the Corporations Law, the court has power to order the winding up of a company if the court is of the opinion that it is just and equitable that the company be wound up. A shareholder has standing to apply for a winding up order on this ground.¹⁰⁸ If a minority shareholder were to rely on this drastic provision in protest against the company's political donations, the application would probably be framed in terms of the 'justifiable lack of confidence' ground referred to by the House of Lords in *Loch v John Blackwood Ltd.*¹⁰⁹ Lord Shaw stated that a lack of confidence in the conduct and management of a company's affairs may be 'justifiable' and give rise to a successful application on the just-and-equitable ground where there has been a 'lack of probity' in the conduct of the company's affairs.¹¹⁰

Sections 461(1)(f) and 461(1)(g) provide further grounds on which the court may make a winding up order following a shareholder application. Namely, that the affairs of the company are being conducted in an oppressive, unfairly prejudicial or unfairly discriminatory manner, or that an act or omission by or on behalf of the company is oppressive, unfairly prejudicial or unfairly discriminatory.

An additional ground for a court-ordered winding up is set out in s 461(1)(e) – namely, where a company's directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in some other way that appears to be unfair or unjust to members.

¹⁰⁶ Together with a former member in limited circumstances, and also a person nominated by ASIC in certain circumstances: Corporations Law, s 234.

¹⁰⁷ G P Stapledon, 'Use of the Oppression Provision in Listed Companies in Australia and the United Kingdom' (1993) 67 *Australian Law Journal* 575.

¹⁰⁸ Corporations Law, s 462(2)(c) and s 9 (definition of 'contributory').

¹⁰⁹ [1924] AC 783.

¹¹⁰ Ibid 788.

In practical terms, a member aggrieved by her or his company's political donations would be better-advised to apply for an order under the oppression provisions (Part 2F.1) rather than a winding up order under s 461. This is because compulsory winding up is a drastic remedy, and under s 467(4) the court is required to refrain from making a winding up order on the grounds set out in s 461(1)(e) or (k) if the court believes that some other remedy is available to the applicant and the applicant is acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy. Presumably, the court may well consider that a remedy under the oppression provisions is an acceptable alternative. These remedies include an order for the purchase of the applicant's shares by the company or by another shareholder, or an order prohibiting the payment of further donations.

B. The Electoral Act

The Commonwealth Electoral Act 1918 ('Electoral Act') regulates the practice of donations only by requiring disclosure. The Electoral Act does no more than establish a scheme of annual reporting and disclosure to the Australian Electoral Commission by:

- registered political parties of funds they have received (including donations); and
- individuals, companies, trusts and foundations of donations they have made to registered political parties.

The details of disclosure in each case are not the same. Political parties are required to disclose all amounts they receive during a financial year (including donations, loans and bequests) from a person or organisation where the sum of all amounts received from that person or organisation during the financial year is \$1,500 or more. In calculating the sum, an amount of less than \$1,500 need not be counted.¹¹¹

Disclosure must also be made by candidates in an election or by-election of donations they have received relating to the election.¹¹²

A person or organisation which donates \$1,500 or more to a registered political party during a financial year must provide a return to the Electoral Commission disclosing all donations within 20 weeks after the end of the financial year. Donations made by individuals, companies, trusts and foundations must be disclosed. There have been concerns that the Electoral Act did not require disclosures made indirectly through a trust or foundation. For example, a public company could donate funds to a trust or foundation and if that trust or foundation then used those funds to make a donation to a political party, the source of the original donation (the public company) would not have to be disclosed. This concern has now been addressed. As a result of amendments made by the Electoral and Referendum Amendment Act (No 1) 1999, the return lodged by a person or organisation which specifies the donations made to a political party must also include details of all donations received by that person or organisation, being

¹¹¹ Commonwealth Electoral Act, s 314AC.

¹¹² Ibid, s 304.

donations used to make the donation to the political party.¹¹³ These amendments also require loans made to political parties to be disclosed.

The set of donation records maintained by the Australian Electoral Commission are somewhat unworkable. The records do not neatly differentiate ‘Donations to XYZ Party made by corporations’. This is because the Electoral Act does not differentiate between corporate and non-corporate donors. Also, it does not require the Australian Electoral Commission to consolidate into one report all the State Branch returns from a particular party. Weaknesses in the disclosure scheme are addressed later in this Report.

By comparison, the UK Companies Act 1985 imposes very specific – although not comprehensive – disclosure requirements. Paragraphs 3-5 of Schedule 7 to that Act require the annual directors’ report to disclose details of all donations (whether political or charitable) where the total donated during the year exceeds £200. If donations have been made by subsidiaries, the company must disclose where the company and its subsidiaries have together donated above the £200 threshold.

The current UK disclosure regime makes it more difficult for UK companies to conceal political donations than is the case for Australian companies. The Australian Corporations Law contains no specific disclosure rules. But, as mentioned earlier, the UK government is currently considering tightening the UK disclosure regime. The Australian disclosure regime – already a less demanding regime than its UK counterpart – will be even more so.

¹¹³ Ibid, s 305B(3A). The precise requirement is as follows: ‘The return must also set out the relevant details of all gifts received by the person at any time, being gifts used to make gifts the whole or part of which were used to make gifts totalling \$1,500 or more in a financial year to the same registered political party or the same State branch of a registered political party and the amount or value of each of which is equal to or exceeds \$1,000.’

V. THE STUDY

A. Collecting, categorising and consolidating the data

The data collected for the study was derived from party annual returns for 1995/96, 1996/97 and 1997/98. Research was confined to the major parties in Australian politics – the Australian Labor Party, the Liberal Party, the National Party, the Democrats, the Greens¹¹⁴ and One Nation. Because the returns are not restricted to donations, it seems to make more sense to collect data directly from the donor returns, but these are far more numerous and presented significant logistical and analytical problems which could not be as easily overcome as those presented by the party annual returns. Accordingly, data was collected from the party annual returns for ease of later analysis.

The use of annual returns as the data source necessitated some qualitative refinements to the extracted information to confine the data to corporate donations. In the main, the parties split their annual receipts into gifts and other receipts. In these cases, refinement consisted simply of culling the non-corporate donors from the data.

Once the set of corporate donors was obtained, these were separated into public and proprietary companies. Non-corporate enterprises were culled, but we preserved the data on professional firms¹¹⁵ and lobby groups for comparative purposes.¹¹⁶

The next step in the analysis involved consolidating and verifying the data. Where a public company was seen to have made several donations to a party (say, by way of a donation to each state branch of the party), the donations were consolidated under the banner name of that company. Also, donations were – to a limited extent – consolidated according to corporate groups. Where a donation was made by a similarly-named subsidiary of a public company, it was consolidated under the parent company's name. However, no attempt was made to consolidate donations made by group companies which were operating under markedly different names. To have attempted to consolidate in this comprehensive manner would have necessitated an enormous amount of time cross-checking company names against either a database of corporate group constituents or disclosures of subsidiaries in public companies' annual reports.

Very little consolidation according to corporate groups was carried out for *proprietary* companies. The reason is that the sheer number of proprietary companies in existence means that similarities in name may be coincidental rather than evidence of a group relationship. Again, verification would have involved a very substantial exercise.

¹¹⁴ There are many registered parties going by the name 'Green' or some derivative of that word. We consolidated these parties under the 'Green' banner for convenience.

¹¹⁵ 'Professional firms' were those donors that were found to be law firms, barristers' clerking offices and accounting firms.

¹¹⁶ A broad definition of 'lobby group' was adopted because it was considered inappropriate to include some corporate donors in the corporate listings, if in substance the company was a lobby group. In general, lobby groups were those donors that were companies limited by guarantee, or bore the title 'Association', 'Club', 'Federation' or 'Group', but not trade unions.

Where the party return was ambiguous or unclear, a number of databases were used to resolve difficulties over entity type or consolidation. In some cases, the donor's address (taken from the return) matched the address which was returned by ASIC's website search facility, the White Pages or the Yellow Pages. However, addresses are not conclusive because several unrelated companies may share the same registered office (eg: that of their mutual accountant). So, in the case of uncertainty, reference was made to the Australian Financial Review's *Shareholder* guidebook and Dun & Bradstreet's *Who Owns Whom*, to settle questions of consolidation.

Public companies were separated into ASX-listed companies and unlisted companies. The listed companies were then classified according to ASX industry groups. This allowed a comparison of the patterns of corporate giving by industry group over the 3 years of the study.

Given the inconsistencies and flaws in the raw data, the conclusions that may be drawn from this research must necessarily be qualified to some extent. This raises a separate issue. The problems with the database produced under the current disclosure regime highlight the desirability of reforming the existing disclosure rules so that comprehensible and meaningful information is disclosed in the future.

B. Patterns of corporate political philanthropy in Australia – 1995/96 to 1997/98

1. Aggregate figures over the 3 year period

Summary data is presented in Table A. Over the three year period 1995/96-1997/98, total corporate donations were \$29 million. Of this amount, 64% (\$18.5 million) was donated to the Liberal Party while 23% (or almost \$7 million) was donated to the ALP. The National Party received just under \$3.5 million.

Of the total amount of \$29 million, over \$17 million was donated by public companies (with 63% of this going to the Liberal Party and 29% going to the ALP) and more than \$11.6 million was donated by private companies (with 65% of this being donated to the Liberal Party and 15.5% being donated to the ALP).

Professional firms gave almost \$250,000 to the Liberal Party, just over \$73,000 to the ALP, and a mere \$9,000 to the National Party. Lobby groups gave over \$11 million to the Liberal Party, almost \$9 million to the ALP, and \$2.7 million to the National Party.

In summary, over the three years of the study, the ALP received most of its corporate money from public companies, while the Liberal Party received significant sums from both the public and proprietary company sectors. The National Party's figures varied too widely to generalise, but tended to the proprietary company sector. The Liberal Party received substantially more than the other parties from professional firms. Finally, the Liberal Party and the ALP both received significant amounts from lobby groups.

2. Aggregate figures, year by year

Remaining with Table A, but turning to a year by year analysis, the highest corporate political donations were made in 1995/96 – when total corporate donations amounted to almost \$15 million. More than half of this amount (\$8.4 million) comprised donations from public companies, while donations from proprietary companies accounted for \$6.3 million. Professional firms contributed a little more than \$150,000, while lobby groups accounted for almost \$9.4 million. The Liberal Party was clearly the most successful at attracting money from all sources, accounting for between 60% and 65% of all categories of corporate donation and lobby group donations, and nearly 90% of donations by professional firms.

Overall donations fell in 1996/97, with companies giving less than half of their previous year's level (\$6.2 million). Gifts from public companies amounted to just over \$4 million, while proprietary companies contributed the remaining \$2.2 million. The Liberal Party was able to increase its share of corporate contributions – it received between 67% and 70% of all categories of corporate donation. Professional firms gave \$68,000 in 1996/97, with almost 80% of it going to the Liberal Party. Lobby groups gave only slightly less than in the prior year, down just over \$1 million to \$8.2 million. The Liberal Party received almost 41% of this, the ALP close to 36% and the National Party 23.5%.

Corporate giving increased to almost \$8 million in 1997/98. Public company donations were up slightly on the previous year, to just under \$5 million. Proprietary company donations were also up, to a little over \$3 million. Proportionately, the level of giving to the Liberal Party was down at the expense of increased corporate support for the ALP, but the Liberal Party nevertheless continued to hold its position as the most popular destination for corporate gifts. Professional firms gave just over \$100,000, with the Liberal Party attracting 52% of this (a significantly smaller proportion than in the previous two years); the ALP took almost 42%, and the National Party the remaining 6.5%. Lobby groups contributed much less than in the previous two years (\$5.1 million), with 51% of it going to the ALP, 43% to the Liberal Party and the remaining 5.7% to the National Party.

3. Number of contributors and average size of contributions, year by year

The number of contributors varied significantly every year. In 1995/96, the Liberal Party accepted gifts from 537 companies, with the average donation being \$17,656. The ALP received gifts from 159 corporate contributors (average: \$20,918), while the National Party had 80 corporate benefactors (average: \$23,073). The Liberal Party received an average of \$32,135 from its 171 *public* company donors, while the ALP collected an average of \$31,829 from its 77 public company donors. The National Party's 28 public company donors gave an average of \$15,367, while the Democrats received an average of \$6,250 from its 8 public company donors.

Contributor numbers were down in 1996/97. The Liberal Party received gifts from 167 companies, at a higher average of \$25,496 per company. The ALP received an average \$17,180 from its 74 corporate donors, while the National Party received a similar average amount (\$17,337) from its 37 corporate donors. The Democrats received the highest average of \$31,917

from just 2 corporate donors. The Liberal Party received gifts from 72 public companies, at an average of \$37,599. The ALP received \$25,065 on average from 34 public companies, while the National Party received an average \$19,622 from 22 public companies.

Contributor numbers were up in 1997/98, but average donations were lower. The Liberal Party received an average \$18,758 from 256 corporate donors, while the ALP collected \$19,473 from 112 corporate donors. The National Party had 107 corporate donors (average: \$9,282). The Liberal Party had more public company benefactors than the previous year (106), but with total donations from public companies lower (its average gift being \$26,499). The ALP took an average \$25,925 from 64 public company donors, while the National Party collected an average \$11,816 from its 39 public company donors.

4. *ASX-listed companies*

The pattern of giving by ASX-listed companies is presented in Table B. The data has been totalled over the three years of the study, and is confined to the three major parties that received significant levels of donations. The industry groups shown in Table B are those industry groups represented in the data – not all industry groups were represented.

Each party's data can be read and interpreted independently of the data of another party. The overall pattern of giving may be discerned from the three columns following the 'Industry sector' column. The 'Total donated' column represents the total amount in dollars donated to the three parties by the corresponding industry sector. The 'Number of companies' column, however, does not reflect the total number of donations made by the corresponding industry sector. Rather, this column indicates how many companies in a given sector made donations to any combination of parties. For example, in the Gold sector, 24 companies made donations – 22 to the Liberal Party and 3 each to the ALP and the National Party. Adding up each party's number of benefactors would give 28, which would be incorrect because several companies made donations to more than one party. Accordingly, the figure in the 'Number of companies' column avoids double-counting of donors. Finally, the 'Average aggregate overall donation' column is simply the result obtained by dividing 'Total donated' by 'Number of companies'. This aggregate figure represents the average amount which companies in a given industry sector set aside for donations to any destination; where this figure is higher than the averages received by a particular party, it can be concluded that companies in a given sector have donated to more than one party.

Tables C and D are derived from Table B, and are more amenable to descriptive analysis. Table C ranks the industry sectors in descending order of total donations per sector. It can be seen that the industry sector with the most donations was the banking and finance sector with almost \$3 million in total donations over the 3 year period. This was followed by the tourism and leisure sector with \$1.7 million in total donations, the developers and contractors sector with \$1.44 million in total donations and the diversified industrial sector with \$1.05 million in total donations. The average amount donated by all companies within an industry sector was \$686,040 which fell between ranks 8 and 9.

Table D ranks the industry sectors in descending order of average aggregate overall donation. The average was \$118,172, which fell between ranks 9 and 10. This is the average total amount donated by an ASX-listed company over the three years studied.

Table E is identical in form to Tables C and D, except that it is confined to each party in turn. The pattern of ranking for donors to the Liberal Party, in terms of both total industry sector donation and average contributions per sector, closely follows the figures for all parties combined. The ALP's total industry sector donations and average contributions per sector do not follow the overall figures as closely as the Liberal Party. Both sets of figures for the National Party are at great variance to the overall figures. These figures show clearly that the Liberal Party was the most strongly supported party by ASX-listed companies.

Table F shows the Top 10 ASX-listed company donors. The companies have been ranked in terms of total *disclosable* political donations made over the three-year period studied. Donations made to all political parties have been combined. Only Westpac and Village Roadshow donated more than \$1 million during the three years.¹¹⁷ Among the Top 10 donors, two made donations to all four major parties (Liberal, ALP, National and Australian Democrats); five made donations to three parties (Liberal, ALP and National); two made donations to two parties (Liberal and ALP); and one made a donation to only one party (Liberal).

C. Analysis

Not surprisingly, the Liberal Party consistently outperformed the other parties in terms of attracting corporate donations. So consistent, in fact, and so successful that in each year of the study, over the three-year period in aggregate, and in each corporate category, the Liberal Party's donations amounted to more than those of the other parties combined.

With respect to ASX-listed companies, the Liberal Party was able to achieve similarly dominant results for all industry sectors except Engineering, from which it received a few thousand dollars less than the ALP over the three years of the study. The Liberal Party was also able to attract donations from every industry sector except Chemicals, from which there were no disclosed donations at all.

In total, the level of donations could be said to be financially immaterial from the perspective of the corporate sector. About \$29 million in total was donated by corporations to political parties over the three years of the study, which is not a large amount of money compared to the value

¹¹⁷ But note that the total for National Australia Bank would also have been over a million dollars if a disputed amount of \$1 million had been counted in our study. The Liberal Party's return for 1996/97 did not show an amount for the transaction described below. However, in a letter to the Australian Electoral Commission, dated 30 July 1998, and on the Commission's public database, the Liberal Party requested that its 1996/97 return be amended to include a \$1 million receipt from National Australia Bank. The letter explained: 'During the year ended 30 June 1997, as part of the Party's bank overdraft facilities with the National Australia Bank, a commercial bill of \$1 million was credited to our bank account. This amount was not shown as a receipt in the Party's 1996/1997 Annual Return on the basis that it was a component of the overdraft. Overdrafts are not discloseable as receipts, but rather as debts if owed at year end, and in our view, the same approach should apply to the commercial bill, particularly when it is part of an overall bank overdraft arrangement. This approach was verbally agreed with an officer of the Commission on 20 October 1997, prior to lodgement of the return, but subsequently reversed by another officer during the conduct of the audit.'

of the corporate sector. Confining the analysis for the moment to public companies, the three-year figure of \$17 million seems even less significant when contrasted with the multi-billion-dollar market capitalisation of ASX-listed companies.¹¹⁸ Although the figures have not been tested for company size, the data intuitively confirms the findings of US studies that, other things being equal, large companies tend to make larger donations than small companies.¹¹⁹ One thing, though, is certain: the data do not allow us to gauge the effect of the donations. Whether the donations have assisted the commercial aspirations of the donors is entirely speculative.

A possible conclusion is that the level of donations is hardly cause for concern. But before this conclusion may be made it is important to consider three factors. First, although the figure of \$29 million over three years seems relatively small in contrast to the value of the corporate sector, it would be considered a much more significant sum when compared to the budget of the political parties. From the public policy perspective, a key issue is how much leverage a company (or companies) obtains as a result of political donations. This is more a factor of the importance of the donation to the political party than the relative size of the donation compared to the company's own value.

Second, from the corporate perspective, it is important that decisions to donate public company funds to political parties are subject to some checks and balances. Typically, these decisions will be made by the board of directors or a senior executive, but the money being donated is not theirs. As a matter of company law it is the company's money – and as a matter of substance it is the shareholders' money; it is not the directors' money.

Third, for the period of the study (1995/96-1997/98), there were readily available means to circumvent the existing disclosure provisions. The real level of corporate political 'support' would be revealed to be considerably higher if (i) donations made indirectly via clubs, trusts and foundations, and (ii) gifts-in-kind were to be added to the disclosed gifts in money. Indeed, the real level of corporate political support could be several times higher than the figures reported above. It is simply not possible to say because of the inadequate disclosure requirements that operated during the period of the study. The 1999 amendments to the Electoral Act, outlined in Section IVB above, should operate to improve disclosure. However, further reform is needed, as recommended in the next section.

¹¹⁸ As at 31 December 1998, the market capitalisation of companies listed on the ASX was \$536.2 billion: Australian Stock Exchange, *Fact Book 1999* (1999) 26.

¹¹⁹ Adams and Hardwick, above n 53, 645, citing studies by R L Watts and J L Zimmerman, 'Towards a Positive Theory of the Determination of Accounting Standards' (1978) 53 *Accounting Review* 112-34; A Belkaoui and P G Karpik, 'Determinants of the Corporate Decision to Disclose Social Information' (1988) 2(1) *Accounting, Auditing and Accountability Journal* 36-44; and S A Lenway and K Rehbein, 'Leaders, Followers and Free Riders: An Empirical Test of Variation in Corporate Political Involvement' (1991) 34 *Academy of Management Journal* 893-905.

VI. OPTIONS FOR REFORM

A. Background

Shareholders' current powers in relation to political donations are very limited.¹²⁰ In its recent consultative paper concerning regulation of corporate political donations in the UK, the DTI summarised the current options for a company's shareholders seeking to prevent the directors from making political donations:

(a) challenge the donations in court on the grounds that the making of political donations fell outside the objects clause in the company's [constitution] ... (b) challenge the donations in court on the grounds that the directors have acted in breach of their fiduciary duties ... (c) require the directors to obtain prior shareholder approval by amending the company's [constitution to that effect].¹²¹

The first option is, as already discussed,¹²² of limited applicability in Australia because the doctrine of *ultra vires* with respect to companies has been abolished. The second option, concerning directors' and officers' duties, has been considered earlier in this Report. The DTI paper considered a shareholder lawsuit over a political donation an unlikely event given the courts' traditional reluctance to review the merits of business decisions made by the board,¹²³ and the limited circumstances in which a shareholder may bring an action for breach of directors' duties.¹²⁴ A similar view was expressed earlier in this Report, in relation to Australia.

The third option is unlike the first two options, which are reactive in nature. The DTI's main concern with the third option was the unlikelihood that there would be widespread adoption of such a clause in companies' constitutions. History shows that changes to company constitutions are normally board/management-initiated. In widely-held listed companies, it would be very rare for a shareholder-sponsored proposal for a change to the constitution – which did not enjoy board and management support – to be successful.¹²⁵

In summary, the options currently available for shareholders of large companies to place checks and balances on their companies' political donations are very limited. But several interested parties – including a UK parliamentary committee,¹²⁶ the UK government,¹²⁷ an Australian political party¹²⁸ and shareholder advisory firms¹²⁹ – have concluded that leaving the matter of political donations mainly to the directors' discretion gives rise to an accountability problem. Specifically, it is not clear whether a particular donation has been made to serve primarily the interests of the company, or one or more of the company's directors. Reforms have been

¹²⁰ DTI, above n 19, para 4.1.

¹²¹ Ibid.

¹²² See Section IVA above.

¹²³ See, eg, *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil NL* (1967) 121 CLR 483, 493.

¹²⁴ DTI, above n 19, para 4.1.

¹²⁵ See Geof Stapledon, Sandy Easterbrook, Pru Bennett and Ian Ramsay, *Proxy Voting in Australia's Largest Companies* (Research Report, Centre for Corporate Law and Securities Regulation, 2000).

¹²⁶ Neill Committee, above n 18.

¹²⁷ DTI, above n 19.

¹²⁸ Australian Democrats, above n 1.

¹²⁹ See, eg: Pensions and Investments Research Consultants (PIRC), *Trends in Political Donations and Shareholder Authorisation* (PIRC, London, 1998).

sought that would provide shareholders and the public generally with greater confidence that, when a company makes a donation to a political party, it is doing so because the donation is demonstrably in the company's interest.¹³⁰

B. A statutory requirement for prior shareholder approval

1. The Australian Democrats and UK government proposals

As mentioned earlier, the Australian Democrats have proposed that public companies be required to obtain shareholder approval for their 'donation policies'.¹³¹

A similar – but more detailed – proposal was made by the UK Neill Committee. The Committee recommended a change to the UK Companies Act to require prior shareholder authority as a pre-condition to a company making political donations. The specific nature of the reform suggested by the Committee, and subsequently supported by the UK government, involves:

- shareholders voting by ordinary resolution to give the directors a broad enabling authority to exercise discretion in making donations;
- the authority would be subject to renewal at every fourth AGM;
- the authority would state a limit on the total amount available for political donations over the four years;
- 'political donation' would be defined very broadly to cover:
 - ◊ all forms of donation whether in cash or in kind (to catch, for example, the provision of paid employees' time and free use of equipment and facilities);
 - ◊ transactions at a favourable rate (eg: supplying goods or services at below their true cost – with the gift element being the difference between the true cost and the charge actually made);
 - ◊ loans made on other than arm's length terms;
 - ◊ sponsorship of a political party or an event sponsored by a political party; and
 - ◊ 'donations' (in this broad sense) made to other organisations or individuals engaged in activities which could reasonably be regarded as likely to affect public support for a political party; and
- donations made by a subsidiary would be permissible only if both the subsidiary's shareholder(s) and the shareholders of its holding company had given prior approval.¹³²

¹³⁰ DTI, above n 19, Foreward.

¹³¹ Australian Democrats, above n 1.

¹³² Neill Report, above n 18, paras 4.44, 4.45, 6.34-6.37; Recommendation 34; DTI, above n 19, ch 3, 4.

2. Recommendation

A shareholder-approval provision of the kind being considered in the UK should be introduced into the Australian Corporations Law. There are three factors which, taken in combination, support this recommendation.

First, when a company's board (or a senior executive) authorises a political donation out of company funds, the money donated – or other benefit provided – does not come from the directors' own funds. The benefit is provided by the company. In an economic sense the benefit is provided by the company's shareholders.

Second, a decision to make a political donation will in many cases be materially different from other 'business' decisions made by a large company's board and senior management. The benefit to the company from the donation will in many cases be at best extremely indirect and of uncertain magnitude.¹³³ However well-intentioned, any benefit to the company from this form of 'investment' is often going to be far more speculative than is the case with other investment decisions made by the board and senior management.

Third, it is reasonable to assume that a component of management self-interest accompanies many corporate political donations. But the options currently available for shareholders of large companies to place checks and balances on their companies' political donations are very limited. Therefore, it is likely that many political donations made by public companies entail agency costs.

Accordingly, imposing an *appropriately designed* shareholder-approval requirement can be viewed as a justifiable form of regulatory intervention. The likely benefits of an appropriately designed rule would probably outweigh the likely costs. A key benefit would flow from reducing the agency costs that accompany those donations that are motivated largely by management self-interest. The major cost would probably be the management time spent justifying the proposed shareholder resolution.¹³⁴ Appropriate design of the rule entails, among other things, recognising that:

- The benefit from reducing agency costs would be tangible only in medium-sized and large companies – particularly widely-held public companies. This is because, in many proprietary companies, there is significant overlap between the people who manage the company's business and the people who own the company's shares.
- Obtaining shareholder approval can be an expensive process for large listed companies.

¹³³ We are not referring here to donations that are intended to influence a government tender, or in some other way confer a direct financial benefit on the company. Rather, we are referring to the presumably (hopefully) more common variety: where the board is supporting a particular political party due to a commonality of view over major long-term policy issues.

¹³⁴ Shareholders must be given adequate disclosure about matters on which they are asked to vote: Corporations Law, s 249L(b); *Bulfin v Bebarfalds Ltd* (1938) 38 SR NSW 423, 440; *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94, 96-7; *Fraser v NRMA Holdings Ltd* (1995) 15 ACSR 590.

The first point indicates that the rule should be confined to public companies. But to stop circumvention, the rule should be drafted sufficiently widely to catch benefits provided by subsidiaries or other controlled entities of a public company.

The second point explains why, under the UK proposal, approval and subsequent ‘renewals’ would be spaced four years apart. Of more importance, though, the political donations matter could be added to the agenda for the annual general meeting (‘AGM’) – a shareholder meeting which all public companies must hold in any event.¹³⁵ This suggests that the expense attributable to a new shareholder-approval rule is unlikely to be great. As indicated, it would consist largely of management time spent justifying the proposed resolution granting donation-making power to the board.

C. Improved disclosure rules

The UK government has decided that the existing UK disclosure requirements should be broadened to ensure that companies need to disclose ‘all forms of financial benefit to political parties, including donations in kind, sponsorship, or loans at a favourable rate’.¹³⁶ And the government is seeking views on whether directors should be required to disclose any connection with a political party or organisation which might give rise to a conflict, or perceived conflict, of interest.¹³⁷

The Australian Democrats have proposed that public companies be required to make ‘full donations disclosure’ in their annual report of donations to political parties.¹³⁸ The proposal appears to mirror the UK government proposal. That is, it seems to be intended to catch all forms of benefit or ‘support’ provided by public companies to political parties. Presumably, the Democrats intend the rule to catch:

- support provided not only by the public company but also by any subsidiary or controlled entity of the public company; and
- support provided not only directly to political parties but also indirectly to organisations (clubs, trusts, foundations, etc) that support political parties.

The Australian Democrats’ proposals provide support for the shareholder-approval rule proposed above. The information produced under a comprehensive disclosure rule would enable shareholders, when considering whether to empower the board to make political donations for the next four years, to make their decision with detailed knowledge of the way in which company funds had been donated in the previous four-year period.

¹³⁵ Corporations Law, s 250N.

¹³⁶ DTI, above n 19, para 5.9.

¹³⁷ Ibid para 5.10.

¹³⁸ Australian Democrats, above n 1.

VII. CONCLUSION

Corporate political donations are of interest for several reasons including:

- a concern that commercial interests can be advanced by donating funds to political parties; and
- in the case of public companies, that the funds being donated are not those of the directors of the company who make the decision to donate the funds but are the funds of the company's shareholders.

In order to ascertain the extent of corporate political donations, the authors conducted a study, the data for which was derived from the annual returns of the major political parties lodged with the Australian Electoral Commission for 1995/96, 1996/97 and 1997/98.

Over this 3 year period, total corporate donations were \$29 million. Of this amount:

- 64% was donated to the Liberal Party while 23% was donated to the ALP;
- over \$17 million was donated by public companies (with 63% of this going to the Liberal Party and 29% to the ALP); and
- more than \$11.5 million was donated by private companies (with 65% of this going to the Liberal Party and 15.5% to the ALP).

In Australia, concerns have been expressed about inadequate disclosure requirements for political donations. The Electoral Act requires disclosure of political donations. However, disclosure under this Act is inadequate because it does not require disclosure of 'financial benefits' other than donations and loans made to political parties. For example, it may not catch a bank *forgiving* a loan made to a political party. In January 2000 the Australian Democrats outlined reform proposals:

- to require shareholder approval of 'donation policies' of public companies (this follows the UK Government announcement that it will amend its Companies Act to require that any company wishing to make a donation to a political party in the UK must obtain the prior approval of its shareholders); and
- to require 'full donations disclosure' in a public company's annual report.

These reforms should be supported.

TABLE A

Total corporate donations 95/96					Total corporate donations 96/97					Total corporate donations 97/98					Total corporate donations - 3 year total				
	\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		% total
ALP	3,325,949	159	20918	10000	22.5%	ALP	1,271,287	74	17,180	5,750	20.4%	ALP	2,180,970	112	19,473	10,000	27.3%	6,778,204	23.4%
Liberal	9,481,495	537	17,656	5,000	64.2%	Liberal	4,257,876	167	25,486	5,000	66.3%	Liberal	4,801,927	256	18,758	5,000	60.1%	18,641,288	63.9%
National	1,845,850	80	23,073	5,000	12.5%	National	641,465	37	17,337	10,000	10.3%	National	983,100	107	9,282	5,000	12.4%	3,480,475	12.0%
Democrat	113,210	14	8,066	5,000	0.8%	Democrat	53,834	2	31,917	31,917	1.0%	Democrat	18,759	3	6,253	5,000	0.2%	195,803	0.7%
Greens	3,600	2	1,800	1,800	0.0%	Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	3,600	0.0%
One Nation	----	----	----	----	100.0%	One Nation	6,234,462	0	0	0	100.0%	One Nation	0	0	0	0	100.0%	28,989,382	100.0%
Total public company donations 95/96					Total public company donations 96/97					Total public company donations 97/98					Total public company donations - 3 year total				
	\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		% total
ALP	2,450,832	77	31,829	20,000	29.1%	ALP	969,887	34	25,065	15,000	21.7%	ALP	1,659,196	64	25,925	15,000	33.6%	4,979,915	28.7%
Liberal	5,496,130	171	32,135	10,000	65.2%	Liberal	2,707,147	72	37,999	15,000	67.5%	Liberal	2,808,886	106	25,499	10,000	56.9%	11,071,163	63.4%
National	430,272	28	15,367	6,000	5.1%	National	431,660	22	19,622	10,250	10.8%	National	480,834	39	11,816	10,000	9.3%	1,322,786	7.6%
Democrat	50,000	8	6,250	5,000	0.6%	Democrat	2,292	1	2,292	2,292	0.1%	Democrat	5,000	1	5,000	5,000	0.1%	57,292	0.3%
Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	0	0.0%
One Nation	8,426,234	0	0	0	100.0%	One Nation	4,011,005	0	0	0	100.0%	One Nation	0	0	0	0	100.0%	17,371,156	100.0%
Total private company donations 95/96					Total private company donations 96/97					Total private company donations 97/98					Total private company donations - 3 year total				
	\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		% total
ALP	875,117	82	10,672	5,000	13.8%	ALP	401,400	40	10,035	4,500	18.1%	ALP	591,774	48	10,870	5,000	17.0%	1,798,291	15.5%
Liberal	3,966,365	366	10,862	5,000	62.8%	Liberal	1,550,729	95	16,323	5,000	69.7%	Liberal	1,993,041	150	13,287	5,000	65.1%	7,530,135	64.6%
National	1,415,578	52	27,223	5,000	23.3%	National	209,785	15	13,986	5,000	9.4%	National	532,326	68	7,828	5,000	17.4%	2,167,688	18.6%
Democrat	63,210	6	10,535	7,500	1.0%	Democrat	61,542	1	61,542	61,542	2.8%	Democrat	13,759	2	6,879	6,879	0.4%	138,511	1.2%
Greens	3,600	2	1,800	1,800	0.1%	Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	3,600	0.0%
One Nation	6,343,870	0	0	0	100.0%	One Nation	2,223,456	0	0	0	100.0%	One Nation	0	0	0	0	100.0%	11,628,226	100.0%
Total professional firm donations 95/96					Total professional firm donations 96/97					Total professional firm donations 97/98					Total professional firm donations - 3 year total				
	\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		% total
ALP	16,932	8	2,117	2,000	11.1%	ALP	12,000	3	4,000	5,000	17.6%	ALP	44,565	3	14,855	3,000	41.6%	73,497	22.4%
Liberal	135,448	19	7,129	2,854	88.9%	Liberal	54,304	3	18,101	25,000	79.5%	Liberal	55,615	11	5,056	5,000	51.9%	245,367	74.8%
National	0	0	0	0	0.0%	National	2,000	1	2,000	2,000	2.9%	National	7,000	2	3,500	3,500	6.5%	9,000	2.7%
Democrat	0	0	0	0	0.0%	Democrat	0	0	0	0	0.0%	Democrat	0	0	0	0	0.0%	0	0.0%
Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	0	0.0%
One Nation	152,380	0	0	0	100.0%	One Nation	68,304	0	0	0	0.0%	One Nation	0	0	0	0	0.0%	327,864	100.0%
Total lobby group donations 95/96					Total lobby group donations 96/97					Total lobby group donations 97/98					Total lobby group donations - 3 year total				
	\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		\$	n=	Mean	Median	% total		% total
ALP	3,246,840	18	180,380	26,600	34.6%	ALP	2,936,049	9	326,228	50,000	35.8%	ALP	2,615,010	14	186,786	6,000	51.2%	8,797,969	38.8%
Liberal	5,647,687	38	148,623	6,750	60.1%	Liberal	3,334,432	40	83,361	3,500	40.7%	Liberal	2,204,408	32	68,888	5,000	43.1%	11,166,527	49.3%
National	462,633	13	35,587	15,000	4.9%	National	1,928,929	7	275,561	67,000	23.5%	National	289,952	8	36,244	5,500	5.7%	2,681,514	11.8%
Democrat	25,000	3	8,333	10,000	0.3%	Democrat	0	0	0	0	0.0%	Democrat	0	0	0	0	0.0%	25,000	0.1%
Greens	9,975	1	9,975	9,975	0.1%	Greens	0	0	0	0	0.0%	Greens	0	0	0	0	0.0%	9,975	0.0%
One Nation	9,392,135	0	0	0	100.0%	One Nation	8,199,410	0	0	0	100.0%	One Nation	0	0	0	0	100.0%	22,700,915	100.0%

TABLE B

Donations by listed companies by industry group

3 year total

Industry sector	Total donated	Number of companies	Avg. aggregate overall donation	Total to ALP	# to ALP	Avg to ALP	Total to Lib	# to Lib	Avg to Lib	Total to Nat	# to Nat	Avg to Nat
Alcohol and Tobacco												
Brewer (081)	642,900	8	124,780	174,500	4	43,625	409,400	5	81,880	80,300	1	80,300
Tobacco (083)	144,500	2	72,250	13,000	2	6,500	131,500	2	65,750	0	0	0
Tobacco & Food (084)	94,000	2	47,000	15,000	1	15,000	79,000	2	39,500	0	0	0
Banking and Finance												
Banking (101)	2,974,252	14	212,447	1,036,619	19	163,062	1,089,631	14	122,118	233,872	6	38,986
Banking (101)	2,974,252	14	212,447	1,036,619	19	163,062	1,089,631	14	122,118	233,872	6	38,986
Building Materials												
Building Materials (071)	602,000	8	120,400	212,000	4	53,000	323,000	8	84,000	273,000	3	33,900
Building Materials (071)	602,000	8	120,400	212,000	4	53,000	323,000	8	84,000	273,000	3	33,900
Cement (072)	38,000	1	38,000	2,000	1	2,000	34,000	1	34,000	2,000	1	2,000
Developers and Contractors												
Building, Contractor (081)	1,424,900	17	84,341	412,000	7	87,428	749,000	12	84,125	97,400	9	4,372
Property, Development Manager (082)	383,000	0	0	100,000	3	62,000	165,000	2	82,500	32,000	4	8,000
Residential Developer (083)	141,400	6	23,567	51,000	2	25,500	166,000	6	14,333	4,400	2	2,200
Developer, Retailer (084)	234,000	3	78,000	50,000	1	50,000	169,000	2	84,500	16,000	2	8,000
Developer, Financial (085)	20,800	1	20,800	0	0	0	20,800	1	20,800	0	0	0
Developer, Financial (085)	20,800	1	20,800	0	0	0	20,800	1	20,800	0	0	0
Diversified Industrial												
Diversified Industrial (031)	1,845,772	9	181,177	317,000	8	52,322	645,174	9	60,568	180,594	3	60,199
Diversified Industrial (031)	1,845,772	9	181,177	317,000	8	52,322	645,174	9	60,568	180,594	3	60,199
Diversified Resources												
Oil, Steel, Mining (032)	237,900	2	118,950	120,000	1	120,000	137,900	2	68,950	0	0	0
Oil, Steel, Mining (032)	237,900	2	118,950	120,000	1	120,000	137,900	2	68,950	0	0	0
Mining, Smelting (033)	4,400	1	4,400	0	0	0	4,400	1	4,400	0	0	0
Mining, Smelting (033)	4,400	1	4,400	0	0	0	4,400	1	4,400	0	0	0
Energy												
Oil/gas producer (041)	941,688	8	117,711	191,300	3	63,767	713,288	7	161,893	26,800	3	12,167
Oil/gas producer (041)	941,688	8	117,711	191,300	3	63,767	713,288	7	161,893	26,800	3	12,167
Oil/gas explorer (042)	395,050	2	197,525	130,000	1	130,000	671,050	2	335,525	25,000	1	25,000
Oil/gas explorer (042)	395,050	2	197,525	130,000	1	130,000	671,050	2	335,525	25,000	1	25,000
Oil/gas investor (043)	36,500	1	36,500	1,500	1	1,500	33,500	1	33,500	1,500	1	1,500
Oil/gas investor (043)	36,500	1	36,500	1,500	1	1,500	33,500	1	33,500	1,500	1	1,500
Coal (045)	5,000	1	5,000	0	0	0	5,000	1	5,000	0	0	0
Coal (045)	5,000	1	5,000	0	0	0	5,000	1	5,000	0	0	0
Uranium (046)	16,000	1	16,000	50,000	1	50,000	3,500	1	3,500	10,000	1	10,000
Uranium (046)	16,000	1	16,000	50,000	1	50,000	3,500	1	3,500	10,000	1	10,000
Engineering												
Heavy Engineering (111)	171,300	8	34,260	76,000	3	25,333	65,800	3	22,167	35,000	1	35,000
Heavy Engineering (111)	171,300	8	34,260	76,000	3	25,333	65,800	3	22,167	35,000	1	35,000
Steel merchants & Agents (112)	141,500	2	70,750	80,000	2	25,000	55,500	1	55,500	30,000	1	30,000
Steel merchants & Agents (112)	141,500	2	70,750	80,000	2	25,000	55,500	1	55,500	30,000	1	30,000
Engineering contractors (114)	20,000	1	20,000	20,000	1	20,000	0	0	0	0	0	0
Engineering contractors (114)	20,000	1	20,000	20,000	1	20,000	0	0	0	0	0	0
Light engineering (115)	5,000	1	5,000	0	0	0	5,000	1	5,000	0	0	0
Light engineering (115)	5,000	1	5,000	0	0	0	5,000	1	5,000	0	0	0
Food and Household												
Food (091)	414,250	8	51,775	187,000	4	26,250	215,250	8	26,906	42,000	2	14,000
Food (091)	414,250	8	51,775	187,000	4	26,250	215,250	8	26,906	42,000	2	14,000
Flour miller, baker (092)	143,200	4	35,800	40,000	2	20,000	68,200	4	17,050	35,000	1	35,000
Flour miller, baker (092)	143,200	4	35,800	40,000	2	20,000	68,200	4	17,050	35,000	1	35,000
Milk, baker, food (093)	10,000	1	10,000	0	0	0	10,000	1	10,000	0	0	0
Milk, baker, food (093)	10,000	1	10,000	0	0	0	10,000	1	10,000	0	0	0
Soft drink, confectionery (094)	5,000	1	5,000	115,000	1	115,000	5,000	1	5,000	0	0	0
Soft drink, confectionery (094)	5,000	1	5,000	115,000	1	115,000	5,000	1	5,000	0	0	0
Household goods, chemicals (095)	250,000	1	250,000	2,000	1	2,000	139,800	1	139,800	5,000	1	5,000
Household goods, chemicals (095)	250,000	1	250,000	2,000	1	2,000	139,800	1	139,800	5,000	1	5,000
Gold												
Gold Producer (011)	233,637	24	10,543	24,000	3	8,000	211,337	22	9,618	17,500	3	5,833
Gold Producer (011)	233,637	24	10,543	24,000	3	8,000	211,337	22	9,618	17,500	3	5,833
Gold Explorer (012)	175,500	9	19,500	10,000	1	10,000	165,500	9	18,389	7,500	2	3,750
Gold Explorer (012)	175,500	9	19,500	10,000	1	10,000	165,500	9	18,389	7,500	2	3,750
Gold, oil (014)	85,017	11	7,729	4,000	1	4,000	71,017	9	7,891	10,000	1	10,000
Gold, oil (014)	85,017	11	7,729	4,000	1	4,000	71,017	9	7,891	10,000	1	10,000
Gold, copper (015)	6,500	1	6,500	0	0	0	6,500	1	6,500	0	0	0
Gold, copper (015)	6,500	1	6,500	0	0	0	6,500	1	6,500	0	0	0
Gold, investors (016)	31,000	2	15,500	10,000	1	10,000	21,000	2	10,500	0	0	0
Gold, investors (016)	31,000	2	15,500	10,000	1	10,000	21,000	2	10,500	0	0	0
Gold, investors (016)	31,000	2	15,500	10,000	1	10,000	21,000	2	10,500	0	0	0

Industry sector	Total donated	Number of companies	Avg. aggregate overall donation	Total to ALP	# to ALP	Avg to ALP	Total to Lib	# to Lib	Avg to Lib	Total to Nat	# to Nat	Avg to Nat
Health Care and Biotechnology/	178,000	9	24,000	28,000	2	14,000	131,000	8	26,250	0	0	0
Pharmaceutical (211)	134,000	1	134,000	34,000	1	34,000	100,000	1	100,000	0	0	0
Biotechnology (212)	7,500	1	7,500	0	0	0	7,500	1	7,500	0	0	0
Hospital Management (213)	20,500	3	9,500	5,000	1	5,000	22,500	3	7,500	0	0	0
Infrastructure and Utilities	206,000	2	143,000	72,000	2	37,500	164,000	2	82,000	48,000	2	24,000
Electricity, Gas (052)	206,000	2	143,000	72,000	2	37,500	164,000	2	82,000	48,000	2	24,000
Insurance	1,028,000	7	148,000	224,000	8	44,000	771,000	8	131,000	12,000	1	9,000
Insurance Company (171)	1,028,000	7	148,000	224,000	8	44,000	771,000	8	131,000	12,000	1	9,000
Investment and Financial Services	902,300	8	82,700	329,000	4	82,700	407,300	8	90,918	0	0	0
Investment Trust/Company (191)	4,000	1	4,000	0	0	0	4,000	1	4,000	0	0	0
Equity Investor (192)	558,000	3	186,000	245,000	3	81,667	311,000	3	103,667	0	0	0
Property Investor (193)	10,000	1	10,000	0	0	0	10,000	1	10,000	0	0	0
Trustee company (194)	41,000	2	20,500	20,500	0	0	41,000	2	20,500	0	0	0
Miscellaneous financial services (195)	50,550	1	50,550	10,000	1	10,000	40,550	1	40,550	0	0	0
Media	241,144	8	56,422	100,000	1	100,000	331,144	8	38,522	10,000	1	10,000
Diversified Media (151)	20,490	3	8,497	0	0	0	20,490	3	6,830	0	0	0
Television (153)	212,656	2	106,328	100,000	1	100,000	112,656	2	56,328	10,000	1	10,000
Radio (154)	100,000	1	100,000	0	0	0	100,000	1	100,000	0	0	0
Miscellaneous Industries	167,816	12	13,984	18,000	6	3,000	149,816	12	11,984	9,500	3	3,167
Miscellaneous Industries (221)	84,750	2	42,375	0	0	0	84,750	2	42,375	0	0	0
Miscellaneous services (222)	5,450	3	1,817	0	0	0	5,450	3	1,817	0	0	0
Agriculture and Related Services (224)	30,500	2	15,250	7,500	2	3,750	15,500	2	7,750	7,500	2	3,750
Automotive and Related Services (225)	35,110	3	11,703	6,500	1	6,500	28,610	3	9,537	0	0	0
Entrepreneurial Investments (227)	8,000	1	8,000	2,000	1	2,000	2,000	1	2,000	2,000	1	2,000
High technology (228)	8,000	1	8,000	2,000	1	2,000	2,000	1	2,000	2,000	1	2,000
Other Metals	80,000	8	10,000	80,000	4	20,000	80,000	7	90,250	15,000	2	7,500
Diversified Mining (021)	841,000	4	210,250	75,000	2	37,500	666,000	4	170,250	110,000	2	55,000
Base metals (022)	10,000	1	10,000	0	0	0	10,000	1	10,000	0	0	0
Mining (producers) (020)	4,500	1	4,500	2,500	1	2,500	2,000	1	2,000	0	0	0
Mining (explorer) (027)	2,000	1	2,000	0	0	0	2,000	1	2,000	0	0	0
Mining investment (026)	2,500	1	2,500	2,500	1	2,500	0	0	0	0	0	0
Paper and Packaging	440,000	1	440,000	138,000	1	138,000	402,000	1	402,000	30,000	1	30,000
Forest products, Trade (122)	440,000	1	440,000	138,000	1	138,000	402,000	1	402,000	30,000	1	30,000
Property Trusts	14,000	1	14,000	0	0	0	14,000	1	14,000	0	0	0
Property Trust (201)	14,000	1	14,000	0	0	0	14,000	1	14,000	0	0	0
Retail	963,730	8	133,148	265,800	2	132,900	697,930	8	118,730	121,000	2	60,500
Retail (131)	590,730	2	295,365	105,800	1	105,800	484,930	2	242,465	104,000	1	52,000
Wholesaler, retail (132)	248,000	1	248,000	100,000	1	100,000	148,000	1	148,000	20,000	1	20,000
Retail, investments (134)	15,000	2	7,500	0	0	0	15,000	2	7,500	0	0	0
Telecommunications	15,000	2	7,500	0	0	0	15,000	2	7,500	0	0	0
Network operator (181)	13,500	2	6,750	0	0	0	13,500	2	6,750	0	0	0
Equipment, services (182)	2,400	1	2,400	0	0	0	2,400	1	2,400	0	0	0
Tourism and Leisure	1,809,050	8	211,381	414,300	8	51,788	1,394,750	8	174,788	10,000	1	10,000
Casinos/Gaming (241)	221,750	4	55,438	85,000	2	42,500	136,750	4	34,188	10,000	1	10,000
Hotel Operations (242)	10,000	1	10,000	0	0	0	10,000	1	10,000	0	0	0
Leisure Activities (243)	1,407,300	3	469,100	364,300	3	121,433	1,043,000	3	347,767	0	0	0
Transport	146,000	3	51,933	86,000	2	43,000	160,000	3	53,333	14,000	2	7,000
Transport (141)	84,000	1	84,000	20,000	1	20,000	64,000	1	64,000	5,000	1	5,000
International Transport (142)	48,800	1	48,800	1,800	1	1,800	47,000	1	47,000	0	0	0
Transport other services (143)	55,000	1	55,000	45,000	1	45,000	10,000	1	10,000	10,000	1	10,000

Sorted by total donation by industry

TABLE C

Rank	Industry sector	Total donated	Number of companies	Avg. aggregate overall donation	Total to ALP	# to ALP	Avg to ALP	Total to Lib	# to Lib	Avg to Lib	Total to Nat	# to Nat	Avg to Nat
1	Banking and Finance	2,974,252	14	212,447	1,030,619	10	103,062	1,709,661	14	122,119	233,972	6	38,995
2	Tourism and Leisure	1,989,050	8	212,381	414,300	5	82,860	1,274,750	7	182,107	10,000	1	10,000
3	Developers and Contractors	1,438,900	17	84,641	612,000	7	87,429	766,500	12	64,125	57,400	9	6,378
4	Diversified Industrial	1,045,772	9	116,197	317,000	6	52,833	548,176	9	60,908	160,598	3	60,199
5	Insurance	1,028,050	7	146,864	224,500	5	44,900	791,550	6	131,825	12,000	2	6,000
6	Retail	965,730	5	193,146	265,980	2	132,990	578,750	5	115,750	121,000	2	60,500
7	Energy	941,050	8	117,631	191,300	3	63,767	713,250	7	101,893	36,500	3	12,167
8	Other Metals	860,000	8	107,500	80,000	4	20,000	665,000	7	96,286	85,000	2	42,500
9	Investment and Financial Services	662,350	8	82,794	255,000	4	63,750	407,350	8	50,919	0	0	0
10	Alcohol and Tobacco	643,900	5	128,780	174,500	4	43,625	409,400	5	81,880	60,000	1	60,000
11	Paper and Packaging	640,000	1	640,000	125,000	1	125,000	495,000	1	495,000	20,000	1	20,000
12	Building Materials	602,000	5	120,400	212,000	4	53,000	323,000	5	64,600	67,000	2	33,500
13	Food and Household	414,200	8	51,775	157,000	4	39,250	215,200	8	26,900	42,000	3	14,000
14	Media	341,146	6	56,858	100,000	1	100,000	231,146	6	38,524	10,000	1	10,000
15	Infrastructure and Utilities	286,000	2	143,000	75,000	2	37,500	166,000	2	83,000	45,000	2	22,500
16	Diversified Resources	257,900	2	128,950	120,000	1	120,000	137,900	2	68,950	0	0	0
17	Gold	253,037	24	10,543	24,000	3	8,000	211,537	22	9,615	17,500	3	5,833
18	Transport	185,800	3	61,933	66,800	3	22,267	104,000	2	52,000	15,000	2	7,500
19	Engineering	171,500	5	34,300	70,000	3	23,333	66,500	3	22,167	35,000	1	35,000
20	Health Care and Biotechnology	170,000	5	34,000	38,000	2	19,500	131,000	5	26,200	0	0	0
21	Miscellaneous Industrials	167,810	12	13,984	18,000	5	3,600	140,310	12	11,693	9,500	3	3,167
22	Telecommunications	15,982	3	5,321	0	0	0	15,982	3	5,321	0	0	0
23	Property Trusts	14,500	1	14,500	0	0	0	14,500	1	14,500	0	0	0

Sorted by average corporate donation by industry

TABLE D

Rank	Industry sector	Total donated	Number of companies	Avg. aggregate overall donation	Total to ALP	# to ALP	Avg to ALP	Total to Lib	# to Lib	Avg to Lib	Total to Nat	# to Nat	Avg to Nat
1	Paper and Packaging	640,000	1	640,000	125,000	1	125,000	495,000	1	495,000	20,000	1	20,000
2	Banking and Finance	2,974,252	14	212,447	1,030,619	10	103,062	1,709,661	14	122,119	233,972	6	38,995
3	Tourism and Leisure	1,699,050	8	212,381	414,300	5	82,860	1,274,750	7	182,107	10,000	1	10,000
4	Retail	965,730	5	193,145	265,980	2	132,980	578,750	5	115,750	121,000	2	60,500
5	Insurance	1,028,050	7	146,864	224,500	5	44,900	791,550	6	131,925	12,000	2	6,000
6	Infrastructure and Utilities	286,000	2	143,000	75,000	2	37,500	166,000	2	83,000	45,000	2	22,500
7	Diversified Resources	257,900	2	128,950	120,000	1	120,000	137,900	2	68,950	0	0	0
8	Alcohol and Tobacco	643,900	5	128,780	174,500	4	43,625	409,400	5	81,880	60,000	1	60,000
9	Building Materials	602,000	5	120,400	212,000	4	53,000	323,000	5	64,600	67,000	2	33,500
10	Energy	941,050	8	117,631	191,300	3	63,767	713,250	7	101,893	36,500	3	12,167
11	Diversified Industrial	1,045,772	9	116,197	317,000	6	52,833	548,176	9	60,908	180,596	3	60,199
12	Other Metals	860,000	8	107,500	80,000	4	20,000	695,000	7	99,266	85,000	2	42,500
13	Developers and Contractors	1,438,900	17	84,641	612,000	7	87,429	769,500	12	64,125	57,400	9	6,378
14	Investment and Financial Services	662,350	8	82,794	255,000	4	63,750	407,350	8	50,919	0	0	0
15	Transport	185,800	3	61,933	66,800	3	22,267	104,000	2	52,000	15,000	2	7,500
16	Media	341,146	6	56,858	100,000	1	100,000	231,146	6	38,524	10,000	1	10,000
17	Food and Household	414,200	8	51,775	157,000	4	39,250	215,200	8	26,900	42,000	3	14,000
18	Engineering	171,500	5	34,300	70,000	3	23,333	66,500	3	22,167	35,000	1	35,000
19	Health Care and Biotechnology	170,000	5	34,000	39,000	2	19,500	131,000	5	26,200	0	0	0
20	Property Trusts	14,500	1	14,500	0	0	0	14,500	1	14,500	0	0	0
21	Miscellaneous Industrials	167,810	12	13,984	18,000	5	3,600	140,310	12	11,693	9,500	3	3,167
22	Gold	253,037	24	10,543	24,000	3	8,000	211,537	22	9,615	17,500	3	5,833
23	Telecommunications	15,962	3	5,321	0	0	0	15,962	3	5,321	0	0	0

TABLE E

Rank	Industry sector	Total to ALP	# to ALP	Avg to ALP
1	Banking and Finance	1,030,619	10	103,062
2	Developers and Contractors	612,000	7	87,429
3	Tourism and Leisure	414,300	5	82,860
4	Diversified Industrial	317,000	6	52,833
5	Retail	265,980	2	132,990
6	Investment and Financial Services	255,000	4	63,750
7	Insurance	224,500	5	44,900
8	Building Materials	212,000	4	53,000
9	Energy	191,300	3	63,767
10	Alcohol and Tobacco	174,500	4	43,625
11	Food and Household	157,000	4	39,250
12	Paper and Packaging	125,000	1	125,000
13	Diversified Resources	120,000	1	120,000
14	Media	100,000	1	100,000
15	Other Metals	60,000	4	20,000
16	Infrastructure and Utilities	75,000	2	37,500
17	Engineering	70,000	3	23,333
18	Transport	66,800	3	22,267
19	Health Care and Biotechnology	39,000	2	19,500
20	Gold	24,000	3	8,000
21	Miscellaneous Industrials	18,000	5	3,600
22	Property Trusts	0	0	0
23	Telecommunications	0	0	0

Rank	Industry sector	Total to ALP	# to ALP	Avg to ALP
1	Retail	265,980	2	132,990
2	Paper and Packaging	125,000	1	125,000
3	Diversified Resources	120,000	1	120,000
4	Banking and Finance	1,030,619	10	103,062
5	Media	100,000	1	100,000
6	Developers and Contractors	612,000	7	87,429
7	Tourism and Leisure	414,300	5	82,860
8	Energy	191,300	3	63,767
9	Investment and Financial Services	255,000	4	63,750
10	Building Materials	212,000	4	53,000
11	Diversified Industrial	317,000	6	52,833
12	Insurance	224,500	5	44,900
13	Alcohol and Tobacco	174,500	4	43,625
14	Food and Household	157,000	4	39,250
15	Infrastructure and Utilities	75,000	2	37,500
16	Engineering	70,000	3	23,333
17	Transport	66,800	3	22,267
18	Other Metals	60,000	4	20,000
19	Health Care and Biotechnology	39,000	2	19,500
20	Gold	24,000	3	8,000
21	Miscellaneous Industrials	18,000	5	3,600
22	Property Trusts	0	0	0
23	Telecommunications	0	0	0

Rank	Industry sector	Total to Lib	# to Lib	Avg to Lib
1	Banking and Finance	1,709,661	14	122,119
2	Tourism and Leisure	1,274,750	7	182,107
3	Insurance	791,550	6	131,925
4	Developers and Contractors	789,500	12	64,125
5	Energy	713,250	7	101,893
6	Other Metals	695,000	7	99,286
7	Retail	578,750	5	115,750
8	Diversified Industrial	548,178	9	60,908
9	Paper and Packaging	495,000	1	495,000
10	Alcohol and Tobacco	409,400	5	81,880
11	Investment and Financial Services	407,350	8	50,919
12	Building Materials	323,000	5	64,600
13	Media	231,146	6	38,524
14	Food and Household	215,200	8	26,900
15	Gold	211,537	22	9,615
16	Infrastructure and Utilities	166,000	2	83,000
17	Miscellaneous Industrials	140,310	12	11,693
18	Diversified Resources	137,900	2	68,950
19	Health Care and Biotechnology	131,000	5	26,200
20	Transport	104,000	2	52,000
21	Engineering	66,500	3	22,167
22	Telecommunications	15,962	3	5,321
23	Property Trusts	14,500	1	14,500

Rank	Industry sector	Total to Lib	# to Lib	Avg to Lib
1	Paper and Packaging	495,000	1	495,000
2	Tourism and Leisure	1,274,750	7	182,107
3	Insurance	791,550	6	131,925
4	Banking and Finance	1,709,661	14	122,119
5	Retail	578,750	5	115,750
6	Energy	713,250	7	101,893
7	Other Metals	695,000	7	99,286
8	Infrastructure and Utilities	166,000	2	83,000
9	Alcohol and Tobacco	409,400	5	81,880
10	Diversified Resources	137,900	2	68,950
11	Building Materials	323,000	5	64,600
12	Developers and Contractors	789,500	12	64,125
13	Diversified Industrial	548,178	9	60,908
14	Transport	104,000	2	52,000
15	Investment and Financial Services	407,350	8	50,919
16	Media	231,146	6	38,524
17	Food and Household	215,200	8	26,900
18	Health Care and Biotechnology	131,000	5	26,200
19	Engineering	66,500	3	22,167
20	Property Trusts	14,500	1	14,500
21	Miscellaneous Industrials	140,310	12	11,693
22	Gold	211,537	22	9,615
23	Telecommunications	15,962	3	5,321

Rank	Industry sector	Total to Nat	# to Nat	Avg to Nat
1	Banking and Finance	233,972	6	38,995
2	Diversified Industrial	180,596	3	60,199
3	Retail	121,000	2	60,500
4	Other Metals	85,000	2	42,500
5	Building Materials	67,000	2	33,500
6	Alcohol and Tobacco	60,000	1	60,000
7	Developers and Contractors	57,400	9	6,378
8	Infrastructure and Utilities	45,000	2	22,500
9	Food and Household	42,000	3	14,000
10	Energy	36,500	3	12,167
11	Engineering	35,000	1	35,000
12	Paper and Packaging	20,000	1	20,000
13	Gold	17,500	3	5,833
14	Transport	15,000	2	7,500
15	Insurance	12,000	2	6,000
16	Tourism and Leisure	10,000	1	10,000
17	Media	10,000	1	10,000
18	Miscellaneous Industrials	9,500	3	3,167
19	Diversified Resources	0	0	0
20	Investment and Financial Services	0	0	0
21	Health Care and Biotechnology	0	0	0
22	Property Trusts	0	0	0
23	Telecommunications	0	0	0

Rank	Industry sector	Total to Nat	# to Nat	Avg to Nat
1	Retail	121,000	2	60,500
2	Diversified Industrial	180,596	3	60,199
3	Alcohol and Tobacco	60,000	1	60,000
4	Other Metals	85,000	2	42,500
5	Banking and Finance	233,972	6	38,995
6	Engineering	35,000	1	35,000
7	Building Materials	67,000	2	33,500
8	Infrastructure and Utilities	45,000	2	22,500
9	Paper and Packaging	20,000	1	20,000
10	Food and Household	42,000	3	14,000
11	Energy	36,500	3	12,167
12	Tourism and Leisure	10,000	1	10,000
13	Media	10,000	1	10,000
14	Transport	15,000	2	7,500
15	Developers and Contractors	57,400	9	6,378
16	Insurance	12,000	2	6,000
17	Gold	17,500	3	5,833
18	Miscellaneous Industrials	9,500	3	3,167
19	Diversified Resources	0	0	0
20	Investment and Financial Services	0	0	0
21	Health Care and Biotechnology	0	0	0
22	Property Trusts	0	0	0
23	Telecommunications	0	0	0

TABLE F

Top 10 ASX-listed company donors	
Company	\$A
Westpac Banking Corporation	1,272,346
Village Roadshow Limited	1,124,800
Santos Limited	833,800
WMC Limited	778,500
Coles Myer Limited	687,730
Lend Lease Corporation Limited	669,500
Arcor Limited	640,000
HIH Winterthur	462,000
National Australia Bank	445,330
Boral Limited	420,000