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## Foreign political donations

by Chris Angus

### 1. Introduction

This e-brief discusses current restrictions on political donations in NSW and other Australian jurisdictions in the light of recent media reports on donations from foreign and foreign-linked donors. It then outlines the means by which donors could bypass these restrictions, before briefly detailing the constitutional limitations to reform as a result of the implied freedom of political communication.

### 2. Power and influence (peddling?)

#### 2.1 Foreign political donations in Australia

On 5 June 2017 a joint ABC/Fairfax investigation reported on the activities of Chinese government-linked organisations in Australia, and mapped the influence of individuals who have access to political and business leaders. The joint investigation reported that the head of the Australian Security Intelligence Organisation (ASIO) had warned that espionage and foreign interference was occurring in Australia on an unprecedented scale, with the potential to cause serious harm to the nation's sovereignty, security and integrity of the political system.<sup>1</sup>

Two Australian-Chinese businessmen were identified as having donated significant sums of money to the NSW ALP branch, as well as the Western Australian branch of the Liberal Party.<sup>2</sup> This followed earlier reports that, between 2013 and 2015, Chinese-linked companies and individual donors contributed more than \$5.5 million to various branches of the Liberal, National and Labor parties.<sup>3</sup> Other media reports have alleged that a threat to withdraw donations may have influenced Commonwealth Labor Senator Sam Dastyari's position on China's activities in the South China Sea,<sup>4</sup> while other donations are alleged to have influenced the selection of political officials and candidates.<sup>5</sup>

It should be emphasised that the donations received from these businessmen do not appear to have broken donation laws in any State jurisdiction or at the Commonwealth level. In NSW, the [\*Election Funding, Expenditure and Disclosures Act 1981\*](#) sets strict requirements as to what donations can be accepted by NSW political parties, with State and Federal donations to be kept separate from one another.<sup>6</sup>

Nevertheless, the revelations have led to considerable media discussion over the extent to which foreign donations influence Australian politics at all levels of government. In response to these reports, Prime Minister Malcolm Turnbull has ordered a major inquiry into the nation's espionage and foreign interference laws, while Opposition Leader Bill Shorten reaffirmed Labor's commitment to take "direct and indirect foreign influence out of our elections".<sup>7</sup>

### 2.2 The hazards of private political donations

The recent media attention on foreign donations may have arisen in part as a response to global political events of 2016: in particular, the allegations that foreign governments interfered with both the US presidential election process and the UK's decision to leave the European Union.<sup>8</sup> However, these concerns form part of a much larger issue surrounding private donations in the Australian political system: one that has been discussed in a number of past NSW Parliamentary Research papers.<sup>9</sup>

Donations are an essential means of raising the funds necessary for effective political campaigning. As noted in a 2010 NSW Parliamentary Research Service e-brief:

The need for successful political parties to be financially viable, with an adequate cash flow, is imperative. Modern methods of campaigning, including communicating with constituents, are a costly exercise and the sustainability of a pluralistic democracy depends on the financial wellbeing of a diverse array of political parties.<sup>10</sup>

In this respect, McMeniman has asserted that "[i]n Australian political finance, money speaks both the language of pragmatism and the language of ideology."<sup>11</sup> Major political parties rely heavily on private donations to fund their election campaigns, and donations from the corporate and business sector have long been a vital source of this funding.<sup>12</sup>

However, difficult questions arise as a consequence of this financial imperative. How much funding is appropriate, and from what sources should this funding be obtained? Putting constitutional limitations aside, should corporations, trade unions or powerful groups or individuals be permitted to donate to political parties, or should these sources of funding be restricted or banned outright to avoid the risk of undue influence?<sup>13</sup>

While corruption has been found to have occurred in Australian politics in the past, the evidence indicates that illegal exchanges between Australian politicians and donors are a rare occurrence.<sup>14</sup> However, Orr nevertheless comments that the more common and subtler problem is using donations to buy access to the ears of ministers, senior politicians, and their advisers:<sup>15</sup> known as "influence peddling".<sup>16</sup> The Independent Commission Against Corruption (ICAC) has argued that it is vital that politicians and governments minimise this behaviour—both actual and *perceived*—given the serious damage it causes to representative democracy:

A situation in which citizens believe elections can be bought or that there is some quid pro quo for helping a candidate win must be seen as seriously damaging to the proper functioning of a democratic government. A corrupt member of parliament can be voted out of office if elections are free and fair.

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But if there is a loss of trust in the election process, then the whole system of representative government is weakened.<sup>17</sup>

### 3. Current NSW restrictions on donations

As a result of reforms over the past decade, NSW has some of the most restrictive election donation and expenditure rules of any democracy. This was the view of the ICAC,<sup>18</sup> as well as the [2014 Final Report of the Expert Panel on Political Donations](#) (the Expert Panel): an independent panel established by then Premier Mike Baird following the ICAC's investigations into allegations that political donations had been accepted from banned donors.<sup>19</sup>

Key restrictions under NSW law are summarised below.

#### 3.1 Donation caps and unlawful donors

The [Election Funding, Expenditure and Disclosures Act 1981](#) (EFED Act) sets out a range of restrictions that apply to different types of political donations, as well as certain political party donors.

Section 95A of the EFED Act sets a series of donation caps for different political entities or individuals. These limits apply to all NSW elections, including local government elections. According to the NSW Electoral Commission, the adjusted donation caps are as follows:

Maximum annual donation	Recipient or beneficiary
\$5,900	<ul style="list-style-type: none"><li>Registered political party;</li><li>Group</li></ul>
\$2,600	<ul style="list-style-type: none"><li>Unregistered party</li><li>Candidate</li><li>Elected member</li><li>Third party campaigner</li></ul>

Furthermore, political donations totalling \$1,000 or more must be disclosed, including the donor's name, address and date the donation was made.<sup>21</sup>

Certain types of donations are restricted. Section 96F of the EFED Act provides that it is unlawful for a person to accept anonymous political donations over \$1,000 unless the person knows the true name and address of the donor. Certain indirect campaign contributions, such as the provision of office accommodation or vehicles, or full or partial payment of electoral advertising, are also prohibited where the value of the contribution exceeds \$1,000.<sup>22</sup>

Additionally, the Act prohibits property developers and tobacco, liquor or gambling industries from making *any form* of political donation whatsoever, or to solicit others to make donations on their behalf.<sup>23</sup>

### 3.2 Ban on donations from foreign sources

Unique to NSW (see section 5), s 96D(1) of the EFED Act bans donations from foreign entities and individuals that do not reside in Australia. Under the section:

It is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is:

(a) an individual who is enrolled on the roll of electors for State elections, on the roll of electors for federal elections, or on the roll of electors for a local government election or, if not so enrolled, who has supplied to the Commissioner identification that is acceptable to the Commissioner showing the individual's full name and an Australian residential address, or

(b) an entity that has a relevant business number or a principal or executive officer of which has supplied to the Commissioner identification that is acceptable to the Commissioner showing the principal or officer's full name and an Australian residential address.

The EFED Act states that the object of this provision is to create certainty about who is making a political donation, and to remove a perception that certain foreign donors could exert influence over the Australian political process.<sup>24</sup>

However, it appears that foreign individuals can still donate to NSW political parties in some circumstances. Section 96D(1) of the EFED Act allows unenrolled individuals and entities without an ABN to lawfully donate if they provide acceptable evidence to the NSW Electoral Commission of an Australian residential address.<sup>25</sup> Such an application must be accepted by the Commission no more than six months before the donation is made.<sup>26</sup>

This provision was added to the EFED Act in 2014 in the wake of the *Unions NSW* case, which challenged a provision in the EFED Act banning political donations from persons who were not on the electoral roll (see section 6).<sup>27</sup> The High Court held that individuals who are not enrolled as electors nevertheless have a "legitimate interest" in seeking to influence electoral outcomes, and could not be prevented from making political donations.<sup>28</sup> In evidence given to the Expert Panel, Professor Anne Twomey stated that the amendment to the EFED Act places NSW law in line with Canada, the United States and New Zealand.<sup>29</sup>

Constitutional issues arising from bans on foreign (and other) political donations are discussed further in section 6.

### 3.3 Enforcement provisions

The EFED Act lists a range of offences relating to breaches of electoral donation laws as well as associated penalties which, following 2014 amendments,<sup>30</sup> have been significantly increased. Key offences and penalties are as follows:<sup>31</sup>

- Making a false disclosure statement, or one that the person does not reasonably believe is true: maximum 400 penalty units (\$44,000) or imprisonment for 2 years, or both;

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- Intentionally making a donation over the cap: maximum 400 penalty units (\$44,000) or imprisonment for 2 years, or both;
- Circumventing a ban on political donations or election expenditure: maximum 10 years imprisonment; and
- A person accepting an unlawful donation must pay an amount of equal value (or double that amount if that person knew that it was unlawful) to the State.

In its 2014 report, the Expert Panel commented that with the 2014 amendments, the penalties under the EFED Act are in line with those in other jurisdictions such as Canada and Germany, “and reflect the seriousness with which the community views deliberate breaches of election funding laws.”<sup>32</sup> Still, the Expert Panel reported that several barriers to compliance and enforcement remained, and made several recommendations in response. Select examples include the following:<sup>33</sup>

- Increasing the maximum monetary penalty that can be imposed by the Local Court for offences (currently \$4,400);
- Simplifying the means by which the prosecution must prove knowledge, awareness or intent for offences under the Act, in order to maximise the chances of successful prosecutions; and
- A range of mid-level enforcement options be made available to the NSW Electoral Commission, including the ability to withhold public funding entitlements from parties and candidates.

These recommendations were agreed to in principle by the NSW Government,<sup>34</sup> but have not yet been implemented.

### 4. Bypassing NSW donation laws

Although NSW has the nation’s strongest political donation laws,<sup>35</sup> critics have identified a number of means by which donors—domestic and foreign alike—can bypass these restrictions. Several of these methods are discussed below.

#### 4.1 Limits to and loopholes in NSW restrictions

Foreign donations allowed if residing in Australia: The effectiveness of the State’s foreign donation bans has also been raised by some stakeholders. Although the Expert Panel concluded that s 96D stops foreign donations to NSW political parties, and recommended that the existing ban be retained,<sup>36</sup> other stakeholders have commented that this restriction is not absolute.

In its 2016 [Inquiry into the Final Report of the Expert Panel - Political Donations](#), the NSW Parliament’s Joint Standing Committee on Electoral Matters referred to the NSW Electoral Commission, which stated that it could not prevent donations from foreign donors and entities if they provide acceptable identification showing an Australian residential address. It further noted that additional legislative amendments were needed to effectively ban donations from foreign sources.<sup>37</sup>

While the Committee—like the NSW Government<sup>38</sup>—supported in principle the Expert Panel’s recommendation that the ban on foreign political donations be retained, it nevertheless suggested that the NSW Government consider the practical problems associated with banning donations from foreign sources, as highlighted by the NSW Electoral Commission.<sup>39</sup>

Multiple donations: While the EFED Act appears relatively robust in its ability to stop unlawful donations, the existing cap of \$5,900 for registered parties and \$2,600 for other individuals or organisations can be overcome.

For example, under the Act a donor can make an annual donation of \$5,900 for NSW State election purposes, and another \$5,900 for NSW local government purposes, without breaching the cap.<sup>40</sup> The Act does not appear to require donations to a party and its endorsed candidates to be aggregated, allowing a single donor to give \$5,900 to a party and \$2,600 to its endorsed candidate or candidates: a total of \$8,500 per year.<sup>41</sup>

While the 2014 Final Report of the Expert Panel on Political Donations acknowledged calls for a combined party/candidate cap, it also expressed concern that such a response could increase corruption risks at the candidate level (for example, a party choosing for strategic reasons not to invest a great deal in a particular candidate’s campaign).<sup>42</sup> Still, this demonstrates that existing caps can be overcome in certain circumstances.

Associated entities: Donating to associated entities—Commonwealth-based organisations controlled by and operated for the benefit of a registered political party, such as think tanks or registered clubs or trade unions<sup>43</sup>—is another means of bypassing NSW restrictions. Unlike direct political donations, which must comply with disclosure requirements, donations to associated entities are published in a way that makes it difficult to track the flow of money, thus obfuscating the origins of the donation beyond the associated entity itself.<sup>44</sup>

According to the Expert Panel on Political Donations, unlike other jurisdictions NSW imposes disclosure requirements on associated entities similar to those applied to major donors, rather than more detailed disclosure requirements that apply to political parties. According to one Panel witness:

[T]his is a big loophole in New South Wales election funding laws – the absence of regulation of associated entities and I suspect it has facilitated some of the behaviour we are seeing ventilated before the ICAC hearings.<sup>45</sup>

Subsequently, the Expert Panel recommended that the EFED Act be amended to regulate associated entities, and require their disclosure obligations to be the same as those of political parties.<sup>46</sup> This recommendation was accepted in principle by both the NSW Government and the NSW Joint Standing Committee on Electoral Matters,<sup>47</sup> although legislation has not yet been adopted to address this shortcoming.

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### 5. Donating and influencing via other jurisdictions

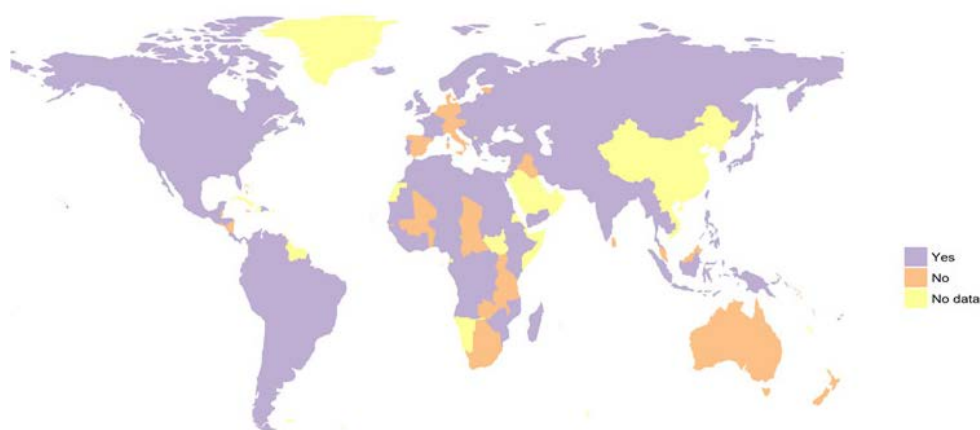
As shown in Table 2 below, NSW has stronger political donations than other Australian jurisdictions:

Jurisdiction	Donation limits (parties)	Disclosure requirements	Foreign donation restrictions
NSW	\$5,900	Donations over \$1,000 (annual disclosure)	Banned
Cth <sup>49</sup>	Only for anonymous donations (cap of \$13,200)	Donations over \$13,200 (annual disclosure)	None
ACT <sup>50</sup>	None (previous cap of \$10,000 removed in 2015)	Donations over \$1,000 (annual disclosure)	None
NT <sup>51</sup>	None	Donations over \$1,500 (annual disclosure)	None
Qld <sup>52</sup>	Only for anonymous donations (cap of \$1,000)	Donations over \$1,000 (annual disclosure)	Ban on foreign property donations only
SA <sup>53</sup>	No (\$500 limit for 'pay for access' events)	Donations over \$5,000 (bi-annual disclosure)	None
Tas <sup>54</sup>	None	None – must comply with Commonwealth requirements	None
Vic <sup>55</sup>	\$50,000 limit for gambling licensees only	None – must comply with Commonwealth requirements	None
WA <sup>56</sup>	Only for anonymous donations (cap of \$2,300)	Donations over \$2,300 (annual disclosure)	None

Indeed, the legal position at the Commonwealth level means that Australia is one of the few countries that does not prohibit donations from foreign interests to political parties or candidates (see Figure 1 overleaf).

Of comparable English-speaking democracies, only New Zealand allows overseas donations to parties, however these are capped at NZD\$1,500.<sup>57</sup>

Figure 1: Bans on donations from foreign interests to parties



Over the past decade there have been several attempts to ban foreign political donations at the Commonwealth level.<sup>58</sup> The most recent development is a March 2017 report by the Commonwealth Joint Standing Committee on Electoral Matters, which made the following recommendation in relation to foreign donations:

The Joint Standing Committee on Electoral Matters recommends a prohibition on donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties. This ban would not apply to dual Australian citizens either in Australia or overseas, or to non-Australian permanent residents in Australia.<sup>59</sup>

However, the majority's recommendation that a ban be extended to registered charities was criticised by the ALP and Greens Committee members, and the not-for-profit sector, for potentially restricting the capacity of not-for-profit organisations to draw attention to their causes.<sup>60</sup>

The inconsistencies in political donation laws across Australia have created an environment where donors who cannot contribute to a NSW political party or candidate may instead donate larger amounts to State or Federal branches with less restrictive laws. The ABC has explained how this donation splitting could occur:

A donation can be split into amounts of \$13,000 or less and distributed to the individual state and territory branches of a party.

Labor has 10 branches, which means you can donate \$130,000 to the party without anyone knowing. The Liberal party has eight branches, opening the door to a \$104,000 anonymous donation and the Greens have nine, meaning you can give \$117,000 and keep it private.

We have to note here that Labor and the Greens say they voluntarily declare all donations over \$1,000.<sup>61</sup>

This does *not* mean that these donations can be transferred in their entirety from an interstate party branch to their NSW counterparts. NSW law limits the amount each interstate or federal party branch can donate to its NSW counterpart.<sup>62</sup>

However, such restrictions may not stop efforts to influence NSW political parties via donations to parties and candidates in *other jurisdictions*.



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McMeniman has summarised how such donations can help to build connections with politicians, even if the money does not go directly to them, their parties or fellow State candidates:

Australian participants outline the same subtle process of network development as do their Canadian counterparts. Financial contributions do not buy a direct, clear, and simultaneous benefit. Instead, by building a record with the party and relationships with politicians and their advisers, financial contributions establish a basis for reciprocal benefits in the future.<sup>63</sup>

In 2016 ABC News reported that Sydney property developers donated thousands of dollars to the ACT branch of the Liberal Party despite having no apparent connection with the Territory.<sup>64</sup> The Canberra Liberals noted that these donations were permitted under ACT donations law and were linked to the party's federal election campaign.<sup>65</sup> Nevertheless, donating to party branches in other jurisdictions may be considered an alternative way for donors—domestic and foreign alike—to indirectly influence NSW politics.

### 6. Constitutional limits on further restrictions

As discussed in section 3, the NSW ban on political donations from foreign sources is the most stringent in Australia, and, when combined with general caps on donations and other restrictions, goes a significant way to responding to the instances of corruption and undue political influence that had previously affected NSW politics. This section explores constitutional limitations on any potential tightening of the ban on foreign donations.

#### 6.1 Implied freedom of political communication

While not expressly stated in the Australian Constitution, the High Court first recognised an implied freedom of political communication in 1992.<sup>66</sup> In the 1997 decision of [Lange v Australian Broadcasting Corporation](#) (subsequently modified in 2004), the High Court outlined a two part test for determining whether a law is invalid:<sup>67</sup>

- 1) Does the law effectively burden freedom of communication about government or political matters either in its terms, operations or effect?
- 2) If yes, is the law reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with representative and responsible government?

In the 2013 case of [Unions NSW v New South Wales](#) the High Court assessed the legality of several provisions introduced through the [Election Funding, Expenditure and Disclosures Amendment Act 2012](#) (NSW), which:

- Made it unlawful for a political donation to a party, elected member, group, candidate or third party campaigner to be accepted unless the donor was an individual who was enrolled to vote (section 96D); and
- For the purposes of the caps on electoral expenditure, provided for the aggregation of electoral expenditure of political parties and their affiliated organisations (section 95G(6)).

The High Court struck out both provisions, finding that they breached the implied freedom of political communication because the restrictions were too widely applied and therefore could not be shown to be “connected to, and in furtherance of, the anti-corruption purposes of the Act”.<sup>68</sup>

A comprehensive analysis of the *Unions NSW* case can be found in the 2014 NSW Parliamentary Research Service e-brief [The High Court’s decision in the electoral funding law case](#).

In the aftermath of the *Unions NSW* case, some legal scholars expressed doubt that future (or even existing) restrictions on political donations could survive judicial scrutiny.<sup>69</sup> The 2015 case of [McCloy v New South Wales](#) demonstrated that, in at least some circumstances, such restrictions would not violate the Constitution.

McCloy and two other property developers challenged several provisions of the EFED Act on the ground that these violated the implied freedom of political communication: notably the cap on political donations (Div 2A) and the ban on donations from property developers (Div 4A). However, the High Court rejected this challenge in its entirety, holding that both the donations cap and the ban on certain donors were aimed at the legitimate end of preventing corruption and undue influence.<sup>70</sup>

With regard to the ban on property developers and other organisations, the Court found that these groups represented a class “sufficiently distinct to warrant specific regulation in light of the nature of their business activities and the nature of the public powers which they might seek to influence in their self-interest, as history in New South Wales shows”.<sup>71</sup>

### 6.2 Prospects for future reform

What does *McCloy* mean for future legislative reform? According to Orr, any legislation designed to further restrict donations must provide strong justification for such a ban or restriction, and avoid discriminating against certain classes of donors (such as unions versus corporations).<sup>72</sup>

In his submission to the Commonwealth Joint Standing Committee on Electoral Matters, Professor George Williams argued that donations from “a source that is exclusively foreign” should be banned, but this should only extend to persons without Australian citizenship, or entities not registered in Australia.<sup>73</sup> In contrast, Professor Twomey’s submission argued that it was unlikely that donations from permanent residents living in Australia could be banned, even if they had foreign origins or connections.<sup>74</sup>

Additionally, Associate Professor Joo-Cheong Tham commented in his submission that restrictions targeted at specific classes of people, such as property developers, can be compatible with the freedom if there is a demonstrated justification for such selectivity. However, if the provision were not of “selective scope”, it would very likely be unconstitutional.<sup>75</sup>

In light of these submissions, it appears that future restrictions or bans would have to target a specific sub-class of donor whose behaviour could be clearly shown to justify such action. These restrictions would have to be narrowly defined so as to avoid including donors whose actions do not deserve to be curbed in such a fashion.

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In the context of foreign-*linked* donors, this may prove to be a difficult task. As noted by Associate Professor Tham and Malcolm Anderson, “foreign” has multiple meanings in the context of foreign political donations:

In this context, “foreign” seems to have three possible meanings: a narrow one, which refers to overseas-based donors; and a broad one, which extends to all non-citizens who donate to political parties, whether or not they are residing in Australia. The third understanding is more complex: it refers to individuals born overseas who are now Australian citizens or permanent residents and who, while they are closely involved in business activities in their country of adoption, nevertheless retain close government and business connections in their country of origin. Indeed, their implicit “foreignness” devolves from the fact that they may hold citizenship (or permanent residence status) in Australia and in another country.<sup>76</sup>

It is unclear which of these definitions, if any, would survive a High Court challenge.

### 7. Conclusion

The perception that foreign interests are influencing Australian politicians has become more pronounced following recent media revelations, and has already led Commonwealth leaders to promise reform of their electoral funding laws in the near future.

This will be welcome news for NSW, whose stringent (yet not perfect) bans on foreign donations are impacted by inconsistent laws across other Australian jurisdictions. Without reform in these jurisdictions, foreign donors may be able to exercise political influence in Australia, including NSW.

Should further reforms be pursued in NSW—for example, targeting Australian citizens or residents with links to foreign governments or organisations—they risk violating the implied constitutional right to freedom of political communication. *McCloy v New South Wales* demonstrates that legislative bans will only be valid if they clearly and directly target a class of donors who have unequivocally been shown to be harming the Australian system of representative government.

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<sup>1</sup> N McKenzie, S Koloff, A Davies, [Power and Influence](#), ABC Four Corners, 6 June 2017.

<sup>2</sup> Ibid; R Trigger, [Chinese businessman subject of ASIO warning donated \\$200,000 to WA Liberals](#), ABC News, 10 June 2017.

<sup>3</sup> C Uhlmann, A Greene, [Chinese donors to Australian political parties: who gave how much?](#), ABC News, 8 June 2017.

<sup>4</sup> G Chan, [Sam Dastyari contradicted South China Sea policy a day after Chinese donor's alleged threat](#), The Guardian, 5 June 2017.

<sup>5</sup> D Welch, [The Labor Party, Chinese property developer Huang Xiangmo, and the seat in the NSW parliament](#), ABC News, 6 June 2017; N McKenzie, C Vedelago, S Nicholls, R Baker, [ALP reels after resignation and calls for China donations inquiry](#), Sydney Morning Herald, 13 June 2017; B Norington, [Candidate's China links find \\$120k for Labor](#), The Australian, 13 June 2017.

<sup>6</sup> [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW) s 95B(2).

<sup>7</sup> C Uhlmann, C Gribbin, [Malcolm Turnbull orders inquiry following revelations ASIO warned parties about Chinese donations](#), ABC News, 6 June 2017.

<sup>8</sup> Office of the Director of National Intelligence, [Background to “Assessing Russian Activities and Intentions in Recent US Elections”](#): The Analytic Process and Cyber Incident Attribution, 6 January 2017, p ii; R Syal, [Brexit: foreign states may have interfered in vote, report says](#), The Guardian, 12 April 2017.

<sup>9</sup> For example, see: J Arditi, [Political Donations and Electoral Finance](#), NSW Parliamentary Research Service, e-brief 1/2010, January 2010; G Griffith, [The Regulation of Lobbying](#), NSW Parliamentary Research Service, Briefing Paper 5/2008, June 2008; G Griffith, T Drabsch, [Election Finance Law: Recent Developments and Proposals for Reform](#), NSW Parliamentary Research Service, Briefing Paper 8/2007, June 2007.

<sup>10</sup> Arditi, note 9, p 3.

<sup>11</sup> I McMeniman, [If money talks, what does it say? Corruption and business financing of political parties](#) (Oxford University Press, 2015) p 67.

<sup>12</sup> G Orr, 'Party Finance Law in Australia: Innovation and Enervation' (2016) 15 *Election Law Journal* 58, p 62; Arditi, note 9.

<sup>13</sup> Griffith and Drabsch, note 9, p 47.

<sup>14</sup> McMeniman, note 11, p 90.

<sup>15</sup> Orr, note 12, p 62.

<sup>16</sup> A Gurria, ['Building a Cleaner World Economy'](#) (Speech delivered at the OECD Global Forum on Public Governance, 4 May 2008).

<sup>17</sup> ICAC, [Election funding, expenditure and disclosure in NSW - strengthening accountability and transparency](#), December 2014, p 7.

<sup>18</sup> *Ibid* p 7.

<sup>19</sup> Expert Panel on Political Donations, [Political Donations Final Report – Volume 1](#), December 2014, pp 1, 9. Also see: M Baird, ['Expert panel to drive donations reform'](#) (Media Release, 27 May 2014).

<sup>20</sup> Electoral Commission NSW, [Caps on Political Donations](#), 19 January 2017.

<sup>21</sup> [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW) Pt 6, Div 2.

<sup>22</sup> *Ibid* s 96E.

<sup>23</sup> *Ibid* s 96GA.

<sup>24</sup> *Ibid* s 96D(4).

<sup>25</sup> *Ibid* s 96D(1); Expert Panel on Political Donations, [Political Donations Final Report – Volume 1](#), December 2014, p 44.

<sup>26</sup> Electoral Commission NSW, [Unlawful Political Donations](#), 30 June 2016.

<sup>27</sup> [Election Funding, Expenditure and Disclosures Amendment Act 2014](#) Sch 2.

<sup>28</sup> [Unions NSW v New South Wales](#) (2013) 88 ALJR 227, [30], [144]; Expert Panel on Political Donations, note 19, p 44.

<sup>29</sup> Expert Panel on Political Donations, note 19, p 47.

<sup>30</sup> [Election Funding, Expenditure and Disclosures Amendment Act 2014](#) Sch 2.

<sup>31</sup> [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW) Pt 6, Div 5. Each penalty unit is valued at \$110: see [Crimes \(Sentencing Procedure\) Act 1999](#) (NSW) s 17.

<sup>32</sup> Expert Panel on Political Donations, note 19, p 134.

<sup>33</sup> *Ibid* pp 135, 137.

<sup>34</sup> NSW Government, [Government response to Expert Panel's final report](#), Attachment A.

<sup>35</sup> *Ibid* p 9.

<sup>36</sup> *Ibid* p 48.

<sup>37</sup> Joint Standing Committee on Electoral Matters, [Inquiry into the Final Report of the Expert Panel - Political Donations](#), Parliament of NSW, Report No 1/56, June 2016, p 12.

<sup>38</sup> NSW Government, note 34.

<sup>39</sup> Joint Standing Committee on Electoral Matters, note 37.

<sup>40</sup> [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW) s 95A(3A).

<sup>41</sup> Expert Panel on Political Donations, note 19, p 54.

<sup>42</sup> *Ibid*.

<sup>43</sup> [Commonwealth Electoral Act 1918](#) (Cth) s 287; Australian Electoral Commission, [Associated entities](#), 6 July 2016.

<sup>44</sup> A McGhee, [The missing millions: Political donations likened to money laundering](#), ABC News, 1 February 2017

<sup>45</sup> Expert Panel on Political Donations, note 19, p 104.

<sup>46</sup> *Ibid*.

<sup>47</sup> NSW Government, note 34; Joint Standing Committee on Electoral Matters, note 37, p 45.

<sup>48</sup> Derived in part from Orr, note 12, Appendix. Other sources referred to by jurisdiction in the rows below.

<sup>49</sup> [Commonwealth Electoral Act 1918](#) (Cth) s 306(2); Australian Electoral Commission, [Disclosure threshold](#), 19 May 2016.

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- <sup>50</sup> [Electoral Act 1992](#) (ACT) s 216A (disclosure); Elections ACT, [New electoral campaign finance laws in the ACT](#), 5 July 2016.
- <sup>51</sup> [Electoral Act](#) (NT) s 194; NT Electoral Commission, [Donors to Parties and Candidates](#), n.d.
- <sup>52</sup> [Electoral Act 1992](#) (Qld) ss 261 (disclosure requirements), 270 (foreign donation restrictions), 271 (donation limits).
- <sup>53</sup> [Electoral Act 1985](#) (SA) ss 130ZF, 130ZL.
- <sup>54</sup> Government Administrative Committee B, [Final report on Tasmanian Electoral Commission](#), Legislative Council, Parliament of Tasmania, 2016, pp 20-1 (foreign donations), 29 (donation limits, disclosure requirements).
- <sup>55</sup> [Electoral Act 2002](#) (Vic) s 216 (donation limits); Victorian Ombudsman, [Reform political donation laws: Ombudsman](#) (Media Release, 25 November 2015).
- <sup>56</sup> [Electoral Act 1907](#) (WA) Pt VI, Div 3; Western Australian Electoral Commission, [Political Finance Reports](#), n.d.
- <sup>57</sup> D Muller, [Foreign political donations](#), Commonwealth Parliamentary Library, 6 September 2016.
- <sup>58</sup> *Ibid.*
- <sup>59</sup> Joint Standing Committee on Electoral Matters, [Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations](#), Parliament of Australia, March 2017, Ch 3.
- <sup>60</sup> [Dissenting Report 2 - Labor Members and Senators](#); [Dissenting Report 3 - The Australian Greens](#); Human Rights Law Centre, [Defending Democracy: Safeguarding independent community voices](#), June 2017, p 6.
- <sup>61</sup> A McGhee, [The missing millions: Political donations likened to money laundering](#), ABC News, 1 February 2017.
- <sup>62</sup> [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW) s 85(3A) prevents unregulated donations in one jurisdiction being channelled to candidates in NSW.
- <sup>63</sup> McMeniman, note 11, p 91.
- <sup>64</sup> E Gilbert, [Sydney property developers donating thousands to ACT Liberal Party, despite NSW ban](#), ABC News, 15 July 2016.
- <sup>65</sup> *Ibid.*
- <sup>66</sup> [Australian Capital Television Pty Ltd v Commonwealth](#) (1992) 177 CLR 106.
- <sup>67</sup> [Lange v Australian Broadcasting Corporation](#) (1997) 189 CLR 520, as reformulated by [Coleman v Power](#) (2004) 220 CLR 1, 31 [95]-[96], 57 [196], 61-2 [211].
- <sup>68</sup> *Ibid* [60]
- <sup>69</sup> For example, see: L Roth, [The High Court's decision in the electoral funding law case](#), e-brief 2/2014, February 2014, Ch 6; A Gray, 'Donation and Spending Limits in Political Finance Law and their Compatibility with the Australian Constitution' (2014) 60 *Australian Journal of Politics and History* 592.
- <sup>70</sup> [McCloy v New South Wales](#) [2015] HCA 34, [33]
- <sup>71</sup> *Ibid* [49]
- <sup>72</sup> G Orr, [In McCloy case, High Court finally embraces political equality ahead of political freedom](#), The Conversation, 8 October 2015.
- <sup>73</sup> G Williams, [Submission to the inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto](#), Submission No 19, 23 October 2016, p 5.
- <sup>74</sup> A Twomey, [Submission to the inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto](#), Submission No 24, 26 October 2016, p 2.
- <sup>75</sup> J Tham, [Submission to the inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto](#), Submission No 25, 21 February 2017, pp 4-5.
- <sup>76</sup> J Tham, M Anderson, [Taking xenophobia out of the political donation debate](#), Inside Story, 20 October 2016.