

**Submission
No 3**

**ADEQUACY OF THE FUNDING ALLOCATION OF THE NSW ELECTORAL
COMMISSION FOR THE 2023 STATE GENERAL ELECTION**

Name: The Hon. Jonathan O'Dea MP
Position: Speaker of the Legislative Assembly
Date Received: 27 January 2022



The Hon. Jonathan O'Dea MP
Speaker of the NSW Legislative Assembly
Member for Davidson

The Chair
Joint Standing Committee on Electoral Matters
Parliament House, Macquarie Street
Sydney NSW 2000

27 January 2022

Dear Committee,

**Inquiry into the adequacy of the funding allocation of the NSW Electoral Commission
for the 2023 State General Election**

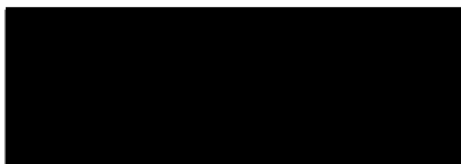
Thank you for the invitation to make a submission to the Committee's inquiry into the adequacy of the funding allocation of the NSW Electoral Commission for the 2023 State General Election.

I attach my paper, entitled *Political donations reform*, for your information. This paper outlines my concerns about the current electoral funding model and recommends an Opt-Out Public Funding Model to improve the situation.

For the Committee's information, I intend to deliver this paper at the 2022 Australasian Study of Parliament Group (ASPG) Conference in Victoria in April.

I would be happy to discuss this matter further if you wish.

Yours sincerely,



Jonathan O'Dea
Speaker of the New South Wales Legislative Assembly

Political Donations Reform

The Hon. Jonathan O’Dea MP, Speaker of the NSW Legislative Assembly

Paper prepared for 2022 ASPG Conference Victoria

Introduction

Modern democracies require robust checks and balances in order to effectively operate in an age of widespread wariness and cynicism towards politicians and the legislative process. Citizens rightly expect that the decisions made by their governments and parliaments should be free from undue influence.

Donations to political candidates and parties can be fraught with danger. If the public perceive that politicians can be ‘bought and sold’ by major donors for their own interests and policy agendas, this perception undermines trust and confidence in the electoral system and decision-making process to the detriment of democracy. It is therefore important to seek improvements to the current donations law framework in NSW.

To minimise potential risks posed by private donations, a new ‘opt-out’ model of public funding would better serve candidates, parties and constituents. Parliaments and citizens should thoroughly consider the framework’s efficacy and constitutionality so that the proposal best addresses the public interest. A citizens’ jury featuring a sample of people who are broadly representative of the wider community could deliberate on the best model, and make recommendations to the parliament.

The Problem

Political donations have long been a subject of controversy in Australian political life. Last year, the former Attorney General Christian Porter caused public outrage when he accepted donations from a blind trust to partially fund his significant legal fees incurred during a defamation action against the ABC (Riminton, 2021).¹ Across the political aisle, NSW Labor’s former general secretaries Jamie Clements and Kaila Murnain as well as former Senator Sam Dastyari were ensnared following ICAC

investigations into a \$100,000 cash donation to NSW Labor allegedly made by Huang Xiangmo, a billionaire property developer with alleged links to the Chinese Communist Party (Rabe, McClymont and Smith, 2019).ⁱⁱ Powerful individuals, businesses and interest groups have also made substantial contributions to candidates and parties spanning the political spectrum, including mining heavyweights such as Gina Rinehart, Andrew Forrest, Clive Palmer and mining companies such as Woodside, BHP, Rio Tinto and Chevron (de Kruijff, 2021).ⁱⁱⁱ Dubious donations scandals have caused numerous politicians to appear before ICAC or fall on their swords.

Those living in a capitalist society with a market economy generally accept the exchange of money for goods and services, or the presentation of a gift in appreciation of genuine service rendered. If a person strongly agrees with the beliefs, ideals and actions of a particular political party or candidate and wants to make a modest monetary donation to signal their support, generally the citizens of a liberal democracy see this as reasonable.

However, the problem with political donations is their actual or perceived power to potentially purchase undue influence over a candidate or political party and the decisions they may make. Whether monetary sums and discounts, or in-kind gifts such as travel, accommodation and dining are on offer, the prevailing sentiment is that such situations, legally sanctioned or not, can lead to unspoken quid pro quo arrangements. The candidate or party can become subtly indebted to the donor, with the donor expecting to call in the debt for a suitable favour at an appropriate time. Rather than primarily consider what is in the best interests of the public, the candidate or party may then feel obliged to fulfil their end of the bargain by swaying decisions towards donor interests over those of the general public.

In its most egregious form, a candidate or party's election platforms, policy stances and decision-making could essentially be auctioned off to the highest bidder. This shifts the balance of power away from the diverse many who make up a democracy to well-connected entities who have the capacity to ingratiate themselves with whichever candidates or parties they see fit.

It is easy to see how this can lead to adverse outcomes, but it is not so easy for candidates or politicians to refuse offers of political donations. The pressures of modern electioneering necessitate great war chests to fund a political party's ability to effectively market their brand and platform to voters. This challenge is particularly acute given declining membership numbers and associated income, as well as the difficulty of attaining cut-through in the constant noise of the 24/7 news and social media cycle.

Likewise, individual candidates require substantial funds to optimally communicate with local electors and run for office. If candidates are members of a political party, they are expected to fundraise for their party's collective fund. For the politically ambitious, the opportunity for rapid advancement to coveted positions of power entices candidates to redouble their fundraising efforts and perhaps venture into more murky pools of donors with questionable motives.

The current shortfalls of the political donations framework in NSW diminishes public trust and confidence in our political system, contributing to a trend of declining trust in public institutions across Australia. Understandably, people expect politicians to act honestly and in the best interests of their constituents, not themselves or their connections. All candidates and parties need public trust to make effective long-term decisions that improve people's lives across NSW. However, when politicians accept donations they risk the perception that donors can unduly gain enhanced access and influence over important decisions. Thus the shortcomings of the existing political donations framework are a major barrier to achieving the long term aim of improving public trust in political institutions and democracy.

So, how should the system keep candidates and parties out of the fray? While there will always be those who wish to curry favour through their offers of political donations, the way forward lies in improving and strengthening the existing legal framework. If candidates and parties have access to legitimate sources of increased public funding, they should feel less pressure to privately raise funds or tap more ethically questionable funding sources.

In 2011, the O'Farrell Government amended the *Electoral Funding Act* so that only individuals on the electoral roll could make political donations. The changes also limited campaign expenditure undertaken by third parties, such as business groups and unions. The subsequent *Unions NSW v New South Wales* High Court case in 2019 frustrated this reform, finding that the amendments were invalid as they contradicted the implied principle of freedom of political communication within the Commonwealth Constitution.

In 2014, an Expert Panel, comprised of Dr Kerry Schott AO, former senior public servant, the Hon. John Watkins, former Labor Deputy Premier, and Mr Andrew Tink AM, former Liberal Shadow Attorney General, reported to the Premier on viable options for political donation reform. The Expert Panel assessed the feasibility of a full public electoral funding model in light of the public interest as well as legal and constitutional considerations (Department of Premier and Cabinet, 2014).^{iv} The Expert Panel also recommended that the Government should not pursue an 'opt-in', 'opt-out' full public funding scheme as an alternative to a total ban on political donations, despite Labor Party support for a full public funding model.

Legal Framework for Donations in New South Wales

The *Election Funding, Expenditure and Disclosures Act 1981* (NSW) prescribes the public funding of parliamentary election campaigns and the disclosure of political contributions and electoral expenditure.^v

The NSW Electoral Commission (2018, para. 1) defines a political donation as:

“A gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales.”^{vi}

Political donations can include a monetary or non-monetary gift, provision of a service for free or at a discount, a payment that allows participation in and/or benefit from a fundraising venture or function, political party membership fees, sale or transfer of

property between political party branches and different political parties, or uncharged interest on a loan (NSW Electoral Commission, 2021).^{vii}

All donations over \$1,000 in a financial year are deemed reportable political donations, which require both the person/entity donating the funds (also known as a major political donor) as well as the recipient to disclose the donation to the NSW Electoral Commission. The Funding and Disclosure Online portal allows people and entities to easily and securely submit these applications and disclosures.^{viii} The NSW Electoral Commission then publishes the major political donor's name and address as well as the details of their donation on their website as a measure of transparency (NSW Electoral Commission, 2021).^{ix}

In January 2020, it became unlawful to make or accept cash donations over \$100. Any amount over this threshold must be paid electronically or via cheque. Any unlawful cash donation accepted by a person is payable to the State and may be recovered by the NSW Electoral Commission.

In NSW, there is currently a \$6,700 cap for political donations to, or for the benefit of, a registered political party and a \$3,100 cap for political donations for the benefit of candidates, elected members and third party campaigners. In the financial year in which the election is held, candidates for a Legislative Assembly election can donate up to \$66,400 to their party and candidates for a Legislative Council election can donate up to \$53,400 to their party or group (NSW Electoral Commission, 2021).^x There are also expenditure caps on State elections and by-elections, ensuring that parties and candidates can compete on a more even playing field during the lead up to election day (NSW Electoral Commission, 2020).^{xi}

Property developers, tobacco, liquor or gambling business entities and their close associates, as well as industry representative bodies whose membership is mainly comprised of these people, are prohibited from making political donations (NSW Electoral Commission, 2019).^{xii} This ban recognises the disproportionate impact of government decisions on these industries and the potential for political donations to unduly influence these decisions (for example, a property developer making a donation to a political party in government may influence a decision to rezone land

owned by that property developer). The list of prohibited donor categories and its somewhat arbitrary nature has been criticised both for being too restrictive and not restrictive enough.

During the capped expenditure period from 1 October in the year before a State election to the election day, political parties, candidates and third-party campaigners are subject to caps on electoral expenditure directed at the election of the candidate or group (NSW Electoral Commission, 2020).^{xiii} This restriction attempts to level the playing field between competing candidates and parties by limiting the impact of larger pools of funds during the lead up to an election. Breaches of these caps attract significant penalties, whereby amounts that are up to double the expenditure over the cap limit must be paid back to the State, with offenders potentially facing prosecution by the NSW Electoral Commission (NSW Electoral Commission, 2020).^{xiv}

Endorsed Legislative Assembly candidates are capped at \$132,600 in electoral expenditure, while both Independent Legislative Assembly candidates and ungrouped Legislative Council candidates are capped at \$198,700. A party with more than 10 endorsed Legislative Assembly candidates is subject to a cap of \$132,600 multiplied by the number of electoral districts in which a candidate is endorsed by the party. A party that endorses candidates in a group for the Legislative Council but does not endorse any candidates for election to the Legislative Assembly or does not endorse candidates in more than 10 electoral districts is subject to a cap of \$1,389,900. The same \$1,389,900 cap applies to Independent Legislative Council groups. While there is no overall expenditure cap for third-party campaigners due to the High Court's ruling in *Unions NSW v New South Wales 2019*, the electoral district cap is \$26,700 within the third-party campaigner's overall expenditure cap (NSW Electoral Commission, 2020).^{xv}

Donations in Other Jurisdictions

Federal Government

As stipulated by the *Commonwealth Electoral Act 1918* (Cth)^{xvi}, the Federal Government requires disclosure of donation and donor details and for all donations over \$14,500 (Australian Electoral Commission, 2021).^{xvii}

Registered political parties and their state and territory branches, associated entities, political campaigners, third parties and donors must submit annual returns to the Australian Electoral Commission (AEC), which are then published on the AEC Transparency Register.^{xviii} Sections 302CA and 314B of the *Commonwealth Electoral Act 1918* (Cth) afford an important exemption from state and territory electoral legislation whereby political entities, political campaigners or third parties are not required to disclose donations or gifts that are expressly provided for federal electoral purposes (Australian Electoral Commission, 2021).^{xix}

A 2019 amendment to the *Commonwealth Electoral Act 1918* (Cth) restricted political donations from foreign donors in an effort to combat undue influence from foreign interests and state actors. Political entities and political campaigners cannot receive gifts of \$100 or more if the recipient knows the donor to be a foreign donor and the foreign donor intends the gift to be used to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter. They also cannot receive gifts of \$1,000 to \$14,500 without obtaining written affirmation that the donor is not a foreign donor, and cannot receive more than \$14,500 without obtaining written affirmation and appropriate information to establish that the donor is not a foreign donor (Australian Electoral Commission, 2020). However, political entities and political campaigners are able to receive gifts from foreign donors for personal use or purposes not related to a federal election.^{xx}

Numerous amendments to the *Commonwealth Electoral Act 1918* (Cth) were made in 2021, spanning a broad range of subjects including counting, scrutiny and operational efficiencies, party registration integrity, electoral offences and preventing multiple voting, political campaigners, assurance of Senate counting, contingency measures and annual disclosure equality.^{xxi}

The Electoral Legislation Amendment (Political Campaigners) Act 2021 is of particular interest, as non-government organisations are now required to register as significant

third parties with the AEC if they incur more than \$14,500 in electoral expenditure and this represents over a third of their revenue during a financial year. They must also register if they raise greater than \$14,500 and intend to spend it on election activity or donate the funds to a candidate or party that will engage in election activity. If a group's electoral expenditure is more than \$250,000 in the current or any of the preceding three financial years, they must also register with the AEC.^{xxii}

For a comparison of the legislative frameworks in the various Australian State and Territory Governments, please see Appendix 1.

Case Study: Campaign Finance for U.S. Presidential Elections

In the minds of many, the office of the President of the United States of America is the pinnacle of political power, governing one of the world's most established modern democracies. The funding of candidates' presidential campaigns makes a worthwhile case study and offers lessons for the Australian electoral landscape.

Congress passed the *Federal Election Campaign Act* in 1971 to replace a largely dysfunctional and unenforceable federal campaign finance system, capitalising on the Watergate scandal and associated groundswell of public support for political donations reform. Donors were limited to contributing a maximum of \$1,000 to a federal candidate per election, with a total biennial restriction of up to \$25,000 to all federal candidates and committees. Public disclosure of contributions became mandatory, with expenditure caps on campaigns run by presidential and congressional candidates. Both the Presidential Public Funding Program, a new alternative to private financing, and the Federal Election Commission, the latest iteration of an enforcement branch, were formed. Only 5 years later, the Supreme Court case of *Buckley v Valeo* 1976 invalidated the expenditure caps (Gaughan, 2005).^{xxiii}

Today, the Presidential Public Funding Program allows presidential candidates to receive federal government funds to pay for qualified expenses of their political campaigns in both the primary and general elections (Federal Election Commission, n.d.).^{xxiv} If presidential candidates choose to accept public funding, they subject themselves to expenditure caps and severe restrictions on private donations. Should

candidates opt out, they do not receive this public funding and subsequently are not restrained by the same restrictions.

The taxpayer is the sole source of this funding. They can elect to tick a box on their income tax return which allows \$3 USD of their taxes to be paid into the Presidential Election Campaign Fund, without increasing the amount they owe to the government or decreasing any refund they may receive. Since the Presidential Fund's inception in 1974, the percentage of American taxpayers who elect to contribute to the Fund has decreased from a high of 35% in 1977 to a mere 5% in 2016, mirroring a fall in public confidence in Congress and the office of President (Cagé, 2020).^{xxv}

Though initially opposed to the 'dark money' of anonymous political donors and committed to promised reforms of campaign finance laws, the Obama administration saw significant changes to the public funding campaign finance model. In 2008, Barack Obama became the first presidential candidate since Nixon to opt out of the Presidential Public Funding Program, ultimately accruing the highest ever total in campaign funds (\$745 million USD) and outspending Republican rival John McCain four times over (Elliott, 2013).^{xxvi} President Obama's actions set the trend for other presidential candidates and political parties to come.

In 2010, the Supreme Court decided to uphold the First Amendment's right to free speech in *Citizens United v Federal Election Commission*, banning the government from restricting independent expenditures for political campaigns by corporations, non-profits, unions, and other associations. This led to the rise of 'Super Political Action Committees' such as Priorities USA Action, which solicited more than \$60 million in donations from high net worth individuals to enrich President Obama's 2012 election campaign (Elliott, 2013).^{xxvii}

McCutcheon et al. v Federal Election Commission and consequent Congress legislation in 2014 further dismantled the public campaign finance framework by ending the public funding for political parties' presidential nominating conventions, which had previously been available between 1976 and 2012 (Roberts, 2014).^{xxviii}

So the current legal framework for presidential campaign finances in the United States of America highlights challenges to an opt-out public funding model and the non-linear nature of political donation reform.¹

A Solution for NSW: Opt Out Public Funding Model

Overview

A public funding model whereby taxpayers fully fund election campaigns may prove to be a better solution. The default option would be the current election funding situation, whereby candidates and parties receive private donations and remain eligible for a basic level of public funding. However, full public funding of election costs (with an additional tier above the basic funding tier) would be available for all individual candidates and/or political parties who opt-out of the default funding position by choosing not to accept any private donations. Both tiers of funding might be best calculated according to the number of first preference votes attracted at the relevant election.

Providing this alternate funding option should bolster confidence and trust in the political system from not only the electorate, but also from the candidates and parties themselves. It might be especially welcomed at a time when COVID-19 has made fundraising difficult.

Donation caps and spending limits would continue to apply as relevant for all candidates, political parties and third parties. Existing expenditure caps on electoral expenditure during the lead up to the election should also remain part of the system. Any political donations to candidates or parties would be promptly disclosed on a transparent, public website. Limits on third party electoral communications would reduce and a blackout spending period could be introduced close to any election. Ideally, the same rules for NSW would apply consistently across all Australian jurisdictions.

¹ Thanks to Georgia Luk, Parliamentary Adviser, Office of the Speaker, for assistance with this paper, particularly this section on other jurisdictions.

Guiding Principles

While no system will ever be perfect, there are six guiding descriptive ideals relevant to the 'opt out' public funding model:

1. **Transparent** – Information about political donations should be made in a timely manner and accessible to the public.
2. **Honourable** – Political candidates and parties should perform their roles with integrity and without the actual or perceived undue influence that private donations can create.
3. **Comprehensive** – Donations laws should be clearly understood, yet sufficiently extensive and enforceable to efficiently regulate relevant activities.
4. **Lawful** – Any changes to NSW election funding arrangements must comply with the law, especially the Commonwealth Constitution.
5. **Consistent** – The Commonwealth and all states and territories should preferably have consistent donations laws across jurisdictions.
6. **Representative** – Relevant donations frameworks should broadly reflect public opinion and pass 'the pub test'.

It is worth considering how these guiding ideals relate to the proposed model in more detail.

1. Transparent

All donations, of any amount, should be declared as soon as practicable after the candidate or party receives them. A publicly accessible website should be established to promptly detail these donations, ideally by the end of the month following receipt.

The 'Open Declare' software, currently in use in Queensland and South Australia, could offer a real time donation disclosure system that is both transparent and easy to use. Donation disclosure aims to minimise undue influence on the political process by revealing donors, and exposing decisions involving donors to greater scrutiny.

2. Honourable

The people of NSW should be confident that their state is free from corruption, backroom deals or inappropriate influence. Parliamentarians and members of the Executive Government should also feel comfortable making decisions without undue influence or pressure. The requirement for candidates to raise considerable campaign funds can threaten to undermine the integrity of the legislative process. Fundraising also requires candidates and members to dedicate time and energy that might instead be used for electoral or parliamentary purposes.

If candidates and parties chose to utilise the full publicly funded election campaign model, they would only spend public funds on their electoral campaigns. They would therefore be less likely to feel or actually be compromised.

Political parties could still charge reasonable membership fees to help cover the administrative costs of managing their members. They could also continue to hold events to raise awareness of candidates and their campaigns without jeopardising the second tier public funding, so long as the events were structured to direct proceeds to charitable organisations or undertaken on a strict cost recovery basis.

3. Comprehensive

The model needs to be comprehensive in its scope, yet still simple to understand. All expenditure on election campaigns must be limited, not only expenditure by registered parties. Unless third party electoral communications expenditure is appropriately limited, groups such as unions, GetUp! and environmental associations could run large political advertising campaigns that are likely to disproportionately assist left of centre political parties and candidates. Likewise, businesses and employer groups may

otherwise run extensive campaigns that disproportionately benefit right of centre political parties and candidates.

The model should be fair for all. Third party electoral communications expenditure might be lowered to curb the impact of large third party funded marketing campaigns that may unfairly benefit candidates or parties affiliated with these third party groups. A blackout period immediately prior to elections might also be considered to prevent third party campaigns from flooding the public arena at that time.

All sources of political donations and expenditure should be regulated and publically disclosed. It is complex and problematic to distinguish between donations from unions, property developers, tobacco or alcohol companies and others. The source of 'appropriate' private donations will always be an area of interpretation and debate. It is much easier to remove them all.

4. Lawful

It is crucial that any election funding rules are legal and can withstand the scrutiny of the judiciary. As previously mentioned, the *Unions NSW v New South Wales* High Court case challenging the legality of the O'Farrell Government's 2011 amendments to the *Electoral Funding Act* demonstrated the potential for state laws to be contrary to the Commonwealth Constitution.

There are various arguments as to whether or not this High Court decision should have been upheld, given that the laws regulated State-based issues, not Federal. However, when handing down the High Court judgment, it was noted that "generally speaking political communication cannot be compartmentalised to either that respecting State or that respecting Federal issues".

The opt-out public funding model does not ban donations per se and therefore arguably does not suppress political expression of support in an illegal way. The voluntary nature of opting-out from the default position means that a candidate or party can clearly choose to simply opt out of receiving private donations, obtain the second

extra tier of public funding and thus remove any pressure to solicit or receive donations.

5. Consistent

As indicated earlier, the states, territories and Commonwealth governments all have largely different approaches to regulating donations. Ideally there should be a consistent and simplified approach across all Australian jurisdictions. This would help deter donors from shifting funds to the most lenient jurisdictions, increase compliance, enable better enforcement and boost public confidence in the electoral financing system. While NSW already possesses one of the strictest donations law regimes, it is worth working to unify the country in implementing similar legal frameworks for donations across all jurisdictions.

6. Representative

The new model should be finalised after extensive public consultation and opportunities for stakeholder feedback. It is clear from backlashes to previous donations scandals and various ICAC enquiries that the public desires reform. Relevant media reports and surveys indicate that the public would support a shift to the full public funding of elections. However, further public consultation and engagement on reform options is warranted.

Citizens' juries are a mechanism that could be used to help formulate and refine laws for election campaign funding. A citizens' jury involves a group of people chosen at random via lottery, featuring individual characteristics that are broadly representative of the population. Equipped with relevant information and adequate resources, they meet over a series of months to deliberate and make recommendations on important issues. Citizens' juries are a significant avenue to encourage direct democracy amongst constituents and have enjoyed global success in several jurisdictions including Canada, Ireland and the Netherlands (Fournier et al., 2011).^{xxix}

A citizens' jury examining the issue of the best legal framework for donations in NSW (and potentially beyond) could use a defined method and criteria to analyse and

evaluate the existing regulatory system and propose recommendations. Wendy Hu (NewDemocracy, 2021) suggests a three-step test to assess the legal validity of any reforms in light of the implied freedom of political communication found by the High Court within the Commonwealth Constitution, namely:

“First, does the law effectively burden the freedom in its terms, operation or effect? ...Second, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative government (“compatibility test”)? ...Third, is the law reasonably appropriate and adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government? This involves inquiries as to whether the law is suitable, necessary and adequate in its balance (“proportionality test”).”^{xxx}

A well-designed, five-stage process of activation, discovery, understanding, investigation, and deliberation and decision by a citizens’ jury would involve stakeholders and be most likely to gain multi-partisan support (NewDemocracy, 2021).^{xxxi} Incorporating a citizens’ jury into the reform process would promote greater integrity and faith in democracy, and credibility for mutually balanced reform recommendations, including any increased taxpayer expenditure. Ideally, the wider public would also be invited to make submissions on the issue, perhaps via a parliamentary committee or government survey. If the public are to trust politicians, the public should be trusted to provide careful deliberation and sensible judgement on this important issue.

Conclusion

While NSW already enjoys a strict legal framework for political donations, there are serious shortfalls. An ‘opt-out’ public funding model, refined via direct democratic methods such as a citizens’ jury and wider public consultation, could prompt a principled solution for NSW to better address the challenges and ultimately strengthen our democracy.

Appendix 1: Comparison with Australian State and Territory Governments

This table compares the donation limits for political candidates and parties, requirements for disclosure, any prohibitions on persons or organisations who can donate and electoral expenditure caps for the states and territories of Australia (excluding NSW):

Jurisdiction	Donation limits	Disclosure requirements	Prohibited Donors
ACT ^{xxxii}	Anonymous donors can only donate less than \$1,000	Donations over \$1,000 disclosed via annual gift return	Property developers and/or their close associates
NT ^{xxxiii}	Anonymous donors can only donate less than \$1,000	Donations over \$200 to a candidate or \$1,500 to a political party (annual disclosure)	None
QLD ^{xxxiv} (N.B. additional new requirements will be introduced on 1 July 2022)	Foreign property donations are banned. Anonymous donors can only donate less than \$200	Donations of \$1,000 or more for a state government election via bi-annual return (donations of \$500 or more for local government elections)	Property developers and/or their close associates, as well as industry representative organisations with a majority of members being property developers.
SA ^{xxxv}	Anonymous donors can only donate less than \$200	Donations over \$5,000 in a financial year (bi-annual disclosure)	None
TAS ^{xxxvi} (N.B. <i>Final Report of Electoral Act Review</i> released by Tasmanian Government in February 2021 and proposes new	None	None	None

amendments to the <i>Electoral Act 2004</i> (Tas) to be debated in Parliament)			
VIC ^{xxxvii}	A single donor can only donate \$4,210 or less to a single recipient within the four-year period between 2 State elections (general donation cap). Can only donate to up to 6 third-party campaigners within a four-year election period. Anonymous donors can only donate less than \$1,050	Donations of \$1,050 or more	Foreign donors
WA ^{xxxviii}	Anonymous donors can only donate less than \$2,600	Donations over \$2,600 (annual disclosure)	None

Both the Queensland Electronic Disclosure System and South Australian Funding Disclosure Portal use ‘Open Declare’ software, a transparent, real time donation disclosure system with a user-friendly interface. ‘Open Declare’ was Australia’s first real-time donations disclosure platform and was successfully utilised during the 2017 Queensland state election (Open Declare, n.d.).^{xxxix}

References

- ⁱ Riminton, H. (2021, September 15). Christian Porter is beholden to a mystery benefactor. Hidden money is terrible for democracy. *The Guardian*. Retrieved from <https://www.theguardian.com/commentisfree/2021/sep/15/christian-porter-is-beholden-to-a-mystery-benefactor-hidden-money-is-terrible-for-democracy>
- ⁱⁱ Rabe, T., McClymont, K. and Smith, A. (2019, August 29). Dastyari, ICAC and the Chinese 'agent of influence'. *The Sydney Morning Herald*. Retrieved from <https://www.smh.com.au/politics/nsw/dastyari-icac-and-the-chinese-agent-of-influence-20190829-p52m6e.html>
- ⁱⁱⁱ De Kruijff, P. (2021, February 4). Twiggy, Clive, Gina: Which political parties did the mining billionaires favour in 2020? *WA Today*. Retrieved from <https://www.watoday.com.au/politics/western-australia/twiggy-clive-gina-which-political-parties-did-the-mining-billionaires-favour-in-2020-20210201-p56yex.html>
- ^{iv} Department of Premier and Cabinet. (2014). *Panel of Experts – Political Donations*. Retrieved from <https://www.dpc.nsw.gov.au/updates/2014/05/27/panel-of-experts-political-donations/>
- ^v *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (Aust.)
- ^{vi} NSW Electoral Commission. (2018). *What is a donor?* Retrieved from <https://www.elections.nsw.gov.au/Political-participants/Political-donors/What-is-a-donor>
- ^{vii} NSW Electoral Commission. (2021). *Types of Political Donations*. Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Types-of-political-donations#reportablepoliticaldonations>
- ^{viii} NSW Electoral Commission. (2021). *What is Funding and disclosure online?* Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Funding-and-disclosure-online/What-is-Funding-and-disclosure-online>
- ^{ix} NSW Electoral Commission. (2021). *Annual Major Political Donor Disclosure*. Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures/Annual-major-political-donor-disclosure>
- ^x NSW Electoral Commission. (2021). *Caps on Political Donations*. Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations>
- ^{xi} NSW Electoral Commission. (2020). *What are the expenditure caps for State elections?* Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>
- ^{xii} NSW Electoral Commission. (2019). *Prohibited Donors*. Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Unlawful-political-donations/Prohibited-donors>
- ^{xiii} NSW Electoral Commission. (2020). *Caps on Electoral Expenditure*. Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure>
- ^{xiv} Ibid.
- ^{xv} NSW Electoral Commission. (2020). *What are the expenditure caps for State Elections?* Retrieved from <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>
- ^{xvi} *Commonwealth Electoral Act 1918* (Cth) (Aust.)
- ^{xvii} Australian Electoral Commission. (2021). *Disclosure Threshold*. Retrieved from https://www.aec.gov.au/Parties and Representatives/public_funding/threshold.htm
- ^{xviii} Australian Electoral Commission. (2021). *Transparency Register*. Retrieved from https://www.aec.gov.au/Parties and Representatives/financial_disclosure/transparency-register/
- ^{xix} Australian Electoral Commission. (2021). *Financial Disclosure Overview*. Retrieved from https://www.aec.gov.au/Parties and Representatives/financial_disclosure/Overview.htm
- ^{xx} Australian Electoral Commission. (2020). *Foreign Donations*. Retrieved from https://www.aec.gov.au/Parties and Representatives/financial_disclosure/files/foreign-donations-fact-sheet.pdf
- ^{xxi} Australian Electoral Commission. (2021). Recent and proposed changes to electoral laws. Retrieved from <https://www.aec.gov.au/news/electoral-laws.htm>
- ^{xxii} Crowe, D. (2021, December 13). Independents spark funding concern, call to inform the AEC. *The Sydney Morning Herald*. Retrieved from <https://www.smh.com.au/politics/federal/independents-spark-funding-concern-call-to-inform-the-aec-20211213-p59h7v.html>

-
- ^{xxiii} Gaughan, A. (2016). The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform. *Ohio State Law Journal*, 77(4), 791-837. Retrieved from https://kb.osu.edu/bitstream/handle/1811/79605/OSLJ_V77N4_0791.pdf
- ^{xxiv} Federal Election Commission of the United States of America. (n.d.). *Public funding of presidential elections*. Retrieved from <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/>
- ^{xxv} Cagé, Julia. (2020, April 27). *How Barack Obama Spurred the End of America's Public Presidential Election Funding System*. Retrieved from <https://promarket.org/2020/04/27/how-barack-obama-spurred-the-end-of-americas-public-presidential-election-funding-system/>
- ^{xxvi} Elliott, Justin. (2013, January 30). Obama's Flip-Flops on Money in Politics: A Brief History. *ProPublica*. Retrieved from <https://www.propublica.org/article/obamas-flip-flops-on-money-in-politics-a-brief-history>
- ^{xxvii} Ibid.
- ^{xxviii} Roberts, Dan. (2014, April 3). Supreme court strikes down cap on overall campaign contributions. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2014/apr/02/supreme-court-strikes-down-cap-campaign-contributions>
- ^{xxix} Fournier, P., van der Kolk, H., Carty, R.K., Blais, A. & Rose, J. (2011). When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform. *Oxford Scholarship Online*. DOI:10.1093/acprof:oso/9780199567843.001.0001. Retrieved from <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199567843.001.0001/acprof-9780199567843>
- ^{xxx} Hu, Wendy. (2021). Would the High Court allow a ban on political donations? *NewDemocracy*. Retrieved from <https://www.newdemocracy.com.au/wp-content/uploads/2021/09/RD-Note-Donations.pdf>
- ^{xxxi} NewDemocracy. (2021). *Global Leadership in Trusted Campaign Funding*.
- ^{xxxii} ACT Electoral Commission. (2021). *Gifts FAQ*. Retrieved from https://www.elections.act.gov.au/funding_and_disclosure/funding,_expenditure_and_disclosure_faq/gifts_faq
- ^{xxxiii} NT Electoral Commission. (n.d.). *Glossary*. Retrieved from <https://ntec.nt.gov.au/financial-disclosure/Glossary>
- ^{xxxiv} QLD Electoral Commission. (2020). *Guide to Election and Disclosure Obligations for Candidates for State Elections and By-Elections*. Retrieved from https://www.ecq.qld.gov.au/_data/assets/pdf_file/0017/16703/Handbook-2-Election-and-Disclosure-Obligations-for-Candidates-for-State-elections.pdf
- ^{xxxv} SA Electoral Commission. (n.d.). *Donors*. Retrieved from <https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-for-state-elections/donors>
- ^{xxxvi} Tasmanian Department of Justice. (2021). *Electoral Act Review Final Report: February 2021*. Retrieved from https://www.justice.tas.gov.au/_data/assets/pdf_file/0009/601398/210030-DPAC-Electoral-Act-Final-Report_16-Feb_wcag.pdf
- ^{xxxvii} Victorian Electoral Commission. (n.d.). *Political Donations*. Retrieved from <https://www.vec.vic.gov.au/candidates-and-parties/political-donations>
- ^{xxxviii} Western Australian Electoral Commission. (n.d.). *Submitting a Return*. Retrieved from <https://www.elections.wa.gov.au/candidates-and-parties/funding-and-disclosure/submitting-return>
- ^{xxxix} Open Declare. (2018, February 5). Open Declare used in Queensland State Election [Blog post]. Retrieved from <https://www.opendeclare.com/open-declare-used-queensland-state-election/>