

How clean might we become? A progress report on reforming Australia's federal political donations regime

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Introduction

The Joint Standing Committee on Electoral Matters (JSCEM) is, yet again, examining Australia's Federal political donations regime. For readers not familiar with the recent history surrounding previous JSCEM recommendations, it is worth mentioning that its 2011 inquiry into political donations resulted in a 268-page *Report on the funding of political parties and election campaigns* (http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/em/political_funding/report).

Despite making 30 recommendations, the exercise proved to be a classic example of "symbolic politics", whereby members of parliament pay "lip service" to reforming public policy, while in practice doing nothing so that the status quo can be maintained. This claim is supported by the fact that successive governments failed to implement any of the recommendations made in the 2011 report. Indeed there have been no changes to the self-serving political donations regime at the Federal level since 2008.

A political donations system that places party and personal interests well before the public interest has been allowed to operate for too long and it is hoped that the current JSCEM inquiry will reverse parliamentarians' priorities. For a detailed account of previous inaction and its consequences, please refer to the 2016 John Cain Foundation's *Come Clean: Stopping the Arms Race in Political Donations* report available at (<http://www.johncainfoundation.com.au/come-clean-stopping-the-arms-race-in-political-donations-by-dr-colleen-lewis/>).

As the current JSCEM inquiry is yet to bring down its final report, this paper can only offer an appraisal of the Committee's progress to date and assess the likelihood that it will result in meaningful reform. The paper refers to JSCEM's first interim report but places particular emphasis on its second, which focuses on foreign donations.

The progress report concludes by arguing that the reform momentum must be maintained if the Federal political donations regime is to be significantly overhauled before the next election. In the interest of restoring faith in the political process and in members of parliament (MPs) it is essential that this happen.

Terms of reference

The terms of reference for the current JSCEM inquiry are very broad and require the Committee to examine and report on the following matters:

1. all aspects of the 2016 Federal election and matters related thereto, and without limiting the scope of the committee's inquiry, with particular reference to:
 - 1a. The application of provisions requiring authorization of electoral material to all forms of communication to voters;
 - 1b. The potential applicability of 'truth in advertising' provisions to communication to voters including third-party carriage services;
 - 1c. The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities; and,
 - 1d. The potential application of new technology to voting, scrutiny and counting, with particular reference to its application to remote voting, ADF personnel on deployment and supporting vision-impaired voters.
2. The extent of donations and contributions from foreign sources, persons, entities and foreign-

owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.

3. The current donations, contributions, expenditure and disclosure regime, its application and timeliness and alternative approaches available to Parliament.
4. The extent to which fundraising and expenditure by third parties is conducted in concert with registered political parties and the applicability and utilization of tax deductibility by entities involved in campaign activities.
5. Any matters related to the terms outlined above.

JSCEM has received 142 submissions that canvass various aspects of the Committee's terms of reference and to date twelve public hearings have been held (Canberra, Hobart, Melbourne, Sydney, Adelaide, Perth, Brisbane and Townsville).

[http://www.aph.gov.au/Parliamentary Business/Committees/Joint/Electoral Matters/2016Election/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Report)).

The Committee has yet to indicate if it plans to conduct further public hearings.

First interim report

In December 2016 JSCEM issued its first interim report *The 2016 Federal Election Interim Report on the authorization of voter communication*

[http://www.aph.gov.au/Parliamentary Business/Committees/Joint/Electoral Matters/2016Election/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Report).

All of its six recommendations are based on adherence to the following core principles:

1. **Accountability** - parties and other participants should be held to account and be responsible for their political statements;

2. **Traceability** - those who authorize electoral materials should be identifiable and traceable for enforcement and other purposes; and
3. **Consistency** - in the application of the rules and requirements to all electoral material.

The recommendations do not directly address the political donations regime; rather they focus on the authorization of electoral material and impersonating a Commonwealth officer and/or entity. Discussions in the body of the report take particular notice of the dramatic increase in the use of "new media" and "new technologies" as communication tools in the lead up to elections and the changes needed to address loopholes that arise when new mediums are used.

Four of the six recommendations stress the need for the *Commonwealth Election Act 1918* to be updated. Recommendation 4 suggests that in early 2017 JSCEM should undertake further inquiries and put forward recommendations in relation to the impersonation of a Commonwealth officer and entity.

All six recommendations go to the integrity of the electoral process and hence are linked to the political donations regime. You cannot have integrity in one aspect of electoral politics and not the other, as how politics is funded and the integrity standards used to try to win power through the expenditure of those funds are inescapably interwoven.

The report does refer to the amount of money it costs to communicate with the electorate during an election campaign and quotes from a 2010 article authored by Professor Graeme Orr. As Orr says, the "inherent cheapness of electronic communications to direct marketers suggests that SMS, email, 'robo-calling' and variations as yet unimagined will continue to be employed" when communicating with voters (refer p. 8 and footnote 4 of the first interim report).

The money to finance elections comes from two sources: private donations and taxpayers' funds. JSCEM's decision to acknowledge the "inherent cheapness" associated with

using the increasingly popular new mediums to communicate with voters must be factored into the shape of any future political donations regime. It is directly relevant to curbing the escalating "arms race" in electoral spending, which is a very disturbing feature of Federal elections in Australia. The arms race can be curbed through the capping of party and candidate expenditure. However, the uptake in the use of new mediums of communication means that this could happen without the need to drastically reduce the level of political communication during election periods.

Second interim report: foreign donations

JSCEM released its *Second interim report on the inquiry into the conduct of the 2016 election: Foreign Donations*, hereafter referred to as the foreign donations report, on Friday 10 March 2017

(parl.info.aph.gov.au/parlinfodownload/committees/reportjnt/024053/toc_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federalelectionForeignDonationspdf;fileType=application%2Fpdf).

This report addresses the section in the broader terms of reference that asks the Committee to inquire into:

The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.

JSCEM identified four principles as being "fundamental to a trusted system for political donations". These are:

- **Transparency**, via visible, timely disclosure of donations and donors;
- **Clarity**, about what is required and by whom;
- **Consistency** of regulations, so that they capture all participants and support a level playing field; and

- **Compliance**, through enforceable regulations with minimal, practicable compliance burdens.

In line with these fundamental principles, the Committee made five recommendations with all but Recommendation 4 prefaced with the words "The Joint Standing Committee on Electoral Matters recommends":

Recommendation 1

... that any donation reform of the Commonwealth Electoral Act 1918 be in accordance with Australia's sovereign interests.

Recommendation 2

... that any donation reform of the Commonwealth Electoral Act 1918 be consistent with the four principles of transparency, clarity, consistency and compliance as identified by the Committee in this interim report.

Recommendation 3

... 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.

Recommendation 4

The committee recommends that the Joint Standing Committee on Electoral Matters, in its wider inquiry into donations and disclosure, further examine the requirement to extend a foreign donations ban to all other political actors. The key issue to be considered is how to prevent foreign funds being channeled through organisations engaging in political activities and who are not subject to regulation under the Commonwealth Electoral Act 1918. This new inquiry would also examine related

issues that have arisen in this inquiry which are outside the current terms of reference, including tax deductibility for gifts.

Recommendation 5

... the penalties in relation to offences in the Commonwealth Electoral Act 1918 are significantly strengthened to include stricter penalties for non-compliance.

Not all members of the Committee or participating members agree with every recommendation. This has resulted in three dissenting reports. One from a participating member of the Committee (not a Committee member) Senator David Leyonhjelm of the Liberal Democratic Party; one from the Committee's Labor Members and Senators and another from the Australian Greens, hereafter referred to as the Greens.

Dissenting report 1 - Senator David Leyonhjelm

Senator Leyonhjelm prefaces his report (refer pp. 41-49 of the foreign donations report) by stating that he endorses Recommendations 1, 2 and 4 of the main report and does not have a view on Recommendation 5. It is Recommendation 3 that led to his dissenting report.

Senator Leyonhjelm believes that:

Foreign donations should only be regulated if there is a problem specific to foreign donations, if the regulation would solve the problem, if the costs of the regulation don't outweigh the benefits, and if no other solution does a better job (p. 41).

He also believes that "The Committee heard no evidence to support the specific prohibition of foreign donations" (p. 41).

Senator Leyonhjelm concludes his report by stating that:

Prohibition of foreign donations is a solution in search of a problem. There is no reason to believe

regulation will achieve anything of benefit to Australian democracy, while there are grounds to believe it will have unintended consequences and harm democracy (p. 49).

He goes on to make the following four recommendations.

1. That the Government regulate foreign donations the same as domestic donations.
2. That the AEC have the power to require the location of the donor to be provided in disclosure returns.
3. That it be a requirement for all donations (above an agreed threshold) to be disclosed to voters prior to a relevant ballot.
4. That donations made so close to a ballot that voters cannot be made aware of them before voting be prohibited.

On the basis of the views expressed by Senator Leyonhjelm, it is extremely doubtful that if a bill were introduced into the Parliament reflecting the sentiments expressed in Recommendation 3 that it would receive his support.

Dissenting report 2 - Labor Members and Senators

The four Labor Party members of JECCEM (Deputy Chair Mr Andrew Giles MP, Senator Chris Ketter, Senator Coral Brown and Mr Milton Dick MP) commence their dissenting report (refer pp. 51-53 of the foreign donations report) by explaining that, "Labor members of the Committee believe that Australian elections should be determined by the Australian people". They also acknowledge the "legitimate concerns" people have regarding "the interference of foreign actors in the electoral affairs of sovereign nations" (p. 51).

In support of these sentiments, they make it clear that:

Labor members therefore agree that foreign citizens and foreign entities should be banned from making donations to Australian registered political parties...[and] to associated entities of registered

political parties, within the meaning of section 287(1) of the Commonwealth Electoral Act (p. 51).

However, Labor Party members go on to explain that they are unable to support the proposal in the main report, endorsed by the Liberal and National Party members of the Committee, (Chairperson Senator Linda Reynolds, Senator Barry O'Sullivan, Mr Scott Burchholz MP, Mr Ben Morton MP and Mrs Lucy Wicks MP) "to extend the fundraising and financial disclosure obligations imposed by the Electoral Act to capture all third parties that are in any way involved in public campaigning" (p, 51).

Labor members support their position by arguing that:

When it comes to foreign influence on political parties, the risk to our system of government is clearly identifiable. This simply isn't so when it comes to applying the same framework to groups whose electoral involvement may well be incidental (p. 52).

Their concerns centre around what they see as "unfortunate" and "presumably unintended consequences" that would arise from the imposition of "wide-ranging restrictions". For example, not-for-profit organisations would be restricted in drawing attention "to their causes", which could range from "overseas aid, to indigenous advancement". Labor members go on to ask, "What sort of government would seek to shut down, or monopolise, these conversations?" (p.52).

The Labor members note that they genuinely tried to deliver a consensus report by making compromises and did so "in keeping with the bipartisan practice of JSCEM and the importance of rebuilding trust and confidence in the operation of our political intuitions" (p. 52).

While not making formal recommendations, Labor members argue that JSCEM has further work to do on this issue. They suggest that another inquiry is needed that:

...would enable all considerations to be balanced, and the case for change to be tested: weighing the

concerns apparently motivating Coalition members of this Committee against the interests of the full range of affected parties, considering legal and constitutional questions which might be applicable, and recognizing the critical importance of an active civil society to Australian democracy" (p. 52).

Given the complexities surrounding third party entities and foreign donations, this is a very sensible idea. The issue should not, however, be used by the Government as a barrier to other reforms. Overhauling the Federal political donations regime is not an all or nothing situation. Reform in other areas should proceed while an inquiry focusing on third parties and foreign donations is completed.

The tone of Labor's dissenting report demonstrates their desire to have a respectful conversation with other Committee members and with participating members. It also demonstrates that disagreement does not have to be combative, shrill and disagreeable. The Labor members' approach to dissension could serve as a template for addressing policy disagreements between political parties, networks, teams and independents more broadly, particularly as such an approach could help to restore faith in the political process.

Dissenting report 3 - The Australian Greens

The Greens' dissenting report (refer pp. 55-59 of the foreign donations report) does not confine itself to the foreign donations terms of reference. It canvasses many of the issues that are central to remodeling the federal political donations regime more broadly. While the author of this progress report argued strongly for a complete overhaul of the federal political donations system in the John Cain Foundation's *Come Clean* Report referred to earlier, she will confine her analysis here to the foreign donations aspect of the Greens' dissenting report.

The Greens make it clear at the outset that they "welcome the ban on political parties and their associated entities from accepting overseas donations". However,

they go on to identify what they say is a "concerning aspect" of the second interim report, namely that "the recommendation that this should also apply permanently to organisations which are not registered political parties or their associated entities". They explain their position by arguing that "if such a law was enacted it would drastically curtail the role of civil society in Australia" (p. 55).

The Greens view the endorsement of such a policy as a "highly partisan approach" by the Coalition that would result in some community groups being "disadvantaged". They maintain that:

A more responsible approach would be to ban political parties and their associated entities from accepting donations from overseas citizens and overseas entities, and banning third parties from using donations from overseas citizens and overseas entities for election campaigning once the writs for an election are issued" (pp. 55-56).

The Greens' report does not carry quite the same tone as the Labor Members and Senators dissenting report. The Greens argue that:

The highly partisan approach of the Liberal-National Party would disadvantage some community groups working for social good while not capturing groups such as the Minerals Council of Australia which is funded by large membership fees, which are not technically donations, from companies that are completely or largely foreign owned.

The Greens go on to maintain that the foreign donations report "fails to analyse the MCA's own reliance on funding from overseas sources" (p. 55).

To support this argument, their report highlights that in February 2017 the MCA had 47 full members and that:

- 20 are foreign owned (43 per cent)

- Three are at least partially foreign owned (e.g. Rio Tinto and BHP)
- 24 are Australian-based companies (51 per cent). Of the Australian-based companies, three quarters (18) are ASX listed and therefore may be owned by shareholders from anywhere in the world).

Based on the above analysis of the MCA, the Greens maintain it is "reasonable to conclude that a significant portions of the MCA's revenue is sourced and probably controlled from overseas" (p, 59). They also point out that even though the "MCA is an active political third party" none of its overseas sourced funds would be curtailed under the JSCEM recommendations if adopted" (p. 59).

The Greens conclude their dissenting report with the following statement:

Third parties should not be subjected to the same laws that apply to political parties. It is only the latter that can have representatives elected to parliament and therefore be in a position to directly influence the workings and decisions of government. A ban on third parties using overseas donations for election campaigning during an election period would be an appropriate compromise.

They go on to make a recommendation specific to third parties.

Recommendation 5

- Political parties and their associated entities should be banned from accepting donations from overseas citizens and overseas entities. Organisations that are not registered political parties or associated entities to be banned from using donations from overseas citizens and overseas entities for election campaigning once the writs for an election are issues.

There are aspects of the Greens' arguments that require further debate. They are raised below under *Dissension*.

The position of Senator Leyonhjelm, the Labor Party and the Greens in their dissenting reports, suggest strongly that agreement in this particular area could be problematic. However, given the need to place the public interest before party interests and the indication that Committee members are willing to work together to try to achieve consensus, I remain somewhat optimistic that it may be possible to reexamine the third party and foreign donations issue and to perhaps reach consensus on some matters. Achieving this outcome may require each political party to approach the issue with a truly open mind about new possibilities. Using an independent, expert panel (a process adopted by the 2014 Schott Inquiry into political donations in New South Wales) could assist the Committee work through the contested issues. But whatever process is used, it is vital that the public interest as opposed to party or personal interests is the foundation on which all arguments and decisions rest.

The state of play

Consensus

There were no dissenting reports in relation to the six recommendations outlined in JSCEM's previously discussed first interim report. Nevertheless, all issues have not been finalized. Recommendation 4 notes that additional inquiries should be undertaken in early 2017 so that suggestions can be put forward in relation to impersonating a Commonwealth officer and entity. The Parliament and Australian community await the outcome of that inquiry in the very near future.

There is also consensus on the majority of recommendations made in JSCEM's second interim report. Putting to one side participating member David Leyonhjelm's reservation about the need to ban foreign donations, consensus has been achieved by members of JSCEM on the banning of foreign donations to political parties and associated entities. It is incumbent on the

Government and Parliament to act on these agreed positions and to do so swiftly.

Dissension

As previously noted, there is disagreement among JSCEM members in relation to third party entities. At the core of this dissension is what and who should be defined as a "political actor" and whether it should extend to those who currently fall outside the scope of the *Commonwealth Electoral Act 1918*.

The second interim report points out that third party entities receive funding from foreign donors and use them for "electoral expenditure" matters, but that this funding is currently not regulated by the Australian Electoral Commission's Third Party Returns. It also argues that the lack of disclosure obligations for some political actors "runs counter to the key principle of transparency in electoral activity". Liberal-National Party Coalition members believe this creates a "significant loophole" in the current system as it allows:

...electoral expenditure to be channeled through electorally unregulated third parties instead of political parties and associated entities that are subject to greater degrees of regulation and transparency (p. x).

The consequences for not banning third parties from accepting foreign political donations could be a gaming of the system by foreign donors (individuals, businesses, organisations and governments) in that unregulated third parties could be used to channel unaccountable funds to electoral campaigns. It could also mean that foreign sourced donations are not disclosed to the Australian electorate.

While not devaluing the Greens' argument in terms of the MCA, their previously mentioned position could apply to many other companies listed on the ASX and by extension to individuals and corporations that invest in ASX companies. It may also apply to third parties such as

350.org and the World Wildlife Fund (WWF). Both were founded overseas and both are truly global organisations. The WWF receives part of its funding from government sources and corporations and some of its campaigns are run in partnership with very large international corporations

http://assets.worldwildlife.org/financial_reports/27/reports/original/WWF_AR_2016.pdf?1479914569&ga=1.252088201.1640370714.1489715245; <http://>

<http://www.worldwildlifefund.org/about/financials>

The Greens' recommendation to ban third parties from receiving foreign donations once the writs for an election are issued could, in practice, still allow foreign donations to a third party to be used for electioneering purposes. In Australia, some election periods can be as short as three weeks and the media speculates on the date for months in advance. Also, there are time limits around when an election must be called. Third parties sensing an impending election could, for example, use foreign donations to pay for electoral advertising and printing costs in advance. Also, campaigning in support or against a particular political party, candidate or their policies is not confined to the period after the issuing of writs. It can take place for a sustained period of time and well in advance of an election.

The Greens point that only parliamentarians can directly influence the workings and decisions of government does not take into account how political donations, foreign or otherwise, can influence who gets elected to Parliament in the first place.

The Greens need to address these issues if their position not to ban foreign donations to third parties, except for the period after election writs are issued, is to garner support.

It is possible to accept the logic of the views expressed by the Liberal National Party Coalition in relation to the banning of foreign donations to third party actors. However, it is also possible to accept the logic of the arguments raised in the Labor Party and Greens'

dissenting reports. While the Labor Party refer to not-for-profit organisations and the Greens to civil society they are both, in essence, arguing that if the net is cast too wide it is highly likely to capture more than is acceptable in a democratic society. It could ensnare pressure groups that are in receipt of donations from foreign sources but are not using them to act as a front for political parties or to engage in partisan political electioneering. A potential consequence of the Liberal-National Party's recommendation is that some pressure groups could have their democratic right to campaign for or against a particular policy infringed, and this in turn could impinge on their right to engage in the political communication process. The difficult task for JSCEM is to grapple with the somewhat 'wicked problem' of ascertaining the intent of the foreign donor giver and the intent of the receiver of foreign donations to third party entities.

Further input from third parties would assist greatly in resolving disagreements around the decision to include or exclude third parties from the banning of foreign donations.

Willingness of third parties to appear at hearings

At the end of my appearance before JSCEM on 15 February 2017

(http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Public_Hearings), a very brief but nevertheless interesting discussion took place between the Chair of JSCEM and Liberal Party member Mr Ben Morton MP. It concerned the willingness of some third party organisations, which had made written submissions to JSCEM, to accept the Committee's invitation to give evidence in person. The organisations identified in the discussion were: 350.org, Sunrise, the Australian Conservation Foundation and the World Wildlife Fund.

GetUp Ltd was also mentioned. It did appear before the Committee in Sydney on 16 November 2016 and was asked to reappear but did not accept that invitation

(http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Public_Hearings).

The decision not to accept the Committee's invitation or in the case of GetUp Ltd the invitation to reappear is regrettable as these organisations are central to the issues raised in the dissenting reports. It is the source of funding for these organisations and their conduct in the lead up to and during an election campaign that is of concern to the Liberal-National Party members. Appearing in person before the Committee could help to address those concerns.

Making a written submission to a parliamentary committee allows an organization or person to put their side of an argument and to promote their position to a parliamentary committee, the Parliament and to the Australian community. Appearing in person before a committee allows it to ask questions and to query points made in a written submission.

It is curious that most of the organisations mentioned above declined to have their arguments questioned and perhaps challenged. This is certainly what happened when GetUp Ltd appeared before JSCEM. The organization was asked, among other things, to confirm if one of their original directors was now leader of the parliamentary Labor Party and if its national director had been a Greens' candidate for the Australian Capital Territory election. It was also asked if it solicits foreign donations on its website. When asking that question it was pointed out that GetUp suggests foreign donors use PayPal when making donations. The possible political leanings of its board members and whether conflict of interest matters by board members are publicly disclosed was also queried (it appears they are not).

While GetUp staff members appearing before the Committee were certainly challenged by some Committee members, at least the organization was willing to appear on one occasion and to have its responses to questions placed on the public record. For this they are to be commended.

If further inquiries mooted by the Committee for early 2017, and the specific inquiry suggested by the Labor Party members takes place, and they include public hearings, all third party organisations should accept invitations to appear in person at those hearing. Their oral evidence can only assist the Committee, the Parliament and the Australian community arrive at policies that best accord with the national public interest: to ban or not to ban third party entities from receiving donations of any type from foreign sources.

Appearing before JSCEM

With the permission of the John Cain Foundation, I included the *Come Clean* report in my written submission to JSCEM (see submission 77 at [http://www.aph.gov.au/Parliamentary Business/Committees/Joint/Electoral Matters/2016Election/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions)).

As a result, I was invited to give evidence, in person, to the Committee hearing that primarily (but not exclusively) focused on foreign donations. I appeared in Canberra on 15 February 2017 (<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=COMMITTEES;id=committees%2Fcommjnt%2F86c1b2bc-6a64-47d9-af83-236d32e26baf%2F0003;orderBy=customrank;page=0;query=electoral%20matters%20Date%3A15%2F02%2F2017%20Dataset%3AcomJoint;rec=0;resCount=Default>).

The following comments summarise, very briefly, the impressions I took away from the face-to-face encounter with some members of JSCEM and one participating member. I acknowledge that readers can only view my account as a personal reflection and I readily accept that it may not accord with the perceptions of others who appeared before the Committee or of the parliamentarians who were present.

I also acknowledge that reading transcripts does not reveal the body language that accompanies conversations. This means that nods in agreement with a statement, smiles, frowns, other attitudes (positively and negatively delivered and received) and the tone of a

person's voice are missing for anyone reading transcripts.

Despite these limitations for readers, I came away from my experience with the distinct impression that the Chair, Deputy Chair and other members present appreciate the need to reform the current federal political donations regime. They were also aware that their recommendations have the potential to influence, in a positive or negative way, the trust deficit that currently exists between the electorate and MPs

In summary, the Committee was, in my opinion, well chaired and the respect Committee members showed to each other was heartening. If it continues, significant public policy reform may be possible. But what must happen for this to occur is the cessation of political games by some very senior MPs, especially when their premature comments could be viewed as running counter to those expressed at a later date by members of their own party serving on the JSCEM Committee.

Respecting the committee process is vital for reform

The leader of the Opposition Bill Shorten's decision to table a private members bill on political donations, while a joint standing parliamentary committee had been given terms of reference to do exactly that, is highly questionable to say the least, especially when the Committee had recently brought down one interim report and was to table its second report a few weeks after the private members bill was introduced into Parliament <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2Fbb92af69-ccad-4a9d-abf2-195b30e01b0c%2F0075;query=Id%3A%22chamber%2Fhansard%2Fbb92af69-ccad-4a9dabf2-195b30e01b0c%2F0000%22>).

Shorten's actions have all the hallmarks of someone playing political games in the hope of gaining a party political advantage over the government or as others have described it, as a "deliberate act of political theatre" (www.crikey.com.au/2017/02/13/bill-shorten-ncw-donations-push-just-an-act-of-political-theatre/).

The leader of the Opposition's private members bill may prove to have been an unwise decision, as the sentiments he expressed in the Second Reading speech of his bill appear to contradict his actions.

[http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/bb92af69-ccad-4a9d-abf2-195b30e01b0c/toc_pdf/House%20of%20Representatives 2017 02 13 4676 Official.pdf;fileType=application%2Fpdf#search=%22r5808%20first%20reading%22](http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/bb92af69-ccad-4a9d-abf2-195b30e01b0c/toc_pdf/House%20of%20Representatives%202017%2002%2013%204676%20Official.pdf;fileType=application%2Fpdf#search=%22r5808%20first%20reading%22)).

Shorten acknowledges that:

Australians are telling us that our political system, the quality of our democracy and all of us here need to lift our game...What turns Australians off politics is the perception that politicians are purely in it for themselves and their own interests (p. 665).

Despite these noble words, Mr Shorten's actions showed a level of disrespect for the Federal Parliament's joint standing committee process and the timing of the bill appeared dismissive of any JSCEM findings. If politicians do not demonstrate their respect for the structures and procedures that frame Australia's political system, they must expect that the electorate will distrust their words, for it is actions not words that demonstrate adherence to stated positions.

Shorten's private members bill also had the potential to create unnecessary tension between members of the Committee. While at this stage of JSCEM's deliberations, this does not appear to have happened, it may create (or have already created) difficulties for Labor members.

This paper has previously referred to the Labor Members and Senators' dissenting report and the reservations they express about extending the foreign donations ban to third parties. Yet, in his second reading speech, Mr Shorten proclaimed that, "Labor's legislation will ban foreign donations—full stop" (p. 666).

The leader of the Opposition goes on to point out that there are "other problems in this area to which we do not

collectively have the answer". He admits that his private members bill "does not solve the challenge of foreign money being washed through Australian entities" (p. 666).

He goes on to state that:

Our legislation will stop direct foreign donations but what we need to do is not just tick the box of a technical test; we need to thoroughly evaluate the origin of a donation. And where there is genuine apprehension, we need to act on it. This is vital to maintaining public confidence in our system. No one can seriously talk about tackling foreign donations unless they acknowledge this issue... If the leaders of this country know that there is a risk that foreign governments or non-state actors will wash money through Australian entities, then it is not good enough to say that we have not yet so far come up with a mechanism to solve it. We must solve this soft-influence problem (p. 667).

From Shorten's own words, one could be forgiven for thinking that his 13 February 2017 statement to the Parliament aligns more closely to the Liberal-National Party's position in the second interim report on foreign donations than it does with the dissenting reports, including that of Labor members.

Shorten's private members bill advocates the following changes to Australia's political donations regime:

- Lowering the donation disclosure limit from \$13,200 to \$1,000;
- Banning foreign donations, "full stop";
- Banning the current practice of "donation splitting", which allows donations to be spread between branches of political parties and associated entities;
- Banning all anonymous donations more than \$50;

- Linking the receipt of public funding to actual campaign expenditure;
- Introducing new offences and increasing the penalties for breaking donation laws; and
- Introducing a disclosure regime that is as close to real time disclosure as technology allows.

Peculiarly for proposed legislation that aims to set and meet "the highest standard", Mr Shorten's private members bill does not advocate capping donations. As was pointed out in the John Cain Foundation's *Come Clean* research paper (refer P. 24), caps are a vital component of political donations reform. Referring to the Schott 2014 Inquiry, the *Come Clean* Report notes that, "caps are imposed to address perceptions of corruption and undue influence and to reduce the real risk of corruption". An amount of \$1000 was suggested by Schott and advocated for in the *Come Clean* Report. This amount was settled on because it allows the less affluent to express financially their support for a candidate or party. It also helps to lessen the perception that large donations open the doors to power. In addition, setting a \$1000 cap and requiring full disclosure for any form of donation, gift etc above that amount (or a lower amount) helps to address the constitutional matters surrounding the banning of certain classes of domestic donors and could assist in resolving the foreign donations third party issue.

The JSCEM terms of reference require it to address all of the matters raised in the private members bill and most importantly, the crucial issue of caps on donations.

There appears to be no obvious or compelling reason for the introduction of the private members bill except the desire to play partisan political games. But "politics is not a game". The Australian community knows this and will treat harshly MPs, political parties, networks, teams and independents that treat it as such.

Conclusion

I previously referred to my optimism that meaningful reform might be possible. While it may prove to be misplaced, there are indications that the Australian community could see the public interest being placed where it rightly belongs in terms of political donations reform, which is at the head of the vested interest queue. This must be the position it occupies when addressing and making recommendations on all aspects of the Federal political donation regime. These include: caps on donations, bans on certain classes of domestic donors, bans on foreign donations, disclosure rules, the introduction of real time disclosure, penalties for breaking electoral laws, rules around continued public funding, private funding including paying for privileged access to decision makers and reducing the arms race through expenditure caps on political parties and candidates. Who steers these discussions is vital for arriving at sensible and acceptable policies.

It is imperative therefore, that we do not have a repeat of the revolving door approach to chairing JSCEM (six chairpersons in 15 months) or a similar approach to committee membership. The composition of the JSCEM committee should not change until such times as the current inquiry is complete, the relevant report(s) issued and legislation to radically reform the political donation regime at the Federal level has been introduced into the Parliament.

What JSCEM need to tell the Australian community, and quickly, is when further reports will be made public, if there will be additional public hearings and if so when, and whether it intends to adopt the Labor Party members' sensible suggestion to hold an inquiry that focuses on third parties and foreign donations.

The clock is ticking toward the next Federal election. Australian electors must be in a position to go to that election with a political donations regime that has been reformed root and branch. The public interest demands no less.

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