

Principles for fair political finance reform

Discussion paper

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Summary

Constructive and non-partisan political finance reform could improve trust in politics and reduce the influence of vested interests.

But if political finance reform is done poorly, it could make Australian elections less fair, and conceal rather than expose the undue influence moneyed interests enjoy over our politicians and parties.

The Australia Institute has long been interested in restoring integrity to politics. We have identified the following key principles for political finance reform. If these principles are not abided by, any political finance reform risks exacerbating the problems it aims to fix.

Nine principles for political finance reform:

All candidates and contributors should be treated fairly. Five principles that advance this pillar are that political finance reform should:

1. Give voters a range of choices about who represents them
2. Not make it harder for new candidates to compete with incumbents
3. Provide a level playing field regardless of whether candidates are members of a political party or independents
4. Factor in the significant taxpayer-funded advantages of incumbency, with an eye to reducing disadvantages already faced by challengers
5. Account for spill over effects and economies of scale.

Political finance reforms should be targeted and effective. Four principles that advance this pillar are that political finance reform should:

6. Focus on those who most clearly threaten democracy and accountability
7. Ensure that public funding is fit for purpose
8. Strive for fairness and increased transparency
9. Distinguish between bona fide contributions and “cash for access”.

The Australia Institute highlighted five of these principles in a July 2023 open letter from civil society groups saying that political finance reform is overdue but warning that, if done poorly, it could make elections less fair and parliaments less representative.¹

¹ The Australia Institute (2023) *Leading civil society organisations publish open letter calling for long overdue political finance reforms*, <https://australiainstitute.org.au/post/leading-civil-society-organisations-publish-open-letter-calling-for-long-overdue-political-finance-reforms/>

Introduction

The Joint Standing Committee on Electoral Matters and the Albanese Government are considering reforms to how parties and candidates run and fund their election campaigns.²

The interest in reform comes after many years of concerted effort by integrity groups, including the Australia Institute, to draw attention to Australia's patchy and inadequate political finance laws – particularly the lack of transparency around political donations.

The interest also comes at a time of relatively low support for the major political parties. In the 2022 election, the Coalition won 35.7% of the primary vote and Labor 32.6%, only just ahead of the non-major party vote on 31.7%. Not since the Great Depression has the combined vote for the two largest parties been so low.³ This decline in the fortunes of the major parties is partly reflected in the historically large House of Representatives crossbench, with 16 MPs.

Opinions vary on whether major parties, minor parties or independents best represent the interests of the Australian public, or indeed whether Australia's bicameral system represents the best of both worlds. However, what is clear is that support for minor parties and independents has grown for several decades,⁴ even if the parliamentary representation of minor parties and independents lags the proportion of the vote that they win.

Electoral reform decides the "rules of the game" under which major party, minor party and independent candidates contest elections. In a democracy, these rules should be fair, and as best as possible reflect the popular will. Changes to those rules should not favour one set of contestants over another. This paper lays out nine principles that would help ensure that any changes to the rules are fair and balanced.

² Galloway (2022) 'We intend to legislate': Labor considering caps on federal election spending and public funding, <https://www.smh.com.au/politics/federal/we-intend-to-legislate-labor-considering-caps-on-election-spending-and-public-funding-20220922-p5bk7r.html>; Joint Standing Committee on Electoral Matters (2022) *Inquiry into the 2022 federal election: Terms of reference*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2022federalection/Terms_of_Reference

³ If the Liberal National Party is treated as a separate party, the combined vote for the two largest parties has never been as low as it was in 2022, even during the 1900s when there were three major parties. However, since most Liberal National Party MPs sit in the Liberal party room, this was not considered a fair comparison.

⁴ Raue (2022) *The declining major party vote*, <https://www.tallyroom.com.au/47443>

All candidates and contributors should be treated fairly

Principle 1. Give voters a range of choices about who represents them

A healthy democracy where elected representatives are held to account requires that voters be given a range of choices about who represents them. This is the broad principle that underpins others in this section, like the need for a level playing field between incumbents and challengers and between party-affiliated candidates and independents.

Principle 2. Not make it harder for new candidates to compete with incumbents

Australian democracy depends on the possibility of new and emerging political parties and candidates. No major party in 2022 was a party of government at Federation (although the Labor Party soon became one), and the Greens are the third “major minor” party of the post-war era, after the Democratic Labour Party and the Democrats. The rise of community independents in formerly blue-ribbon Liberal seats shows that the needs and priorities of voters change.

Political finance rules that reward parties and candidates for prior performance risk locking out new entrants, cruetting their chances before the campaign even begins. New entrants already face higher fixed campaign costs because their infrastructure and name recognition start from zero.

An example of a political finance rule that *does* accommodate new entrants is:

- Donation matching schemes, where public funding is based on public support ahead of the election.⁵

Examples of political finance rules that fail to accommodate new entrants are:

- Public funding based on the share of the vote that the candidate received at the previous election. At its most extreme, as in Victoria, public funding can be paid in advance of the election based on votes received at the last election.⁶

⁵ For more discussion in the Victorian context, see Browne and Morison (2023) *Submission 77*, pp 17–19, <https://new.parliament.vic.gov.au/get-involved/inquiries/2022-victorian-state-election/submissions>

⁶ VEC (n.d.) *Public funding for registered political parties*, <https://www.vec.vic.gov.au/candidates-and-parties/funding/funding-registered-political-parties/rpp-public-funding>

- Allowing for unlimited contributions from “nominated entities”, as in Victoria. The major parties’ nominated entities raised their capital while donations were unlimited.
- Donation caps that make an exception for levies of elected MPs and their staff (also known as the “tithe”), as is the case in Victoria.
- Rules that limit the extent to which a retiring or defeated independent can transfer their campaign funds to a likeminded successor (in their own or another seat).
- Spending caps that allow for assets purchased in a previous election campaign (like posters and corflutes/yard signs) to be used in a subsequent campaign without counting against the cap.

Principle 3. Provide a level playing field regardless of whether candidates are members of a political party or independents

Political finance rules should not favour one group over another without justification.

One way political finance rules can discriminate is by favouring parties over independents, or vice versa. This might be by omission, or because it is more straightforward to regulate some organisations or candidates than it is others. Concessions might make sense administratively or have accumulated over time, but in total represent favourable treatment for one type of candidate over another.

Another way that political finance rules can discriminate is by putting more limits on money spent to defend a candidate than on money spent to attack them.

Examples of political finance rules that discriminate are:

- Political parties and incumbent parliamentarians are entitled to tax-deductible donations at any time while other prospective candidates are only eligible for tax-deductible donations once they become candidates (weeks ahead of the election).⁷ It is worth noting that the tax-deductibility threshold is fairly low (at \$1,500), although if donation caps were brought in the effect would be greater.
- Donation or expenditure caps that apply by branch, allowing parties with more branches to collect more donations or spend more money than parties with fewer branches. For example, a person could hypothetically donate just under the disclosure threshold of \$15,200 to each federal, state and territory branch of the Liberal Party and the National Party, for an annual total of over \$250,000 that would not need to be disclosed.
- Nationwide membership requirements for political party registration, which favours national parties and parties based in larger states over parties based in smaller

⁷ Australian Taxation Office (2017) *Claiming political contributions and gifts*, <https://www.ato.gov.au/non-profit/gifts-and-fundraising/in-detail/fundraising/claiming-political-contributions-and-gifts/>

ones.⁸ This is exacerbated when parliamentarians from other states can switch parties to secure the registration of allied parties that do not have the membership numbers in their own right.

- A postal vote process that allegedly allows political parties to harvest data.⁹ Postal vote campaigns are unlikely to be within the financial capacity of smaller parties and new entrants.

Principle 4. Factor in the significant taxpayer-funded advantages of incumbency

Incumbent parliamentarians rarely lose their seats to challengers. Over the last three federal elections, an average of 90% of incumbent Members of Parliament (MPs) have retained their seats. Of the 398 of incumbents who contested their seats, 40 were unseated, and just 11 lost to challengers who were independents or from minor parties.

Members of Parliament receive at least \$996,381 and Senators at least \$885,840 worth of publicly-funded incumbency advantages annually. Over a three-year election cycle, this triples to at least \$2.9 million for Members of Parliament, and \$2.6 million for Senators.

Of course, incumbents will always have some advantages over new entrants. Good local members will build up their profiles and be trusted by their constituents, and deservedly so. There are also fixed costs to running once that an incumbent will not incur, even something as simple as receiving legal advice to ensure no constitutional bars to running (like those in section 44 of the Constitution) exist. Even the experience of having run in a previous election will make an incumbent more effective than a first-time challenger.

In other areas, it is taken for granted that new entrants need concessions to be competitive with incumbents. New teams entering the Australian Football League (AFL) receive significant concessions to make them competitive against well-established teams.¹⁰

⁸ Browne & Shields (2022) *Fortifying Australian democracy*, p. 55, <https://australiainstitute.org.au/report/fortifying-australian-democracy/>

⁹ Tariq (2022) *Privacy concerns raised by political parties' handling of postal vote application forms*, <https://www.canberratimes.com.au/story/7699887/aec-warns-against-applying-for-postal-voting-through-parties-despite-it-being-legal/>

¹⁰ See for example AFL NSW/ACT (2011) *GWS Giants list concessions explained*, <https://aflnswact.com.au/gws-giants-list-concessions-explained/>; Fox Footy (2023) *Priority draft picks and a \$1m marquee fund: How new AFL's Tassie team will build its roster*, <https://www.foxsports.com.au/afl/afl-news-2023-tasmania-team-draft-picks-list-build-trades-concessions-how-will-it-work-priority-selections/news-story/f62404bee1c3ec7abfab1bcc568aefba>; McGowan (2022) *Don't need the help? AFL to review rescue package for hottest team in the league*, <https://www.foxsports.com.au/afl/teams/gold-coast-suns/afl-news-2022-gold-coast-suns-list-concessions-set-to-be-reviewed-rescue-package-form-list-size/news-story/b3a242cb32a51833f8e776072644be49>

Would-be political finance reformers should acknowledge these incumbency advantages, particularly when they are publicly funded, and ensure that legal changes avoid exacerbating existing incumbency advantages, and ideally level the playing field instead.

Principle 5. Account for spill over effects and economies of scale

In any election, major party candidates benefit from economies of scale and spill over effects.

- Regional, state and national advertisements for a political party benefit all candidates for that party. An advertisement in the Sydney or Melbourne “metro” markets might cover 20 or more electorates.¹¹ Independent candidates would “waste” most of the money spent on advertising into a catchment that is larger than their electorate.
- Advertising for a party in one electorate reaches those who visit the electorate for work or leisure, influencing their votes in other electorates. Independent candidates each target a single seat and minor parties often have just one or a few target seats in an area. For example, motorway billboards for major parties often feature party leadership or messaging not individual candidates, because the ads are designed for visitors as well as residents.
- Parties can split the cost of campaign staff, offices and other resources over several candidates, while independent candidates must each establish their own campaign team and base.
- Parties can allocate senators (called “duty senators”) to electorates held by other parties or independents, allowing for an office presence, direct interactions with constituents and local knowledge. Some senators who moved to the House of Representatives laid the groundwork by first becoming the duty senator for the electorate.¹²

The implication of these economies of scale and spill over effects is that independent and minor party candidates need to spend more money to be on an equal footing with major party candidates.

In addition, major parties run in most or all electorates, but only a minority of electorates are target seats for them. This allows them to concentrate resources (money, volunteers and the attention of ministers, shadow ministers, MPs and senators).

¹¹ Based on the author’s visual comparison of an industry map of Australian TV markets and maps of Australian electorates. Ad markets overlap, and different media have different geographical distributions.

¹² Brenton (2009) *What lies beneath: the work of senators and members in the Australian Parliament*, pp. 45–47,
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1534020%22>

As an example of how few seats are target seats, ahead of the 2022 election *The Guardian* identified 13 seats most likely to fall to Labor and seven seats the Coalition was “aggressively targeting”. Similarly, the *Sydney Morning Herald* identified 20 seats that would decide the election (with some differences from *The Guardian’s* list).¹³ Together, these examples illustrate that of the 151 seats in the House of Representatives, only a small number are competitive in any given election – allowing major parties to pool resources for the electorates that are likely to be decisive.

Examples of political finance rules that fail to reflect that some candidates benefit from wider campaigns are:

- Public funding that accrues on an electorate-by-electorate basis but can be distributed to target electorates. This gives parties that run in seats they are guaranteed to lose (or guaranteed to win) a larger war chest in key races than the independent or minor party candidates that they face.
- Expenditure caps that are set as a state- or nation-wide average rather than electorate-by-electorate. This lets major parties dramatically outspend their independent competitors in key seats. This is exacerbated in multi-member electorates like the ACT.¹⁴ This includes models where candidate-based advertising is capped at the electorate level but party-based advertising is capped at the state level, since party-based advertising assists individual candidates.
- Expenditure caps that apply separately for Senate and House of Representatives campaigns, meaning that parties running in both can “double up” in a way not available to independent candidates.
- Fixed compliance costs, which hurt independent candidates and minor parties more than major parties. By the same token, compensation for compliance costs based on scale over-compensates larger parties and more successful candidates because much of the compliance costs are fixed. For example, when the ACT Legislative Assembly increased in size, administrative funding per member was not decreased.¹⁵

¹³ Curtis (2022) *The 20 seats that will decide the outcome of this election*, <https://www.smh.com.au/politics/federal/the-20-seats-that-will-decide-the-outcome-of-this-election-20220405-p5ab4m.html>; Martin (2022) *The seats Labor and the Coalition need for victory*, <https://www.theguardian.com/australia-news/2022/may/20/who-will-win-the-australian-election-seats-labor-liberal-coalition-need-for-victory-australia-2022-federal-poll-today>

¹⁴ Lawson (2015) *Labor and Liberal scrap cap on donations, boost public funding*, <https://www.canberratimes.com.au/story/6071649/labor-and-liberal-scrap-cap-on-donations-boost-public-funding/>

¹⁵ Lawson (2015) *Labor and Liberal scrap cap on donations, boost public funding*

Political finance reform should be targeted and effective

Principle 6. Focus on those who most clearly threaten democracy and accountability

Political finance limitations should be focused on those who most clearly threaten democracy and accountability, such as large corporate donors, and the various ways that they influence politicians through financial and other means.

Much of Australia's cash for access would not necessarily be addressed by political donation reform, because it is not given in the form of political donations.¹⁶

Perversely, bona fide advocates like the charities sector are the ones who were hit with last-minute, poorly-conceived and excessive regulations.¹⁷

Examples of political finance rules that fail to “follow the money” are:

- Limits on political activism by third parties that use a broad and vague definition of election matter, which fail to reflect that advocacy is a legitimate activity of charities.¹⁸
- Greater transparency for or caps on political donations, without addressing contributions to parties that do not qualify as donations. When these contributions are used to buy access, they are as insidious, if not more insidious, than donations.
- Expenditure caps that apply to associated entities, if those associated entities can “crowd out” the candidate they are associated with.
- Rules that focus on foreign and/or corporate donors, and neglect independently wealthy Australian citizens whose influence may be as or more insidious.

Principle 7. Ensure that public funding is fit for purpose

Public funding is an important measure to reduce the influence of private money on politics. However, election outcomes are zero-sum, which means that parties and candidates will

¹⁶ See for example Griffiths & Emslie (2022) *\$177 million flowed to Australian political parties last year, but major donors can easily hide*, <http://theconversation.com/177-million-flowed-to-australian-political-parties-last-year-but-major-donors-can-easily-hide-176129>

¹⁷ Browne (2021) *No good deed goes unpunished*, <https://australiainstitute.org.au/report/no-good-deed-goes-unpunished/>

¹⁸ Browne (2021) *No good deed goes unpunished*

spend more money if they have it instead of replacing private contributions with public funding.

Unless increases to public funding replace private money, the result will be more expensive and expansive election campaigns without any appreciable effect on private money.

In addition, public funding should come when it is needed – which means it should be available before the election campaign, not after it. Models that ensure public funding is fit for purpose include “democracy vouchers” or multiple matching programs.¹⁹

Examples of public funding that is not fit for purpose is:

- The federal public funding scheme, which academics Joo-Cheong Tham and David Grove identified in 2004 as likely to inflate campaign expenditure – although they noted that at the time there had not been a clear trend towards increases in real spending per voter.²⁰
- In the ACT, the two major parties voted together to raise public funding from \$2 a vote to \$8 a vote, while at the same time removing donation caps and lifting restrictions on who can donate.²¹

Principle 8. Strive for fairness and increased transparency

Political finance rules that fail to close loopholes like splitting donations over time or across branches to evade detection punish those who act in good faith while giving a veneer of respectability to those who are not following the spirit of the law.

Political finance rules must also carefully consider whether to include third parties, and how to include them. Placing caps on parties and candidates but not on third parties allows for de facto unlimited political campaigns. On the other hand, placing caps on third parties risks treating some organisations preferably, for example numerous small organisations at the expense of fewer large organisations.

¹⁹ For details see Overton (2012) *Matching political contributions*,
https://scholarship.law.gwu.edu/faculty_publications/166

²⁰ Tham & Grove (2004) *Public funding and expenditure regulation of Australian political parties: Some reflections*, pp. 411–413,
https://www.researchgate.net/publication/280010400_Public_Funding_and_Expenditure_Regulation_of_Australian_Political_Parties_Some_Reflections; see also Muller (2020) *Undisclosed funding sources in Australian federal politics: a quick guide*, fig. 1,
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/UndisclosedFundingSourcesAustralia

²¹ Lawson (2015) *Labor and Liberal scrap cap on donations, boost public funding*

Political finance rules can discriminate by favouring certain types of organisation. For example, a cap on how much an organisation can donate or spend favours smaller, more numerous organisations over larger, less numerous ones.

- Caps on donations or expenditure by organisations that fail to reflect that an organisation can be of any size and represent any number of people. This is exacerbated when some donors, as a class, are rarer and larger than other types. For example, there are many fewer trade unions than there are corporations.
- Caps on expenditure promoting a particular candidate, but not caps on expenditure criticising a particular candidate. This could allow multiple campaigns to aggregate their attacks on a candidate, without the target of the attacks being able to match their spending without hitting the cap. For example, several candidates and third parties might all seek to unseat the same incumbent candidate, informally rallying behind an “anyone but X” campaign. Even if expenditure caps applied to each candidate and third party, their aggregated spending could far outstrip X’s spending. This would leave X unable to spend as much defending themselves as was spent attacking them.

Principle 9. Distinguish between bona fide contributions and “cash for access”

Two political contributions of the same size can have very different effects depending on who they come from.

An example of how a seemingly innocent arrangement can be corrupted is a lottery for a seat next to a minister at a dinner. If tickets are bought by party rank-and-file, the winner is unlikely to get any undue benefit. But if purchases of lottery tickets are not tracked, vested interests can buy up the majority of the tickets and thereby make an untraceable payment for access.

Examples of political finance rules that *do* reflect that some contributions come from vested interests are:

- Bans on particular industries from making political contributions. The desperate way in which some property developers try to evade NSW’s ban on property developer donations is evidence of the personal benefit they serve to gain from making donations.²²

Examples of political finance rules that fail to reflect that some contributions come from vested interests are:

²² Yee-Fui (2023) *A loophole NSW property developers can legally use to bypass political donations ban must be closed*, <https://www.theguardian.com/commentisfree/2023/feb/23/a-loophole-nsw-property-developers-can-legally-use-to-bypass-political-donations-ban-must-be-closed>

- Donation rules that leave loopholes – for example, allowing for lotteries to have dinner with a politician, where one person can buy a majority of the lottery tickets.
- Donation rules that allow for a large number of anonymous payments.
- Transparency rules that give little detail on the reason for a payment, meaning that an “other receipt” could represent anything from cash for access to an innocent dividend or rental payment.
- Donation caps that do not apply to membership fees, affiliation fees or contributions from “nominated entities” (party foundations).

Conclusion

Political finance reform that fails to treat all candidates and contributors fairly or that is not targeted and effective risks the perverse outcome of making elections less fair and more favourable to vested interests.

Political finance reform is difficult, and inevitably involves compromises. But we hope that the principles identified by the Australia Institute can guide the government and parliament in making constructive, equitable and well-suited reforms and serve as a benchmark against which any reform proposals can be measured.

A good place to start would be with greater transparency for political contributions. Better information about the current nature of political finance would allow for future reforms to be targeted, effective and fair.