

# The hidden political expenditure of Australian corporations

Bill Browne

Publicly-listed companies in Australia disclose little information about their political expenditure, with few disclosing lobbying spending or payments to trade associations. Most do not outline clear policies to address political donations, political expenditure or the revolving door between politics and business. Neither the law nor stock exchange rules require them to do so, and few do it willingly.

These are some of the key findings of one of the most detailed and extensive analysis of corporate political expenditure in Australia ever conducted. The Australia Institute commissioned corporate governance and responsible investment solutions provider ISS-ESG<sup>1</sup> to assess the corporate expenditure disclosures, policies and oversight of 75 of the 100 largest companies on the Australian stock exchange (ASX). Their report, *Corporate political expenditure in Australia*, follows this executive summary.

Companies were scored against a version of the CPA–Zicklin Index customised for the Australian regulatory environment. The CPA–Zicklin Index is an annual index scoring the S&P500 (an index tracking 500 of the largest publicly-listed US companies) on their disclosure, policy and oversight related to corporate political expenditure. The Center for Political Accountability (CPA) and Zicklin Center for Governance & Business Ethics at the University of Pennsylvania have released the index annually since 2011.<sup>2</sup>

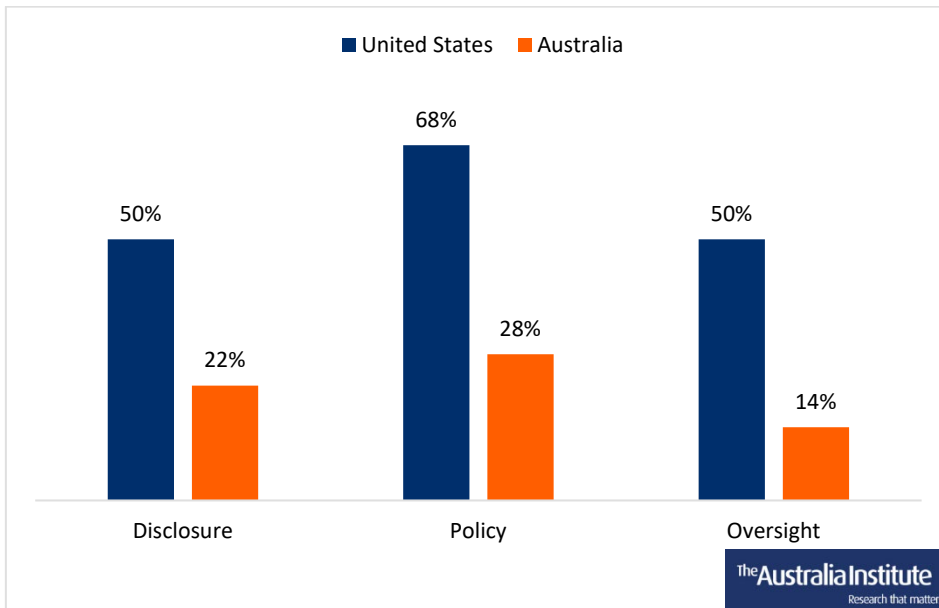
ISS-ESG’s analysis finds that Australian publicly-listed companies publish little information about their political expenditure. No company received an overall score of 50 percent or more, and the average scores across the 75 companies were 22 percent for disclosure, 28 percent for policy and 14 percent for oversight. A comparison with the United States companies analysed by CPA–Zicklin shows how Australian companies lag their peers, as shown in Figure 1 below.

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<sup>1</sup> Institutional Shareholder Services (ISS) is the broader company, and ISS ESG is the business that focuses on responsible investing and environmental, social and governance (ESG) research and ratings.

<sup>2</sup> Center for Political Accountability (n.d.) *CPA–Zicklin Index: A focus on transparency*, <https://www.politicalaccountability.net/cpa-zicklin-index/>

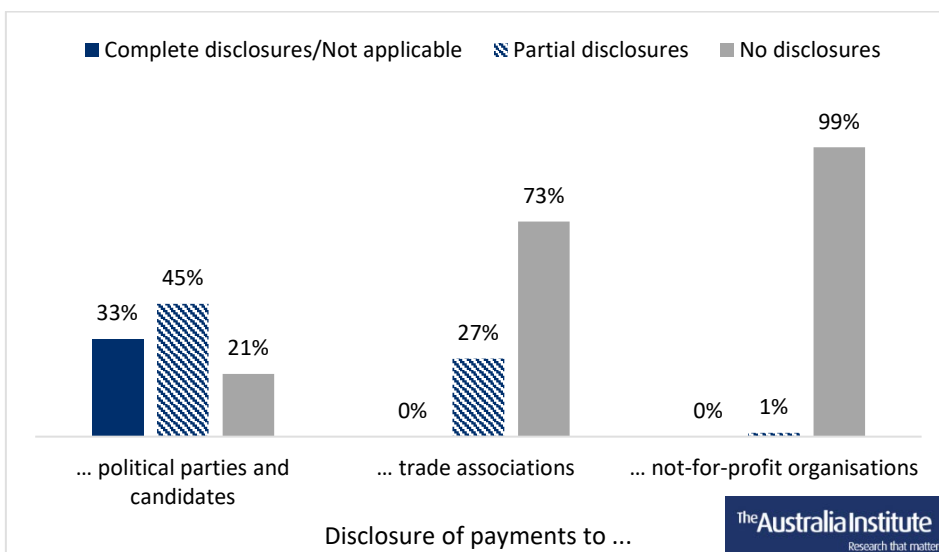
**Figure 1: Average scores for the US vs Australia**



Source: Data provided by ISS-ESG

*Corporate political expenditure in Australia* reveals that disclosures of corporate political payments are patchy. While most companies analysed had at least partial disclosures of payments to political parties and candidates, this was in part because all companies primarily based in Australia were automatically assessed as making partial disclosures because they are subject to federal donation laws. As shown in Figure 2 below, only one in four companies (27 percent) disclosed payments to trade associations and only one of the 75 disclosed payments to not-for-profit organisations.

**Figure 2: Company payment disclosures**



Source: Data provided by ISS-ESG

Despite the major economic and political role played by large publicly-listed companies, Australian political parties have shown limited interest in how corporations are regulated. Australia Institute research released earlier this year finds that, while there are notable exceptions, on the whole political parties do not have detailed policies on corporate democracy and governance.<sup>3</sup> As *Corporate political expenditure in Australia* discusses, the United Kingdom and the United States are more ambitious in a number of areas of corporate accountability. For example, at the federal level the United States has strict lobbying disclosure requirements and bans direct company contributions to parties and politicians while the United Kingdom requires public companies to seek shareholder consent for political contributions.

When companies make little information available about their policies or behaviour, it becomes impossible for shareholders to assess whether they are acting in the best interests of their shareholders, let alone those of Australia as a whole.

Companies can expect more shareholder scrutiny of misalignments and potential misalignments. Since 2017, ASX200 companies have faced 156 shareholder resolutions and statements on environmental, social and governance (ESG) issues.<sup>4</sup> Research from InfluenceMap Australia exposes the failure of certain companies to live up to their stated positions on climate change and the need for climate action.<sup>5</sup> Shareholder pressure has forced major companies to review their trade association memberships for misalignments on climate action.<sup>6</sup>

The focus on trade association membership is particularly pertinent because trade associations are often the locus for corporate lobbying and political advertising. Upcoming research by the Australia Institute will reveal the power and influence of

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<sup>3</sup> Browne (2023) *Party platforms on corporate democracy & governance*,

<https://australiainstitute.org.au/report/party-platforms-on-corporate-democracy-governance/>

<sup>4</sup> ACCR (n.d.) *Australian ESG shareholder resolutions*, <https://www.accr.org.au/research/australian-esg-resolution-voting-history/>

<sup>5</sup> InfluenceMap Australia (n.d.) *Australia: Corporate climate policy engagement*, <https://australia.influencemap.org/>

<sup>6</sup> BHP (n.d.) *Industry associations*, <https://www.bhp.com/about/operating-ethically/industry-associations>; Fortescue (2022) *FY22 industry association report*, <https://www.fmgf.com.au/docs/default-source/corporate-governance-documents/industry-association-report-v1.pdf>; Origin (2022) *Industry association review*, [https://www.originenergy.com.au/about/investors-media/governance/industry\\_association\\_memberships/](https://www.originenergy.com.au/about/investors-media/governance/industry_association_memberships/); Rio Tinto (2021) *Industry Association Disclosure*, <https://www.riotinto.com/en/sustainability/ethics-integrity/industry-association-disclosure>; Santos (2022) *2022 statement on review of industry associations*, <https://www.santos.com/wp-content/uploads/2022/12/Statement-on-2022-Review-of-Industry-Associations-Final-13-December-2022.pdf>

trade associations on the Australian political debate, including: the “greenhouse mafia” that used its access to the Howard Government to undermine climate action, the Minerals Council of Australia’s \$20 million advertising campaign against the Rudd Government’s mining tax, the “ferocious” lobbying by Clubs Australia to convince the Gillard Government to drop mandatory pre-commitment for poker machines and the 2018 industry campaign against the Labor Opposition after it proposed removing poker machines from pubs and clubs in Tasmania.<sup>7</sup>

These campaigns represent some of the most powerful interventions in Australian politics over the last two decades: stymieing climate action, contributing to the bringing down of a prime minister in his first term, reducing public revenue by hundreds of millions of dollars and exposing more Australians to gambling harm. Despite this, no publicly-listed company analysed by ISS-ESG fully disclosed their payments to trade associations, and the vast majority (73 percent) did not even qualify for a “partial disclosure” score.

Shareholders should be crystal clear about the ramifications of trade association memberships for the companies that they invest in. *Corporate political expenditure in Australia* identifies several examples of how a company can rule out making political contributions, while still having a major influence on the political debate:

- BHP has a policy of “impartiality with respect to party politics and does not make political contributions” – but it has still spent millions of dollars on political campaigns directly or through payments to trade associations.
- South32 and Rio Tinto rule out political donations, but they fund the Minerals Council of Australia and the Business Council of Australia – which make political donations (the MCA) or engage in electoral expenditure (the BCA).
- Santos has a policy of not making “any cash donation to a political party”. Nonetheless, Santos’ donor returns for 2020-21 show donations to the Labor and National parties. Presumably the contributions are in-kind or for access to events.

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<sup>7</sup> Cohen (2006) *The Greenhouse Mafia*, <https://www.abc.net.au/4corners/the-greenhouse-mafia/8953566>; Griffiths (2012) *Gillard defends tearing up pokies deal*, <https://www.abc.net.au/news/2012-01-23/gillard-defends-pokies-trial/3787500>; Morton (2018) ‘*Labor thinks you’re stupid’: pokies lobby fights hard in Tasmanian election*, <https://www.theguardian.com/australia-news/2018/feb/23/labor-thinks-youre-stupid-pokies-lobby-fights-hard-in-tasmanian-election>; Osborne & AAP Senior Political Writer (2011) *Mining firms spend \$20m to fight tax*, <https://www.smh.com.au/national/mining-firms-spend-20m-to-fight-tax-20110201-1ac46.html>

ISS-ESG discusses the rule of thumb that indirect political expenditure is 10 times greater than direct political expenditure – which demonstrates the risks to political finance reform that focuses on political donations at the expense of other sources of corporate influence.<sup>8</sup>

The Australian companies that score the highest on the modified CPA–Zicklin Index are AGL Energy (44.3 percent), Rio Tinto (42.9 percent), Vicinity Centres (42.9 percent) and Harvey Norman Holdings (40.0 percent). A further seven companies score 38.6 percent: BHP Group, Challenger, Dexus, Mirvac Group, National Australia Bank, Newcrest Mining and Stockland.

While these companies should be congratulated for leading the pack in Australia, it is worth emphasising how far removed these scores are from the best practice in the United States. The best-performing Australian companies perform worse than the *average* S&P500 company.<sup>9</sup>

In Australia there is little disclosure of actual indirect political expenditure, such as those channelled via memberships and other payments to third parties, nor policies governing such political expenditure. Out of 75 ASX companies assessed, no company received a perfect score for board oversight of direct and indirect political expenditures.

The comparatively weak regulatory framework around political contributions in Australia leaves loopholes that enable companies to avoid disclosing details of their political expenditure. Investors can promote responsible governance of corporate political expenditure by:

- Paying attention to direct and indirect political expenditure in its various forms;
- Establishing structures for independent oversight;
- Reviewing policies and actual spending on a regular basis; and
- Considering the broader implications of environmental and social issues associated with political spending.

The limited voluntary disclosure, oversight and policy development by even Australia’s larger corporations suggests government regulation and oversight is needed. The alternative is to risk that corporations will spend large sums of money on political

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<sup>8</sup> For more, see Browne (2023) *Principles for fair political finance reform*, <https://australiainstitute.org.au/report/principles-for-fair-political-finance-reform/>

<sup>9</sup> Average for companies that have been in the S&P500 index since 2015; see the scoring system for tiers and the S&P500 results: Center for Political Accountability (2022) *The CPA-Zicklin Index of corporate political disclosure and accountability 2022*, pp. 20, 23, <https://www.politicalaccountability.net/cpa-zicklin-index/>

campaigns or political contributions with limited transparency and accountability. The USA and UK have stricter and more expansive rules in these areas, and could inspire Australian public policy development.

# Corporate Political Expenditure in Australia

**August 2023**

*ISS ESG was commissioned by and on behalf of The Australia Institute to update the 2016 paper Corporate political expenditure in Australia by Howard Pender. Like the 2016 paper, this paper uses a version of the CPA–Zicklin Index modified for the Australian context. The CPA–Zicklin Index is a measure of electoral spending transparency and accountability produced by the Washington, D.C. based Center for Political Accountability in conjunction with the Zicklin Center for Governance & Business Ethics at The Wharton School at the University of Pennsylvania. The CPA–Zicklin Index is not an ISS methodology.*

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## Executive Summary

This report examines public and shareholder scrutiny and oversight of corporate political expenditure in Australia. For that purpose, a review of the legal framework around corporate political expenditure in Australia is conducted, including a comparison with relevant U.K. and U.S. law, as well as corporate conduct in each of the countries around political contributions. Across the three countries, different approaches are observed in the respective laws governing corporate political expenditure. These approaches are likely to reflect the relevance and significance that companies, shareholders and the public assign to this topic—which, consequently, might result in varying policies and disclosures around political spending as well as related governance procedures.

Different approaches are taken in each country regarding bans on certain types of contributions and disclosure obligations for contributions made, as well as defined procedures when allowing for such contributions. While in the U.S., at the federal level, companies are banned from making direct political donations, and federal-level lobbying is subject to mandatory expenditure disclosure obligations, there are no such rules in the U.K. and Australia. In the U.S., corporate disclosure of other political expenditure to shareholders is also becoming standard. In the U.K., public companies require shareholder approval before incurring political expenditure, and many boards eschew direct political expenditure altogether. Amongst companies that do seek shareholder approval, public reporting of direct political expenditure is common. A lobbying register exists, and there is a requirement for ministerial diaries to be published to enhance the transparency of lobbying activities further. In Australia, to date, there is no mandatory lobbying expenditure disclosure, and minimal voluntary disclosure of lobbying expenditure is available.

On corporate political contributions at a federal level, Australia is found to have the most lenient legal approach. As a result, there is little systematic disclosure by companies that can be interpreted in a meaningful way, and voluntary disclosure remains scarce. A systematic assessment of 75 ASX companies revealed that only about 25% of all companies assessed had a policy that precluded direct corporate political expenditure and only about 10% of the remaining companies disclosed such expenditure in an itemised fashion. Almost no information on indirect political expenditure can be obtained from screening public sources.

Since companies do not currently disclose their political expenditures in a systematic and consistent way, the volume and patterns of corporate political expenditure in Australia is difficult to quantify. By extension, the impact of such expenditure on Australian politics is hard to assess. Without such disclosure, it is also hard to argue that the spending may not be pertinent to shareholders' assessment of board stewardship, considering that the interests of company executives and board directors on the one hand, and shareholders on the other, might well diverge. Although shareholder resolutions dealing with direct political expenditure

are unknown to date in Australia, there is increasing shareholder scrutiny of the extent of the alignment/misalignment between corporate values and industry association memberships, particularly of any gaps between claimed company policies and the respective industry associations' lobbying efforts in the climate change context. Despite small amounts spent for political purposes, the impact on public policy can be quite significant. Disclosure, whether voluntary or statutory/mandatory, along with defined procedures to proactively involve shareholders in decisions on whether and how to spend corporate funds, will be essential to ensure that corporate political expenditure advances long-term shareholder interest.

From a broader societal perspective, there is also the risk that corporate political activities—especially when conducted by large corporations—can disproportionately influence public policy debates when compared to the activities of other interest groups endowed with less financial resources. As companies rely on a healthy public democracy for planning security and stable company operations, the prevention of undue influence on public policy, law, and regulation should be in the best interests of a company's decision-making authorities as well as its shareholders.

This paper is based on the paper *Corporate Political Expenditure in Australia* by Howard Pender, written for the Australasian Centre for Corporate Responsibility and published in 2016.<sup>1</sup>

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<sup>1</sup> Howard Pender (2016), *Corporate Political Expenditure in Australia*, <https://www.accr.org.au/research/>.

## Glossary<sup>2</sup>

AEC	Australian Electoral Commission
Associated Entities	Organisations associated with a particular political party in Australia. For example, the Cormack Foundation is an Australian investment company that distributes money to the Liberal Party of Australia (Victorian Division).
Astroturf group	“Astroturfing” is the practice of corporations and lobbyists creating the illusion of public, grassroots support. An astroturf group is an apparently grassroots-based citizen group or coalition that is actually primarily conceived, created and/or funded by corporations, trade associations, political interests or PR firms.
c4	A U.S. term for not-for-profit “social welfare” organisations registered under section 501(c)(4) of the U.S. tax code. Such organisations cannot make direct donations to politicians, candidates or parties. However, they can make independent expenditures in support of candidates/parties but this cannot be their major activity. They can spend freely on lobbying activity. <sup>3</sup>
CPA	The Center for Political Accountability, a non-government organization, which collaborates with the Zicklin Center for Business Ethics Research, at the Wharton School, University of Pennsylvania, to produce an index scoring of the performance of the companies comprising the U.S. Standard & Poor’s 500 list on political disclosure and accountability.
Direct political expenditure	Donations to, and other payments for the benefit of, politicians, parties, candidates, their associates or party/campaign support organisations, as well as own-account expenditure, such as direct company payment for advertising, spent intending to influence public, bureaucratic or elite attitudes to candidates, parties or issues. Such donations can be made independently of candidates or parties, and include provision of in-kind benefits and excess payment to attend events.
Indirect political expenditure	Expenditure that passes through a third party, such as trade associations, lobbyists, think tanks, and activist groups (whether legitimate grassroots-based groups or astroturf groups) to influence public, bureaucratic or elite support for politicians, candidates or parties or public, bureaucratic or elite attitudes to, or the outcome of, a political issue or an election.
PAC & ‘Super PAC’	Political Action Committee, a U.S. legal concept. A PAC is typically a company-sponsored organisation intended to influence election outcomes. It generally receives voluntary contributions paid by employees of the sponsoring company and may solicit further public donations. PACs are, in turn, subject to caps on the amount they can donate to candidates and parties. In contrast, Super PACs can raise unlimited amounts from any identified U.S. donor and make unlimited independent expenditure. Super PACs campaign more often in favour of candidates or on specific issues (as opposed to donating to candidates or parties).
Political contributions	A broad term encompassing both indirect and direct political expenditure.

<sup>2</sup> Howard Pender (2016), *Corporate Political Expenditure in Australia*, p 5.

<sup>3</sup> Their activities do not fit neatly into Australian political categories. Some c4s are akin to an Australian associated entity, for example Defending Main Street, which is aligned with moderate Republicans. Others are more akin to single-issue lobby groups, for example various pro- or anti-gun control groups. Others perform a role akin to the political activism of an Australian activist group, for example the Judicial Crisis Network (aka the Concord Fund), which supports the appointment/election of judges and candidates who support a limited role for government. Yet others perform a role more akin to the government affairs staff of a trade association, for example the Jeffersonian Project, which was the lobbying arm of the American Legislative Exchange Council.

Significant Third Parties	Entities with Australian electoral expenditure of more than AUD 250,000 per annum (or more than AUD 14,500 in a year where this is least one-third of their revenue) <sup>4</sup> ; for example, GetUp! and Advance Australia.
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## Introduction

In light of the events of January 6, 2021, in which rioting supporters of then-President Donald Trump attacked the U.S. Capitol Building, many major U.S. companies announced an intent to withhold and reassess their political contributions. Some PACs paused all political contributions after the incident, and some said they would stop contributions to members of Congress who voted against certifying the 2020 presidential election results. However, contributions by companies and industry associations to these members of Congress continued, and there is a growing public interest in understanding whether companies' commitments are reflected in their deeds. Similarly, in Australia, demands to align corporate values with industry association values and actions are gaining traction, with a strong focus on climate change.

In this report, two classes of political expenditure are distinguished. The first is *direct political expenditure*, which encompasses donations to candidates or parties (including those made to party associates), and own-account candidate-, issue-, or party-focused campaign expenditure. The second is *indirect political expenditure*, which encompasses payments to third parties such as trade associations, lobbyists, think tanks and activist groups, which can be used for political purposes. Together, indirect and direct expenditures are referred to as "political contributions" or "political expenditure." The report does not attempt to document the levels and patterns of corporate expenditure in Australia on lobbying, aka 'government affairs.' Despite its likelihood of exceeding other forms of corporate political expenditure, little information is available for Australia.<sup>5</sup>

Section 1 of this paper provides a review of the law on corporate political expenditure in the U.S., the U.K., and Australia. It touches briefly upon laws and regulations around lobbying activities. However, it is important to note that definitions of lobbying activities subject to restrictions and disclosure requirements might differ between jurisdictions, so cross-country comparison needs to be conducted with care. Different regulatory environments can have a significant impact on corporate conduct related to political contributions. Section 2 deals with practice in the U.S., the U.K. and Australia. Section 3 assesses and compares corporate approaches to political expenditure, disclosure, and oversight mechanisms in the U.S. and

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<sup>4</sup> Previously called political campaigners; for further details, see AEC (2022), *Significant Third Parties*, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/significant-third-parties.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/significant-third-parties.htm).

<sup>5</sup> Howard Pender (2016), *Corporate Political Expenditure in Australia*, p 7.

Australia. The section first provides a summary of the results of U.S. S&P 500 companies assessed against the CPA–Zicklin Index in 2021. Subsequently, 75 companies listed on the ASX are scored using a slightly adapted version of the CPA–Zicklin Index 2021 to cater for the Australian use case. Section 3 concludes with a comparison of the results of this aggregate assessment of U.S. and Australian company conduct.

## 1. Policy context and law in the U.K., the U.S. and Australia

### 1.1. Policy context

The International Corporate Governance Network (ICGN)<sup>6</sup> addresses investor concerns about corporate involvement in the political process from the perspectives of both business ethics and corporate governance. The ICGN states that good corporate governance should ensure that companies use corporate funds, including those used for political activities, in the best interests of their shareholders. As companies can be significantly affected by public policy, law, and regulation, it can be beneficial to investors for companies to take an active role in informing public policy debates. However, because of the potential divergence of interests among company executives, directors and shareholders in regard to corporate political expenditure,<sup>7</sup> the concern remains that corporate funds might not always be used in the best interests of shareholders and the company as a whole. Hence, companies need to ensure that political activities are legitimate and conducted in a transparent manner, so that companies and their boards can be held accountable for their corporate political activities. In addition, the ICGN highlights the risk that public policy debates can be influenced disproportionately by corporate political activities, especially those conducted by large corporations, as compared to other interest groups with fewer financial resources.

Globally, countries have taken different approaches in their legal arrangements, which result in different approaches to governing corporate political expenditure. These result in varying levels of restrictions to which companies might be subject. The following section provides a review of legal arrangements relevant to corporate political expenditure in the U.K., the U.S. and Australia at a federal level. (In the case of Australia, where different existing legal frameworks can apply to corporate political expenditure in different states, each framework is examined separately.)

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<sup>6</sup> International Corporate Governance Network (2017), *Political Lobbying and Donations*, p 14-15, <https://www.icgn.org/sites/default/files/2021-06/ICGN%20Political%20Lobbying%20%26%20Donations%202017.pdf>.

<sup>7</sup> Bebchuk and Jackson (2010), *Corporate Political Speech: Who Decides?*, p 83, 117, [https://harvardlawreview.org/wp-content/uploads/pdfs/vol\\_12401bebchuk\\_jackson.pdf](https://harvardlawreview.org/wp-content/uploads/pdfs/vol_12401bebchuk_jackson.pdf).

## 1.2. Law

In a joint report, the Organisation for Economic Co-operation and Development (OECD) and the Principles for Responsible Investment (PRI) analysed 17 major economies’ regulatory systems around corporate political engagement.<sup>8</sup> The different approaches taken in Australia, the U.K. and the U.S. in regard to banning certain types of political donations—as well as to imposing limits on the amounts that can be spent for political purposes—are shown in Table 1 below.

**Table 1: Approaches to political donations in Australia, the United Kingdom, and the United States**

	Banned private contributions		Regulations on spending / Spending limits	
	Corporate donations to political parties and candidates	Foreign donations to political parties and candidates	Third-party spending limits <sup>9</sup>	Spending limits for political parties and candidates
AUSTRALIA	No	Yes, but specific limit	No	No
UNITED KINGDOM	No	Yes	Yes	Yes
UNITED STATES	Yes	Yes	No	Yes

Source: OECD, database on corporate political engagement regulations, 2022

It appears that Australia has the most lenient approach to private donations, including those from corporates, and to spending limits on political parties, candidates and third parties. Spending by third parties remains a challenge globally and can constitute a means of re-channelling election spending through committees, such as Super PACs in the U.S., and other interest groups (e.g., charities, foundations, think tanks, trade associations, activist groups). The U.K. imposes limits on the amount that third parties can spend on election campaign activities. While all three countries of interest are among the countries that have adopted lobbying regulation, transparency requirements related to lobbying activities remain limited. The U.S. is the only country in that sample that requires lobbyists to disclose information on their lobbying spending and their contributions made to political parties and candidates.

<sup>8</sup> OECD/PRI (2022), *Regulating Corporate Political Engagement: Trends, Challenges and the Role for Investors*, <https://www.oecd.org/governance/ethics/regulating-corporate-political-engagement.htm>.

<sup>9</sup> Definitions of “third parties” differ across countries. Please find the details in the respective country sections in the OECD/PRI (2022) report.

Regulation to protect shareholder rights at public companies rarely includes a requirement for shareholders to approve political contributions or lobbying expenditures.

### 1.2.1. The U.K

The *Political Parties and Referendums Act (2000)* and the *Representation of the People Act (1983)* are the main laws regulating political finance in the U.K. Since 2000, in addition to disclosure obligations, the U.K. *Companies Act*<sup>10</sup> has required shareholder approval of public company political donations and expenditure,<sup>11</sup> making it the only country of 17 covered by the OECD report to do so. Somewhat analogous provisions apply to unions in the U.K.<sup>12</sup>

The *Lobbying, Non-Party Campaigning and Trade Union Administration Act* enacted in 2014 does not directly require lobbyists to disclose their political contributions, but it has increased transparency in relation to spending by some third-party campaigners by requiring them to publish and record more information about their spending, donations, accounts, and board members. Whilst the U.K. is the only country that has combined a lobbying register and the requirement for public officials to publish their agenda, most lobbying activities are not covered by the register.<sup>13</sup> The tax-deductible status of political donations/subscriptions by U.K. companies is still a grey area in U.K. tax law.<sup>14</sup> Donations by foreigners are not

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<sup>10</sup> *Companies Act 2006* (UK), <https://www.legislation.gov.uk/ukpga/2006/46/contents>.

<sup>11</sup> The definition of political expenditure is broad—media companies have to be exempted and a common approach by companies who have no wish to make any expenditure is to seek permission for a small amount in case they inadvertently enter into the territory covered by this law. The law applies to all public companies, encompasses donations and expenditure, traces through holding companies, allows an exemption for subscriptions to trade associations and exempts aggregated donations less than £5,000. *Companies Act 2006*, part 14, <http://www.legislation.gov.uk/ukpga/2006/46/part/14>.

<sup>12</sup> A union must conduct a ballot of its members if it wishes to operate a ‘political fund’ and members can choose not to pay dues to that fund. See Department for Business, Energy & Industrial Strategy (2018), *Trade Union Political Funds*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/245595/10-817-trade-union-political-funds-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245595/10-817-trade-union-political-funds-guide.pdf).

<sup>13</sup> OECD/PRI (2022), *Regulating Corporate Political Engagement: Trends, Challenges and the Role for Investors*, p 39.

<sup>14</sup> Formal statements on the subject indicate a lack of deductibility for subscriptions, see HM Revenue and Customs (2022), *Business Income Manual*, <http://www.hmrc.gov.uk/manuals/bimmanual/bim47405.htm>. However, as a matter of practice, it appears the U.K. Tax Authority does frequently effectively allow a deduction. “The British tax authority simply does not tax [corporate political] donations made in this way, six tax accountants said. The tax authority, Her Majesty’s Revenue and Customs (HMRC), said it had the legal right to tax such gifts but would not say why it did not use this right.” See Bergin (2015), *For U.K. Political Donors, an Unintended Tax Break*, <http://www.dailymail.co.uk/wires/reuters/article-3058812/For-UK-political-donors-unintended-tax-break.html>. It seems the U.K. Tax Authority sometimes does allow deductibility for donations but though it would have the capacity to deem a corporate donation by a private company income in the hands of the shareholders (similar to Fringe Benefits Tax in Australia), it declines to do so.

permitted,<sup>15</sup> although donations by non-resident U.K. citizens have become *de facto* legal without limit.<sup>16</sup>

### 1.2.2. The U.S.

Political contributions at the federal level in the United States are largely governed by the *Federal Election Campaign Act* of 1971. The law prohibits corporations from making direct contributions to federal candidates or parties,<sup>17</sup> but allows their employees to do so through “Political Action Committees,” whose funds can then be used in federal elections. A 1974 amendment to the Act led to the formation of the Federal Election Commission as an oversight body and brought in spending limits on campaigns.<sup>18</sup>

A 2010 Supreme Court decision, *Citizens United v Federal Election Commission*, was a landmark case in relation to political expenditure in the United States.<sup>19</sup> The ruling found that independent political expenditure did not present a threat of corruption, reversing several previous corporate political finance laws and enabling corporations and other groups to spend unlimited funds on election expenditures. The ruling was based on the assumption that shareholders would have insight into political spending by the companies in which they are invested, thus ensuring that political spending is aligned with shareholder interests. As a result, corporations are now able to spend unlimited funds on campaign advertising, provided that they are not coordinating with a candidate or political party, although the ruling did uphold the prohibition of direct contributions by corporations to candidates or parties. While some groups such as Super PACs are required to disclose their donors, other organisations such as 501(c)(4) “social welfare” organisations are not required to do so, leading to considerable secrecy.<sup>20</sup>

The U.S. tax code denies a deduction for lobbying and political expenditure.<sup>21</sup> Further, under the federal *Lobbying Disclosure Act* (1995) companies with staff engaged in lobbying activity or using hired lobbyists in the U.S. must make publicly available semi-annual contribution reports of lobbying expenditure.<sup>22</sup> However, the use of social media and grassroots

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<sup>15</sup> See *U.K. Political Parties, Elections and Referendums Act 2000*, section 54, <http://www.legislation.gov.uk/ukpga/2000/41/section/54>.

<sup>16</sup> Rennard (2022), *Political Donations from Non-doms Should Be Curtailed*, <https://www.theguardian.com/politics/2022/apr/04/political-donations-from-non-doms-should-be-curtailed>.

<sup>17</sup> This restriction dates back to the *Tillman Act* of 1907.

<sup>18</sup> Ballotpedia (n.d.), *Federal Campaign Finance Laws and Regulations*, [https://ballotpedia.org/Federal\\_campaign\\_finance\\_laws\\_and\\_regulations](https://ballotpedia.org/Federal_campaign_finance_laws_and_regulations).

<sup>19</sup> Lau (2019), *Citizens United Explained*, <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>.

<sup>20</sup> Open Secrets (n.d.), *Outside Spending by Disclosure, Excluding Party Committees*, <https://www.opensecrets.org/outside-spending/dark-money-groups/disclosure>.

<sup>21</sup> U.S. Code, Section 162(e), <https://www.law.cornell.edu/uscode/text/26/162>; Elliott (2012), *Could Corporations Take Tax Breaks on Political ‘Dark Money’?*, <http://www.propublica.org/article/could-corporations-be-taking-tax-breaks-on-political-dark-money>.

<sup>22</sup> Office of the Clerk of the U.S. House of Representatives (2021), *Lobbying Disclosure Act Guidance*, section 3, “Definitions – Contribution Reports,” [https://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html](https://lobbyingdisclosure.house.gov/amended_lda_guide.html).



communications by lobbyists to indirectly influence public policy is not considered a lobbying activity, and is therefore not subject to disclosure by the lobbyist.<sup>23</sup> There is a broad prohibition on foreign company expenditure intended to influence U.S. elections.<sup>24</sup>

### 1.2.3. Australia

In Australia, at the federal level, donations to candidates, parties or associated entities<sup>25</sup> in excess of AUD 14,300 (for FY 2020-21) must be disclosed to the Australian Electoral Commission (AEC), which publishes such donations.<sup>26</sup> Own-account federal-level campaign expenditure must also be disclosed.<sup>27</sup> Political campaigner (now Significant Third Party) provisions were first introduced into the *Commonwealth Electoral Act 1918* in 2018,<sup>28</sup> requiring key non-party political actors—for example trade associations such as the Business Council of Australia (BCA) and the Minerals Council of Australia (MCA) and activist organisations like GetUp! or Advance Australia—to report data on their political activity. Unlike in the U.K., there is no obligation for shareholder approval of public company political activity. Unlike in the U.S., there are no general federal prohibitions on direct donations.

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<sup>23</sup> OECD/PRI (2022), *Regulating Corporate Political Engagement: Trends, Challenges and the Role for Investors*, p 19.

<sup>24</sup> The prohibition extends to precluding foreign subsidiaries forming PACs whose funding or operation involves non-Americans. See Federal Election Commission (n.d.), *Foreign Nationals*, <http://www.fec.gov/pages/brochures/foreign.shtml#Prohibition>.

<sup>25</sup> There is no grouping provision across recipient state party branches nor across related-to-donor natural persons. AEC (2016), *Financial Disclosure Guide for Donors to Political Parties*, 'Donations to a Party Where the Party Has Several Federal Registrations,' [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/donors/information.htm#related](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/donors/information.htm#related).

<sup>26</sup> *Commonwealth Electoral Act 1918*, section 305B. There is also a grouping provision for donor companies—section 287(6) of the *Commonwealth Electoral Act 1918* deems body corporates related under the provisions of the *Corporations Act 2001* to be a single entity, so donations must be aggregated across the group and then disclosed on a single return in the name of the parent corporation. However, the data can be quite dated. It is published in February of the following financial year.

<sup>27</sup> See *Commonwealth Electoral Act 1918*, section 314AEB. Similar disclosure requirements at the State level are patchy. For example, the NSW *Electoral Funding Act 2018*, section 20, requires disclosure of third-party campaign expenditure, but there are no similar provisions in Victoria. See Victoria, *Electoral Act 2002*, section 217K. See also Granger & Read (2019), *Political Expenditure Regulation in Victoria: Room for Reform*, Table 2.1, [https://www.researchgate.net/publication/340224579\\_Political\\_Expenditure\\_Regulation\\_in\\_Victoria\\_Room\\_for\\_Reform/link/5e7d9cc2299bf1a91b7f1272/download](https://www.researchgate.net/publication/340224579_Political_Expenditure_Regulation_in_Victoria_Room_for_Reform/link/5e7d9cc2299bf1a91b7f1272/download), which sets out the expenditure caps and disclosure across the Australian states.

<sup>28</sup> See Joint Standing Committee on Electoral Matters (2021), *Review of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/OperationandImpact/Report/section?id=committees%2Freportjnt%2F024660%2F76176](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/OperationandImpact/Report/section?id=committees%2Freportjnt%2F024660%2F76176). The new provisions required “key non-party political actors...to report data on their campaign activity, including greater transparency for political campaigners who play a major role in elections.”

While at the federal level there is minimal additional regulation, individual states go further.<sup>29</sup> Some states use lower disclosure thresholds and restrict some classes of donors altogether (e.g., property developers in New South Wales [NSW], Queensland, and Australian Capital Territory [ACT]). The Centre for Public Integrity identifies some form of electoral expenditure caps in NSW, Queensland, South Australia (SA), the ACT, the Northern Territory and Tasmania.<sup>30</sup> In terms of timeliness of disclosure, states such as NSW, Victoria, ACT and SA require disclosure of political donations during elections within 7 to 21 days. In Queensland, political donations must be reported within seven days, regardless of elections. On the federal level, there are no specific requirements during election periods and disclosure is only required on an annual basis (see Appendix I on varying federal and state regulations).<sup>31</sup>

Direct corporate political donations are not tax deductible in Australia.<sup>32</sup> However, own-account expenditure and subscriptions paid to trade associations, which may then be used for political purposes, are deductible. Trade associations can and do make political donations and engage in political expenditure and lobbying (see Appendix G on trade associations' political activity). Political donations from foreign sources of AUD 100 or above have been banned in Australia since 2019.<sup>33</sup>

As an example of how companies engage in indirect political expenditure, BHP has a policy of not making political contributions: *"We maintain a position of impartiality with respect to party politics and do not make political contributions or expenditure/donations for political purposes to any political party, politician, elected official or candidate for public office in any country."*<sup>34</sup> However, own-account expenditure and payments to trade associations are not covered by the policy. In 2009/10 BHP spent AUD 4.1m on an Australian political campaign.<sup>35</sup>

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<sup>29</sup> See Muller (2022), *Election Funding and Disclosure in Australian Jurisdictions: A Quick Guide*, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2122/Quick\\_Guides/ElectionFundingStates](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/ElectionFundingStates); Tham (2018), *It Depends What You Mean by "Political Donations,"* <https://insidestory.org.au/it-depends-what-you-mean-by-political-donations/>.

<sup>30</sup> The Centre for Public Integrity (2022), *How to Level the Playing Field: Electoral Expenditure Caps, Limiting the Incumbency Benefit and Supporting New Candidates*, p 2, <https://publicintegrity.org.au/wp-content/uploads/2022/05/Briefing-note-How-to-level-the-playing-field.pdf>.

<sup>31</sup> The Centre for Public Integrity (2022), *Shining Light on Political Finance for the Next Federal Election*, p 3, <https://publicintegrity.org.au/wp-content/uploads/2022/02/Hidden-money-2021.docx.pdf>.

<sup>32</sup> Since 2010, a business taxpayer cannot claim deductions for contributions and gifts to political parties, members and candidates, including payments incurred in deriving assessable income. See *Tax Laws Amendment (Political Contributions and Gifts) Act 2010* (Cth), <https://www.comlaw.gov.au/Details/C2010A00016>.

<sup>33</sup> AEC (2021), *Foreign Donations*, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/files/foreign-donations-fact-sheet.pdf](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/files/foreign-donations-fact-sheet.pdf).

<sup>34</sup> BHP (n.d.), *Interacting with Governments*, <https://www.bhp.com/about/operating-ethically/interacting-with-governments>.

<sup>35</sup> AEC (2010), *BHP Billiton 2009–2010 Third Party Return*, <https://transparency.aec.gov.au/AnnualThirdParty/ReturnDetail?returnId=18583>.

Between November 2016 and May 2017 BHP gave AUD 2.18m to the WA Chamber of Minerals and Energy for political expenditure in relation to the 2017 WA state election.<sup>36</sup>

In May 2015, the SEC ceased proceedings against BHP upon payment by BHP of a penalty of US\$25 million. The SEC claimed BHP had provided benefits to politicians in a number of African companies where BHP operated in violation of U.S. law.<sup>37</sup> There is no state or federal equivalent to the expenditure disclosure provisions of the U.S. *Lobbying Disclosure Act 1995*.<sup>38</sup>

## 2. Corporate political donations and expenditure in practice in the U.K., the U.S. and Australia

### 2.1. The U.K.

A company's direct political expenditure is generally required to be approved by shareholders at the annual general meeting.<sup>39</sup> After the introduction of the law requiring majority consent, many companies stopped making political donations.<sup>40</sup> Although many companies request precautionary permission from shareholders to be able to grant political donations, they rarely use this authority and commonly disclose that they do not intend to do so. In 2015, 25 of the top 40 companies in the FTSE 100 had some ban on political contributions.<sup>41</sup> The average donation ceiling for which approval was sought in the period 2001 to 2010 was £100,000 but actual expenditure averaged only one eighth of that.<sup>42</sup>

A study conducted in 2018 found that U.K.-listed public companies scored better on political transparency than a broader cohort of companies that included private companies and foreign-owned multinationals. Of this broader cohort, 64% had a policy limiting or prohibiting

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<sup>36</sup> Elections WA (2017), *The Chamber of Minerals and Energy 2017 State Election Return*, <https://www.elections.wa.gov.au/political-funding/document/1685>.

<sup>37</sup> Securities and Exchange Commission (2015), *In the Matter of BHP Billiton*, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf>.

<sup>38</sup> For a description of the regulation of lobbyist conduct, permissibility of success fees, etc in Australia, see McKeown (2014), *Who Pays the Piper? Rules for Lobbying Governments in Australia, Canada, UK and USA*, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/LobbyingRules](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/LobbyingRules).

<sup>39</sup> Watson and McKenzie (2022), *Shareholders' Rights in Private and Public Companies in the UK: Overview*, [https://uk.practicallaw.thomsonreuters.com/5-613-3685?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-613-3685?transitionType=Default&contextData=(sc.Default)&firstPage=true).

<sup>40</sup> Torres-Spelliscy & Fogel (2011), *Shareholder-Authorized Corporate Political Spending in the United Kingdom*, p 558, [https://www.researchgate.net/publication/228160906\\_Shareholder-Authorized\\_Corporate\\_Political\\_Spending\\_in\\_the\\_UK](https://www.researchgate.net/publication/228160906_Shareholder-Authorized_Corporate_Political_Spending_in_the_UK).

<sup>41</sup> Transparency International U.K. (2015), *Corporate Political Engagement Index 2015*, pp 3, 12, <http://www.transparency.org.uk/publications/corporate-political-engagement-index-2015/>.

<sup>42</sup> Torres-Spelliscy & Fogel (2011), *Shareholder-Authorised Corporate Political Spending in the United Kingdom*, pp 565, 569.

political contributions. The poorest categories of performance across the issues assessed for the U.K. companies were “Responsible Lobbying,” assessing what companies do to directly and indirectly influence political decision makers; and “Revolving Door,” addressing risks associated with exchanges of people between the private and the public sector. Although 45% of the broad cohort had a publicly available policy on responsible lobbying, the use of trade associations and chambers of commerce remains opaque. Only 8% of the broad cohort published a comprehensive list of organisations of which they were members. As far as revolving door is concerned, only 6% of companies publish any details of secondments to or from the public sector, and 85% of companies do not publish procedures specifying “cooling-off periods” for former public officials.<sup>43</sup>

Asset owner trade associations, such as the Investment Association, generally oppose corporate political donations.<sup>44</sup> Proxy advisors, such as ISS and Glass Lewis, generally support precautionary low limit approval resolutions, with the expectation that companies do not intend to utilise this authority for making explicit political donations.<sup>45</sup>

## 2.2. The U.S.

Since the first shareholder resolutions on disclosing political contributions were filed in 2004,<sup>46</sup> resolutions seeking disclosure of political contributions and lobbying expenditure have been common in the U.S., and voluntary restrictions on political spending have increased.

Since 2011, the Center for Political Accountability (CPA), in collaboration with the Zicklin Center for Business Ethics Research at the Wharton School of the University of Pennsylvania, has published the CPA–Zicklin Index of Corporate Political Disclosure and Accountability. This is an annual survey scoring companies on an index that benchmarks companies on their political spending disclosure, decision-making and board oversight policies and practices. For

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<sup>43</sup> Transparency International U.K. (2018), *Corporate Political Engagement Index 2018*, pp 7, 12, 15, 18, 22, [https://www.transparency.org.uk/sites/default/files/pdf/publications/1018\\_CPEI\\_Report\\_WEB-1.pdf](https://www.transparency.org.uk/sites/default/files/pdf/publications/1018_CPEI_Report_WEB-1.pdf).

<sup>44</sup> For example, the Investment Association (2015), *Companies Act and Articles of Association Guidance*, p 4, <https://www.theia.org/sites/default/files/2019-06/20091001-CG-Companies-Act-and-Articles-of-Association-Guidance.pdf>, states “... authority is sought by companies to cover political donations and/or political expenditure within the EU. The Company should affirm that it is their policy not to make political donations and that they have no intention of using the authority for that purpose. Authorities may be made under law for up to four years; however best practice is that approval should be sought on an annual basis.”

<sup>45</sup> ISS (2021), *United Kingdom and Ireland Proxy Voting Guidelines*, pp 32-33, <https://www.issgovernance.com/file/policy/active/emea/UK-and-Ireland-Voting-Guidelines.pdf>; Glass Lewis *United Kingdom 2022 Policy Guidelines*, p 48, <https://www.glasslewis.com/wp-content/uploads/2021/11/UK-Voting-Guidelines-GL-2022.pdf>.

<sup>46</sup> Cossette (2011), *Corporations Make Political Donations at the Risk of Shareholders' Wrath*, <https://www.businessinsider.com/corporations-make-political-donations-at-the-risk-of-shareholders-wrath-2011-2>.

all three focus areas of the index, i.e., disclosure, policy and oversight, a positive trend has been observed in the past few years, the improvement in board oversight of political spending being the most outstanding.

In the wake of the January 6, 2021, attack on the U.S. Capitol, many investors have stepped up their scrutiny of corporate political contributions and lobbying expenditure. Many companies pledged to stop donations to politicians who voted against election certification, and others said they would pause or review their political donations generally.<sup>47</sup> However, contributions by companies and industry associations to these members of Congress have continued,<sup>48</sup> and there is a growing public interest in understanding whether companies' commitments are reflected in their deeds.

### 2.3. Australia

In stark contrast with the situation in the U.S. and the U.K., in Australia, legal requirements are limited at the federal level and there is little voluntary company disclosure available. It has not been common to seek shareholder approval for corporate political contributions, and company attitudes to public disclosure seem to vary widely. Even if voluntary disclosure is published by companies, the absence of established and clear definitions of what is considered a political donation, or corporate political expenditure in a broader sense, poses significant challenges in assessing such disclosures in a systematic manner. Often, it remains unclear whether the company is using deliberately ambiguous language when addressing political expenditure, or whether the ambiguity reflects a lack of attention due to low levels of spending. In contrast to the U.S., Australia has been slow to develop Super PAC equivalents—most likely because direct donations are legal. The case study in Appendix D describes challenges that one might encounter when investigating public information on corporate political expenditure.

The Australasian Centre for Corporate Responsibility (ACCR) maintains a list of ESG (Environment, Social and Governance)-themed shareholder resolutions considered at ASX-

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<sup>47</sup> Miller (2021), *Here Are the U.S. Companies Hitting Pause on Political Donations*, <https://www.bloomberg.com/news/articles/2021-01-11/here-are-the-u-s-companies-hitting-pause-on-political-donations#xj4y7vzkg>; Gangitano (2021), *Here Are the Companies Suspending Political Contributions Following the Capitol Riots*, <https://thehill.com/business-a-lobbying/533795-here-are-the-companies-suspending-political-contributions-following-the/>.

<sup>48</sup> Gawehns & Meli (2022), *Are U.S. Companies Punishing Republicans for Jan. 6? Here's What Our Research Finds*, <https://www.washingtonpost.com/politics/2022/01/05/corporations-jan-6-republicans/>; CREW (2021), *The Sedition Is Brought to You by...*, <https://www.citizensforethics.org/reports-investigations/crew-reports/this-sedition-is-brought-to-you-by/>.

listed AGMs. According to that list,<sup>49</sup> there has never been a resolution dealing with direct political expenditure at any ASX listed company. But that is not to say that some of the phenomena that have prompted stronger public policy as well as shareholder scrutiny and oversight in the U.K. and the U.S. have not occurred in Australia. Recently, there has been increasing shareholder interest in the question of whether a company's board is ensuring that the interests of both that company and its shareholders are aligned with the lobbying activities of the trade associations of which the company is a member (see Appendix F on gaps between corporate policies and industry association memberships). Shareholder-initiated proposals on climate-related lobbying received majority support at three ASX companies in 2021.<sup>50</sup>

### 3. Australian company conduct - international context

As already described in the previous sections, both law and corporate conduct regarding political expenditure across jurisdictions can differ significantly. One should therefore be mindful of the different circumstances when comparing conduct related to corporate political expenditures around the globe. The following section presents the CPA–Zicklin Index as applied to U.S. companies in 2021, including a summary of the results. A slightly adapted version of the CPA–Zicklin Index is then introduced and used to assess Australian companies, and a summary of corresponding results is provided.

#### 3.1. Conduct in the U.S.

The CPA–Zicklin Index is an annually published index assessing S&P 500 companies on their political disclosure and accountability policies and practices. The index covers three areas: disclosure, policy, and oversight. The first of these assesses disclosure of political contributions by companies, such as contributions to parties and candidates, trade associations, or independent political expenditures. The second evaluates whether the company discloses a policy governing political expenditures from corporate funds, as well as how detailed and informative these policies are. The third assesses disclosure of arrangements for board approval, review and oversight of political contributions. The scoring is based on publicly available information, and preliminary scores and explanations are shared

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<sup>49</sup> See ACCR (2022), *Australian ESG Shareholder Resolutions*, <https://www.accr.org.au/research/australian-esg-resolution-voting-history/>.

<sup>50</sup> ISS (2021), *2021 Australia and New Zealand Season Review*, pp 14-15, <https://insights.issgovernance.com/posts/2021-australia-and-new-zealand-season-review/>.

with assessed entities. In some instances, follow-up discussions are conducted with assessed companies.

Indicator scores fall into three categories: standard indicators were assigned a maximum score of 2, while key performance indicators were scored more heavily with a maximum score of 4 or 6. One indicator (11) was not scored; its results were collected for informational purposes only. Numerical scores were assigned based on the following system:

- A response of “No” to an indicator resulted in a score of zero;
- a response of “Yes” or “Not Applicable (N/A)” resulted in the maximum score; and
- a response of “Partial” resulted in half of the maximum score.

Please find best practise examples in Appendix A and further details on the methodological approach on the dedicated CPA-Zicklin Index website.<sup>51</sup>

The CPA–Zicklin Index report 2021<sup>52</sup> on political disclosure and accountability policies of U.S. companies in the S&P 500 made the following observations:

- There has been a positive trend over the years in the United States, with average scores increasing steadily.
- 64% of the companies disclosed a detailed policy governing political expenditures from corporate funds.
- 60% of the companies required some kind of board oversight over corporate political spending.
- 57% of companies disclosed full or partial information about payments to trade associations, or said they instructed trade associations not to use these payments on election-related material.
- 45% of companies either disclosed payments to not-for-profit social welfare (c)(4)s, had a policy forbidding contributions to these groups, or had a policy instructing such groups not to use contributions for political purposes (see also Appendix E on corporate political spending in the United States).

### 3.2. Australian company conduct: 75 ASX companies

A version of the CPA-Zicklin Index was customised for the Australian context and applied to 75 ASX companies. To ease comparability, the questions and scoring have been kept as close as possible to those used by the CPA–Zicklin Index 2021, and represent an update on a

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<sup>51</sup> CPA (n.d.), *CPA-Zicklin Index: A Focus on Transparency*, <https://www.politicalaccountability.net/cpa-zicklin-index/>.

<sup>52</sup> CPA & Zicklin Center for Business Ethics and Research (2021) *2021 CPA-Zicklin Index of Corporate Political Disclosure and Accountability*, pp 18, 20, 25, <https://www.politicalaccountability.net/2021-cpa-zicklin-index/>.

previous version of the index customised for Australia by ACCR in 2016.<sup>53</sup> In line with the original CPA–Zicklin Index, the Australian customised version assesses disclosure, policy, and oversight. Only publicly available information was considered for the assessment. In general, companies were assessed against 24 questions on a three-tier scale:

- A maximum score was given for full disclosure of the respective expenditure category of interest or a prohibition of such expenditure without exceptions.
- Half the maximum score was given for partial disclosure/prohibition.
- A score of zero was given for no relevant disclosure being available.

One major difference between the original index and the Australian customised version is the fact that in the latter, lobbying expenditure was considered relevant for some of the assessment questions, while the topic was not covered by the original CPA–Zicklin Index 2021. Appendix B lists the adapted indicators applied to the Australian context as well as the corresponding maximum scores. Corporate expenditure related to lobbying activities was included explicitly in indicator 19, and also needed to be addressed in indicators 7, 8, 10, 12 and 15-16 to achieve the maximum score.

Companies that clearly prohibited the relevant category of political payments (i.e., to political parties and candidates, to campaigners and associated entities, on their own account, to trade associations, etc.) received a full score as appropriate on indicators 1 to 5, and then automatically received partial scores on a number of questions (i.e., indicators 8-9, 12-16, 18, 20, 22-23), as relevant political contributions were partly addressed and precluded.

Appendix C provides further details on the assessment process as well as the list of companies covered by the assessment. For a discussion of the role of the resources and energy industry specifically in making political donations, see Appendix H.

Amongst the 75 ASX companies assessed in 2022:

- Approximately 25% of the companies had a policy which prohibited direct corporate political expenditure;
- among the companies which did not completely prohibit direct political expenditures, only six disclosed their direct political expenditures in an itemised fashion;
- no company disclosed details of its lobbying expenditures;
- no company fully disclosed payments to trade associations or said that they had instructed trade associations not to use these payments for political purposes. Only four companies partially disclosed such payments;
- no company disclosed payments to think tanks or not-for-profit groups, had a policy precluding contributions to these groups, or instructed them not to use the

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<sup>53</sup> Pender (2016), *Corporate Political Expenditure in Australia*, pp 28-30.



contributions for political purposes. Only one company partially disclosed such contributions;

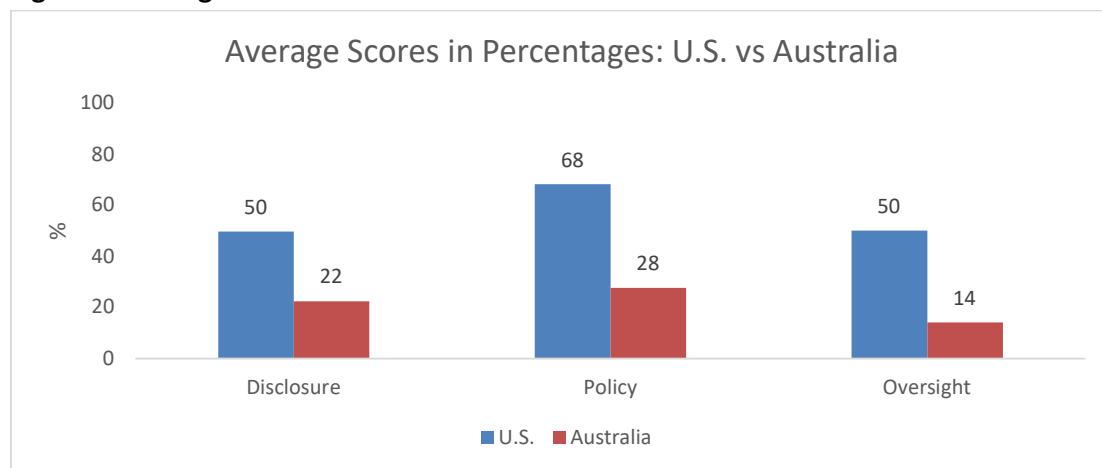
- 60% of the companies published senior management titles who have authority over some parts of the companies' political spending decisions, mostly relating to approval for attending events organised by political parties or their associates (see indicator 15); and
- 45% of the companies had corporate policies<sup>54</sup> in place that partly addressed relevant political contributions and that were subject to regular review by the board (see indicator 17).

### 3.3. Comparing company conduct in Australia and in the U.S.

In this section, the results from the original CPA–Zicklin Index as applied to U.S. companies (S&P 500) are compared to the results obtained by applying the customised version described above to 75 ASX companies.

The total average score of the U.S. companies was 54.1% on a scale from zero to 100%. The total average score for 75 ASX companies was 21.6%. Figure 1 shows the disaggregated average scores of U.S. vs Australian companies under the three broad themes of disclosure, policy and oversight.<sup>55</sup>

**Figure 1: Average scores for the U.S. vs Australia**



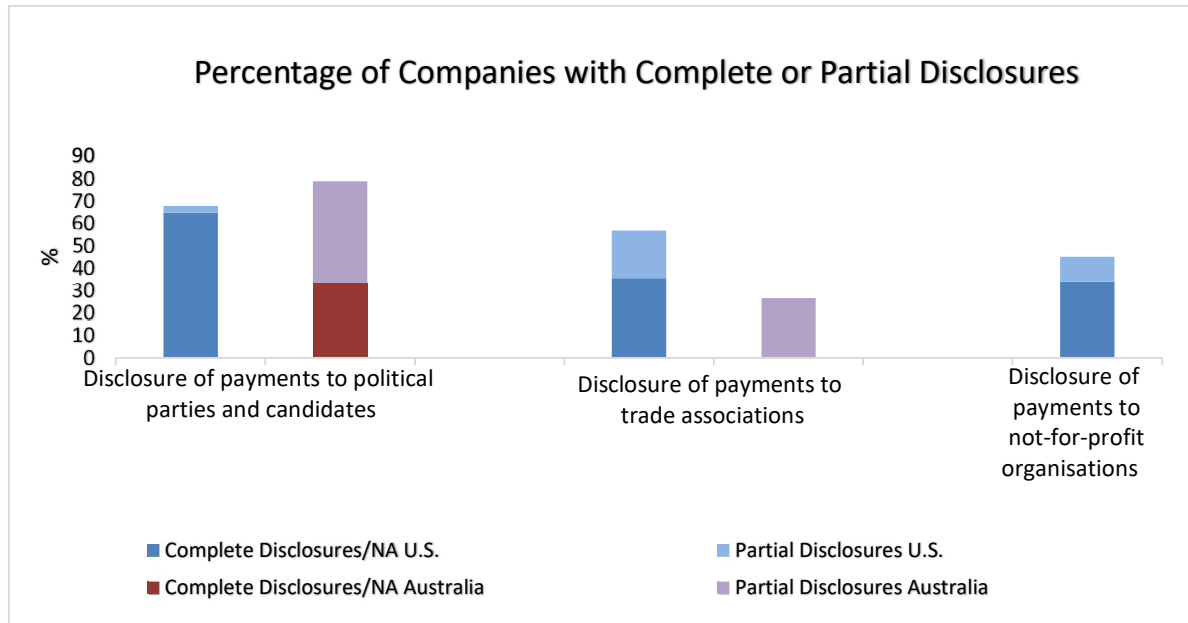
The wide differences come into focus when we look at the scores with a more granular lens. Figure 2 shows that no Australian company fully disclosed its payments to trade associations or not-for-profit groups that may be involved in political activity, while a considerable number

<sup>54</sup> Including dedicated political donations policies, anti-bribery and corruption policies, code of conduct, etc.

<sup>55</sup> Please refer to Appendix C for the individual indicators covered.

of U.S. companies did provide such disclosures. There were several Australian companies that did provide partial disclosures—represented by the light purple bar—for these metrics. The light blue bar represents partial disclosures by their U.S. counterparts.

**Figure 2: Percentage of companies with complete (including not applicable) or partial disclosures**



More than 70% of the ASX-listed companies examined were identified as partially disclosing payments to political parties and candidates. This included all those companies whose operations take place primarily in Australia.<sup>56</sup> This is because companies are required to disclose donations larger than a threshold amount made to Australian federal political parties. By extension, some disclosure requirements exist for the majority of the operations of any company that operates primarily in Australia. However, as disclosure is not mandatory for all payments—donations below the threshold amount, for example, are exempt—these companies were awarded only a partial score for this indicator.

<sup>56</sup> A company was considered to be primarily operating in Australia if the company incurred more than 2/3 of operating revenues in Australia or if 2/3 of non-current assets were located in Australia (if relevant for the business model of the respective company).

## Conclusion

This report examines scrutiny and oversight by both shareholders and the general public of corporate political expenditure in Australia. It construes political expenditure broadly to include both direct expenditures, including donations in the form of “excess” payments to attend events, and own-account political advertising, as well as indirect expenditures through third parties that can be used for political purposes. Across three countries, the U.K., the U.S., and Australia, different approaches are observed in respective laws governing corporate political expenditure. These are likely to reflect the relevance and significance that companies—as well as shareholders and the public—assign to this topic, which might in turn partly explain varying results in policies and disclosures around both political spending and related governance procedures.

Australia is found to have the most lenient legal approach. This approach means there is little systematic disclosure by companies that can be interpreted in a meaningful way, with voluntary disclosure remaining scarce. The result is that the amount and pattern of corporate political expenditure in Australia—and consequently, the impact of such expenditure on Australian politics—is difficult to quantify until disclosure is available in a systematic and comparable manner.

Without such disclosure, it is also hard to assess whether corporate political spending is or is not pertinent to shareholders’ assessment of board stewardship: the interests of company executives and board directors on the one hand, and shareholders on the other, might be potentially divergent.

Even small amounts spent for political purposes can have a significant impact on public policy. Companies need to be mindful of the risk that corporate political activities can have a disproportionate influence on public policy debates—especially when conducted by large corporations—in comparison to other interest groups endowed with less financial resources. As companies rely on a healthy public democracy for planning security and stable company operations, the prevention of undue influence on public policy, law and regulation should be in the best interest of decision-making authorities of a company as well as its shareholders. Disclosure, whether voluntary or mandatory, and defined procedures to proactively involve shareholders in decisions on whether and how to spend corporate funds, will be essential to ensure that corporate political expenditure advances long-term shareholder interest and supports democratic institutions.

## Appendix A – The CPA–Zicklin Index and best practice disclosures in the U.S.

### The Centre for Political Accountability (CPA)

The CPA is a non-profit, non-partisan U.S.-based organisation created in November 2003 to bring transparency and accountability to corporate political spending. The Centre’s aims are to encourage responsible corporate political activity, protect shareholders, and strengthen the integrity of the political process. As a result of the efforts of the CPA and its partners, a growing number of leading public companies have adopted political disclosure and oversight measures. The CPA publishes an annual index scoring S&P 500 companies on their political disclosure and accountability policies and practices. Comprehensive information on the CPA–Zicklin Index, including background information, methodological approach, and assessment results, can be found on their dedicated website.<sup>57</sup>

### The CPA–Zicklin Index 2021

The index has been developed for the U.S. context and deals with disclosure, policy, and oversight related to corporate political expenditure. It assesses disclosure of corporate contributions to political candidates, parties, and committees; 527 groups; ballot initiatives; trade associations; and 501(c)(4) “social welfare” organisations, as well as any independent political expenditures. High scores in a particular expenditure category, as listed above (e.g., corporate contributions to political candidates, parties and committees), can result from either comprehensive disclosure or a policy clearly precluding such expenditure. In the following, some best practice examples that are presented in the CPA–Zicklin Index 2021 of companies achieving the overall maximum possible score are provided for illustrative purposes.

**AT&T** is a best practice example with regard to the provision of detailed disclosure on the mentioned categories on its Political Engagement Report website. This disclosure includes descriptions and links to the company’s relevant positions and policies, as well as a readily accessible archive of past reports:<sup>58</sup>

*“Political contributions, where permitted, are an important part of the political process. This Report is intended to provide transparency regarding our corporate contributions, as well as contributions made by our employee PACs. To summarize:*

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<sup>57</sup> CPA (n.d.), *CPA-Zicklin Index: A Focus on Transparency*, <https://www.politicalaccountability.net/cpa-zicklin-index/>.

<sup>58</sup> AT&T (n.d.), *Political Contributions*, <https://about.att.com/csr/home/governance/political-engagement.html#Contributions>.

- *Our employees can participate in the political process through employee PACs. PAC disbursements support federal, state or local candidates and are disclosed in this Report.*
- *Where lawful, we make corporate political contributions to state and local candidates, political parties, PACs and ballot measure committees. Those contributions are disclosed in this Report.*
- *We do not make corporate political contributions to federal political parties or candidates for federal office.*
- *As a general practice, we do not make independent political expenditures or corporate political contributions to independent expenditure committees or to any non-candidate or non-political-party political committee organized under Section 527 of the Internal Revenue Code (e.g., Super PACs); however, if we do, we disclose them in this Report.*
- *Among other factors, contributions are generally made to candidates who support a strong private sector and show a free-enterprise philosophy.*

*In addition, our disclosures extend beyond political contributions. When a trade association or other tax-exempt organization uses our contribution(s) for lobbying activities, we disclose them as described below. (...)"*

**Accenture PLC** is an example of a company that clearly prohibits political contributions. The company's Political contributions and lobbying policy on its website<sup>59</sup> states the following about direct and indirect contributions: *"The company has a longstanding global policy against making contributions to political parties, political committees or candidates using company resources (including monetary and in-kind services), even where permitted by law."* The company further specifies that in the U.S., *"the company is prohibited from using company resources to make independent campaign expenditures, or to contribute to state or local ballot measures, non-candidate organizations (such as political convention host committees) or organizations organized under Section 527 of the U.S. Internal Revenue Code."* When it comes to payments to trade associations, the company's policy further specifies that U.S. trade associations are instructed *"not to use company funds for independent campaign expenditures or contributions to any federal, state or local candidate, ballot measure, party committee, non-candidate organization (such as political convention host committees) or organizations organized under Section 527 of the Internal Revenue Code."*

Best practice examples of disclosing, rather than prohibiting, payments to trade associations provide clear language about what information is disclosed and the provision of timely reports. **Visa Inc** is among the companies receiving the maximum score on trade association disclosure, and its policy states the following:

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<sup>59</sup> Accenture (n.d.), *Political Contributions and Lobbying Policy*, <https://www.accenture.com/us-en/about/governance/political-contributions-policy>.

*“Government Engagement also will publicly disclose a list of names of U.S. trade associations of which the Company is a member and whose annual membership dues are \$25,000 or more. If applicable, the Company will disclose the amount of dues reported by trade associations as political contributions, if any, in the Annual Contributions Report. Any such disclosure will also include the nature of the political contributions reported by trade associations.”*

When it comes to political spending policies, an articulated policy is expected to provide a means for evaluating the risks and benefits of political spending, measuring whether such spending is consistent and aligned with a company’s overall goals and values, determining a rationale for the expenditures, and judging whether the spending achieves its goals. A best practice policy for monitoring whether a company’s political activity aligns with its core values is provided by **Intel**:

*“We regularly evaluate our political spending for effectiveness and alignment as part of our contributions process. We recognize that it is impractical and unrealistic to expect that our company, stockholders, and stakeholders will agree with every issue that a politician or trade association may support, particularly given our strategy of bipartisan giving. (...) We assess recipients’ overall voting records related to our key policy issues and make funding decisions that we believe in aggregate will have the greatest benefit for our stockholders and key stakeholders. Decisions are also made based on states and districts with a significant Intel presence and leadership on committees of jurisdiction on important Intel priorities. In response to stakeholder feedback, we have further enhanced our review process by adding reviews of public statements to our existing reviews of voting records to better assess alignment with our values. When we identify some degree of misalignment, we communicate directly with contribution recipients. In cases of significant misalignment across our multiple key public policy issues, we take action to realign future funding decisions. For example, following the events at the U.S. Capitol on January 6, 2021, we decided to cease contributions to members of Congress who voted against certification of the 2020 presidential election.”<sup>60</sup>*

Oversight and accountability for political spending is the third pillar of the index. Board oversight of corporate political spending assures internal accountability to shareholders and to other stakeholders. To accomplish this, directors must be able to decide whether the company should engage in election-related spending; to decide whether to disclose such spending; and to ensure that appropriate oversight, policies, and procedures are in place.

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<sup>60</sup> Intel (2021), *2020–21 Corporate Responsibility Report*, p 25, <http://csrreportbuilder.intel.com/pdfbuilder/pdfs/CSR-2020-21-Full-Report.pdf>.

Best practice procedures regarding political spending using corporate funds as applied at **HP Inc.** are described as follows:

*“The Board’s Nominating, Governance and Social Responsibility (NGSR) Committee, comprised entirely of outside directors, has oversight for political contributions, including the use of corporate funds. HP’s Global Head of Government Relations presents a prospective annual political plan for the PAC and corporate contributions to the NGSR committee for review and reports on prior year government relations activity at this time. The political plan for the upcoming year is developed in collaboration with the Executive Director for Americas Government Relations with input from the U.S. federal and state and local team. Following HP PAC Board approval of the annual political plan, the plan is presented to the board NGSR committee. The PAC Board and outside counsel are responsible for reviewing the political contributions policy and any subsequent updates, which are also presented to the NGSR committee. (...) Corporate contributions will be made on a limited basis to state and local candidates where state laws allow. These contributions are approved by the Global Head of HP Government Relations as part of the annual political engagement plan which requires PAC Board approval and are presented to the Board’s NGSR committee.”<sup>61</sup>*

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<sup>61</sup> HP (2020), *HP Political Contributions Policy*, <https://h20195.www2.hp.com/v2/getpdf.aspx/c05517313.pdf>.

## Appendix B – Australian customised version of CPA–Zicklin Index

This section provides further details on how the scoring metric was customised for Australia, giving information on how it was disaggregated into three areas—disclosure, policy and oversight—and on both individual indicators and the maximum scores indicating the relevance of each of the indicators.

### Disclosure

The disclosure indicators 1 to 9 assessed whether companies disclose all contributions, donations, payments,<sup>62</sup> subscriptions or in-kind benefits provided to politicians, political candidates, political parties, associated entities (such as 500 clubs and unions), trade associations, lobby groups, think tanks, activist groups and other organisations.

Essential elements to this disclosure are:

1. Recipient names; and
2. amounts given.

This material should be readily accessible on the company website. In addition:

- The company should disclose political contributions and expenditure of trade associations and other organisations of which the company is a member, event-sponsor or donor;
- the company should disclose the senior manager titles and board committees who have final authority over any political spending decisions; and
- an archive of the company's political expenditure, from the time when it initiated public disclosure, should be made public.

Accounting for AEC requirements on political spending disclosure at the federal level, a differentiation has been made between companies predominantly operating in Australia and companies with major operations abroad. For the former, indicators 1-2 were awarded a partial score even in the absence of disclosures by the respective companies, because the AEC (a) requires companies to report contributions to political parties, candidates, and associated entities, and (b) political campaigners/significant third parties have to report on funds received from companies. For both cases, a disclosure threshold of AUD 14,300 applied for the financial year 2020/21.<sup>63</sup> In addition, federal electoral law in Australia required declaration of campaign expenditure to the AEC, so a partial score was awarded for indicator 3. Companies primarily active in New Zealand are awarded partial scores for indicators 3 and

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<sup>62</sup> This includes “excess” payments, where the amount paid exceeds the immediate, tangible value of the goods or services provided: for example, payments to attend fundraising events organised by associated entities of political parties.

<sup>63</sup> AEC (2022), *Disclosure Threshold*, [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](https://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm).



7, because a person with own-account expenditure for electoral matters, when used to influence the outcome of a referendum, would be required to register as a ‘registered promoter’ if they spent above the threshold of NZD 14,700.<sup>64</sup>

	Indicator	Max. score
1.	Does the company publicly disclose corporate contributions to political candidates and parties, including recipient names and amounts given?	4
2.	Does the company publicly disclose payments to politically active organisations (other than candidates and parties as in 1) and other than trade associations as in 4), for example, associated entities and political campaigners, including recipient names and amounts given?	4
3.	Does the company publicly disclose independent political expenditures made in direct support of or opposition to a campaign, including recipient names and amounts given?	4
4.	Does the company publicly disclose payments to trade associations that the recipient organisation may use for political purposes?	6
5.	Does the company publicly disclose payments to other not-for-profit organisations, such as think tanks, that the recipient may use for political purposes?	6
6.	Does the company itself publicly disclose a list of the amounts and recipients of payments made by trade associations or other not-for-profit organisations of which the company is either a member or donor?	2
7.	Does the company publicly disclose payments made to influence the outcome of politically controversial issues, ballot measures, referendums, or plebiscites, including recipient names and amounts given?	4
8.	Does the company publicly disclose the company’s senior managers (by position/title of the individuals involved) who have final authority over the company’s political spending decisions?	2
9.	Does the company publicly disclose an archive of each political expenditure report, including all direct and/or indirect contributions, for each year since the company began disclosing the information (or at least for the past five years)?	4

**Maximum possible disclosure score**

**36**

<sup>64</sup> See *Electoral Act 1993* (NZ), section 204B(1)(d), [https://www.austlii.edu.au/nz/legis/consol\\_act/ea1993103.pdf](https://www.austlii.edu.au/nz/legis/consol_act/ea1993103.pdf). The NZ Election Commission publishes a list of registered promoters and a list of each promoter’s spending if they spent over NZD 100,000. Spending on elections and referenda are subject separately to these limits. See Electoral Commission (NZ) (2020), *2020 General Election & Referendums*, <https://elections.nz/democracy-in-nz/historical-events/2020-general-election-and-referendums/registered-promoter-expenses-for-the-2020-general-election/>.

## Policy

The indicators 10 to 16<sup>65</sup> assess whether companies disclose a detailed policy governing all their political contributions from corporate funds. A detailed policy explains who makes decisions, based on which public policy priorities; to which entities the company may or may not give; and if there is board oversight.

In addition, such a policy should:

- State that political contributions will be made without regard to the private political preferences of directors and executives; and
- describe arrangements for management and board oversight.

10.	Does the company disclose a detailed policy governing its political expenditures from corporate funds and subsidiaries over which it has operational control?	6
11.	Does the company have a publicly available policy permitting political contributions only through voluntary employee-funded contributions?	Not scored
12.	Does the company have a publicly available policy stating that all of its contributions will promote the interests of the company and will be made without regard for the private political preferences of directors and executives?	2
13.	Does the company publicly describe the types of entities considered to be proper recipients of the company's political spending?	2
14.	Does the company publicly describe its public policy positions that become the basis for its spending decisions with corporate funds?	2
15.	Does the company have a publicly available policy requiring senior managers to oversee and have final authority over all of the company's political spending?	2
16.	Does the company have a publicly available policy that the board of directors regularly oversees the company's corporate political activity?	2

**Maximum possible Policy score      16**

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<sup>65</sup> Note that indicator 11, which relates to the operation of PACs in the U.S., has not been scored in Australia.

## Oversight

The indicators 17 to 24 assess the disclosure of arrangements for board committee approval, review and oversight of political contributions.

In addition, the company should:

- Post on its website, semi-annually, a detailed report on its political spending; and
- disclose an internal process or an affirmative statement on ensuring compliance with its political spending policy.

17.	Does the company have a specified board committee that reviews the company's policy on political expenditures?	2
18.	Does the company have a specified board committee that reviews the company's direct political expenditures made with corporate funds?	2
19.	Does the company have a specified board committee that reviews the company's indirect political expenditures made with corporate funds: for example, lobbying activity and payments to trade associations and other not-for-profit organisations that may be used for political purposes?	2
20.	Does the company have a specified board committee that approves political expenditures from corporate funds?	2
21.	Does the company have a specified board committee, composed entirely of independent non-executive directors, that oversees its political activity?	2
22.	Does the company post on its website a detailed report of its political spending with corporate funds semi-annually?	4
23.	Does the company make available a dedicated political disclosure web page found through a search or accessible within three mouse-clicks from homepage?	2
24.	Does the company disclose an internal process for or an affirmative statement on ensuring compliance with its political spending policy?	2

**Maximum possible Oversight score** **18**

**Total possible raw score** **70**

## Appendix C – Scoring results for 75 ASX companies

In total, 75 ASX companies were scored using this metric. The 75 companies constitute the ASX50<sup>66</sup> (excluding Vanguard Australian Shares Index ETF and Magellan Global Fund, which are listed funds rather than corporations) plus 27 additional companies outside the ASX 50 (all companies listed below). The additional 27 companies were chosen on the basis of trade association membership, economic significance and/or a history of making political donations. The assessments were conducted based on publicly available corporate reporting<sup>67</sup> between May and August 2022 and were finalised on 31 August 2022.<sup>68</sup> All 75 companies were approached for comment on their scoring. Six companies actively provided feedback. Internal policies on political contributions were not considered for this assessment. Details of the 24 questions in the metric are set out in Appendix B.

Overall results for the 75 ASX companies scored are set out in the table below (in alphabetical order):

#	IssuerName	Ticker	2022 Scores in Percentages
1	Afterpay Limited	APT	5.7%
2	AGL Energy Limited	AGL	44.3%
3	Amcor Plc	AMCR	11.4%
4	AMP Ltd.	AMP	21.4%
5	Ampol Limited	ALD	15.7%
6	APA Group	APA	27.1%
7	Aristocrat Leisure Limited	ALL	34.3%
8	ASX Limited	ASX	25.7%
9	Auckland International Airport Limited	AIA	18.6%
10	Aurizon Holdings Ltd.	AZJ	21.4%
11	Australia and New Zealand Banking Group Limited	ANZ	28.6%
12	Bendigo and Adelaide Bank Limited	BEN	12.9%
13	BHP Group Limited	BHP	38.6%
14	Bluescope Steel Limited	BSL	10.0%
15	Brambles Limited	BXB	35.7%
16	Challenger Limited	CGF	38.6%
17	Cochlear Limited	COH	5.7%
18	Coles Group Ltd.	COL	14.3%
19	Commonwealth Bank Of Australia	CBA	12.9%

<sup>66</sup> As of 28 April 2022.

<sup>67</sup> Typically, this included annual reports, sustainability reports, corporate governance statements, corporate policies (e.g., political contributions policies, code of conduct, anti-bribery and corruption policies), and disclosures on the company webpage.

<sup>68</sup> Changes after that date are not accounted for.

20	Computershare Limited	CPU	34.3%
21	Crown Resorts Limited	CWN	14.3%
22	CSL Limited	CSL	8.6%
23	Dexus	DXS	38.6%
24	Downer EDI Limited	DOW	17.1%
25	Endeavour Group Ltd. (Australia)	EDV	15.7%
26	Fisher & Paykel Healthcare Corporation Limited	FPH	32.9%
27	Fortescue Metals Group Ltd.	FMG	24.3%
28	Helia Group (formerly Genworth Mortgage Australia)	HLI	21.4%
29	Goodman Group	GMG	7.1%
30	Harvey Norman Holdings Ltd.	HVN	40.0%
31	IGO Ltd.	IGO	25.7%
32	Incitec Pivot Limited	IPL	34.3%
33	Insurance Australia Group Ltd.	IAG	17.1%
34	James Hardie Industries plc	JHX	1.4%
35	JB Hi-Fi Limited	JBH	18.6%
36	Lendlease Group	LLC	7.1%
37	Macquarie Group Limited	MQG	17.1%
38	Metcash Limited	MTS	8.6%
39	Mineral Resources Limited	MIN	22.9%
40	Mirvac Group	MGR	38.6%
41	National Australia Bank Limited	NAB	38.6%
42	Newcrest Mining Ltd.	NCM	38.6%
43	Nine Entertainment Co Holdings Limited	NEC	8.6%
44	Northern Star Resources Ltd.	NST	8.6%
45	Orica Ltd.	ORI	31.4%
46	Origin Energy Limited	ORG	32.9%
47	Orora Ltd.	ORA	4.3%
48	OZ Minerals Limited	OZL	21.4%
49	Qantas Airways Limited	QAN	35.7%
50	QBE Insurance Group Limited	QBE	4.3%
51	Ramsay Health Care Limited	RHC	11.4%
52	REA Group Ltd	REA	8.6%
53	Reece Limited	REH	4.3%
54	ResMed Inc.	RMD	18.6%
55	Rio Tinto Limited	RIO	42.9%
56	Santos Limited	STO	14.3%
57	Scentre Group	SCG	27.1%
58	Seek Limited	SEK	15.7%
59	Sonic Healthcare Limited	SHL	4.3%
60	South32 Ltd.	S32	11.4%
61	Stockland	SGP	38.6%

<b>62</b>	Suncorp Group Limited	SUN	18.6%
<b>63</b>	Tabcorp Holdings Limited	TAH	32.9%
<b>64</b>	Telstra Corporation Limited	TLS	17.1%
<b>65</b>	The Star Entertainment Group Limited	SGR	25.7%
<b>66</b>	TPG Telecom Ltd.	TPG	37.1%
<b>67</b>	Transurban Group Ltd.	TCL	15.7%
<b>68</b>	Vicinity Centres	VCX	42.9%
<b>69</b>	Washington H. Soul Pattinson and Company Limited	SOL	8.6%
<b>70</b>	Wesfarmers Limited	WES	25.7%
<b>71</b>	Westpac Banking Corp.	WBC	15.7%
<b>72</b>	Wisetech Global Ltd.	WTC	7.1%
<b>73</b>	Woodside Petroleum Ltd.	WPL	32.9%
<b>74</b>	Woolworths Group Limited	WOW	11.4%
<b>75</b>	Xero Limited	XRO	34.3%

## Appendix D – Getting to the bottom of corporate political expenditure

Corporate political expenditure is a broad field. As an interested citizen or shareholder who wants to understand how and where companies direct their political spending, one must be careful not to jump to conclusions. To best understand how money flows from corporations to political causes, there are two options: 1) to be certain that no corporate political expenditure has been made, or 2) to be certain that all corporate political expenditure is being made available in a transparent, sufficiently detailed, and easy-to-understand manner.

Currently in Australia, political expenditure can be divided into two main categories: *direct* and *indirect*. Either form of expenditure can involve the provision of in-kind benefits.

*Direct political expenditure* can be subdivided further. Firstly, it relates to donations and other payments for the benefit of politicians, candidates, parties, their associates or party/campaign support organisations. Secondly, it refers to so-called own-account expenditure, which is spent with the intent to influence public opinion, although it might be non-partisan and not related to specific politicians or candidates.

*Indirect political expenditure*, on the other hand, refers to expenditure that passes through a third party, such as trade associations, lobbyists, think tanks and activist groups (whether legitimate grassroots-based groups or astroturf groups) that is spent, or could be spent, for political purposes.

A very rough rule of thumb for Australia (based on U.S. experience prior to *Citizens United*) is that the ratio of indirect to direct expenditure is likely to be an order of magnitude; that is, the amount of indirect expenditure is likely to be 10 times larger than the amount of direct expenditure. At the federal level in the U.S. during the 2010 election cycle, corporate lobbying expenditure exceeded campaign expenditure by 14 times.

In the following paragraphs, only political expenditure at the federal level is discussed. As noted above, there are significant differences in regulation at the state level, as well as differing rules across states in terms of thresholds used for mandatory disclosure, the introduction of donation caps, and prohibiting certain industry representatives from making political donations altogether.

### Direct political expenditure

At the federal level, the first type of direct political expenditure, if incurred by a company, must be disclosed to the Australian Electoral Commission (AEC) in an Annual Donor Filing.

Own-account expenditure at the federal level, i.e., federal-level campaign expenditure, must also be disclosed.<sup>69</sup>

One could think, therefore, that an interested citizen or shareholder should be able to track a company's federal political expenditure on the AEC website easily. However, an attempt to do so will face several challenges. First of all, the AEC website is not easy to navigate. If a user manages to find the Annual Donor Returns in the Transparency Register, that user can filter for the corporate donor of interest and investigate a company's Annual Donor Returns. Disclosure is usually—but not always—consolidated at group level, so a user might need to research subsidiaries of the group company of interest to be certain of considering all entities relevant to the desired analysis.

The oil and gas company **Santos** serves as an example. According to company policy, as detailed in its Code of Conduct, Santos “[does] not make any cash donation to a political party on behalf of Santos or provide any facilitation payments or benefits that could be construed as a bribe to a government body.” At first glance, this policy seems to exclude political donations. However, its prohibition explicitly only covers cash donations to political parties, hence leaving open the possibility of providing in-kind donations to parties, as well as both cash and in-kind donations to candidates or politicians in general.

In Santos' most recent Annual Donor Returns, filed for 2020-21<sup>70</sup>, there are two entries under Details of Donations Made to Political Parties: AUD 44,000 to the Australian Labor Party (ALP) and AUD 22,000 to the National Party of Australia. If cash donations to political parties are prohibited by corporate policies, a question arises of what these amounts constitute. One answer is that they could be in-kind donations, as these are not prohibited by company policy, or, potentially, “excess” payments for access to events that fall under own-account or campaign-related expenditure. Such payments must be disclosed to the AEC, but are apparently not precluded by the company's prohibition on “cash donation to political parties.”

Other companies are clearer in their communications on political spending. For example, **Qantas'** Code of Conduct specifies that “*Political donations (either in cash or in-kind) must not be made (including to any government official, political party, political party official, election committee or political candidate) directly or indirectly on behalf of the Qantas Group. (...) Employees may attend political party conferences and political functions in their capacity as an Employee only with the approval of a relevant Group Management Committee member (or the Board Chair if a Director) for commercial reasons and where the price charged is not in*

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<sup>69</sup> In some states, state-level campaign-related expenditure must be disclosed. For an example of state disclosure in this context, see:

[https://www.elections.wa.gov.au/sites/default/files/political\\_funding/SGE17%20-%20FD8%20-%20ChamberMineralsEnergy.pdf](https://www.elections.wa.gov.au/sites/default/files/political_funding/SGE17%20-%20FD8%20-%20ChamberMineralsEnergy.pdf).

<sup>70</sup> AEC (2021), *Santos Disclosure Return 2020–21*,

<https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BDGAW0>.



*excess of the commercial value of the conference or function.*” Both cash and in-kind donations to parties and candidates are prohibited, and the company also specifies that no excess payments are allowed for attending functions. In line with its policy, Qantas files no Donor Returns with the AEC.

Instead of prohibiting corporate political contributions, some companies choose to disclose the political contributions they make. However, federal disclosure laws are limited in scope. Most significantly, mandatory disclosure is only required for contributions to federal parties, their state branches and candidates, and certain third parties—and only for individual contributions above a threshold amount (AUD 14,300 in 2020/21).<sup>71</sup> It is thus possible for a company to make donations in several instalments, each below the threshold, without triggering disclosure obligations.

Some companies disclose payments below the threshold: **Macquarie Group**, for instance, specifies that it *“declares all monies paid to political parties to the Australian Electoral Commission (AEC) regardless of any thresholds or other provisions that may otherwise limit the need to disclose”*<sup>72</sup> to rule out the possibility of such payments going undisclosed.

### Indirect political expenditure

Payments falling under indirect political expenditure are even harder to disaggregate and track. Corporate payments made to third parties are not subject to mandatory disclosure to the AEC, even though such third-party organisations can play a significant role in forming public opinion on political matters.

Some companies, such as **Harvey Norman**,<sup>73</sup> have policies prohibiting indirect donations or indirect contributions to political parties or candidates. Other companies, such as **Helia Group** (formerly **Genworth Mortgage Australia**),<sup>74</sup> state publicly that they make no indirect contributions. However, it remains unclear what exactly is covered by such policies or disclosures. Helia Group, for example, discloses its membership with several industry bodies in its sustainability report, but does not refer to membership fees or other payments made to such bodies.<sup>75</sup> It would be beneficial to have full disclosure on any fees paid and for the list of memberships with industry bodies to be exhaustive.

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<sup>71</sup> AEC (2022), *Disclosure Threshold*, [https://www.aec.gov.au/parties\\_and\\_representatives/public\\_funding/threshold.htm](https://www.aec.gov.au/parties_and_representatives/public_funding/threshold.htm).

<sup>72</sup> Macquarie Group (n.d.), *Political Contributions and Engagement*, p 2, <https://www.macquarie.com/assets/macq/impact/esg/policies/political-contributions-and-engagement.pdf>.

<sup>73</sup> Harvey Norman (2021), *Anti-bribery and Corruption Policy*, p 3, [https://cdn.shopify.com/s/files/1/0629/4326/5020/files/HNHL\\_Anti-Bribery\\_and\\_Corruption\\_Policy\\_Version\\_3.0\\_April\\_Final\\_for\\_Publication\\_2021\\_a165d996-d583-49a3-8d1d-024ed9e70b48.pdf?v=1652834967](https://cdn.shopify.com/s/files/1/0629/4326/5020/files/HNHL_Anti-Bribery_and_Corruption_Policy_Version_3.0_April_Final_for_Publication_2021_a165d996-d583-49a3-8d1d-024ed9e70b48.pdf?v=1652834967).

<sup>74</sup> Genworth (2021), *Sustainability Report 2021*, p 20, <https://www.genworth.com.au/media/jwbfy0ke/2021-sustainability-report.pdf>.

<sup>75</sup> Genworth (2021), *Sustainability Report 2021*, p 21.

In the absence of disclosure obligations applicable to companies making indirect political contributions, there is little voluntary disclosure on such payments. Only a few companies, including **AGL Energy**, **BHP**, and **Australia and New Zealand Bank (ANZ)**, make voluntary disclosures of details on trade association dues. No voluntary disclosure for other indirect political expenditure, such as payments to third parties other than trade associations, could be found when assessing the 75 ASX-listed companies. Not all corporate payments to trade associations and other third parties necessarily constitute political expenditure. However, if the use of corporate funds is not restricted, such funds can be used for political purposes.

While there are no disclosure obligations on the companies making payments to trade associations, some trade associations—as well as some other organisations that might receive corporate money—are subject to Australian disclosure laws as “significant third parties” (formerly “political campaigners”).<sup>76</sup> **GetUp!** and **Advance Australia** are not directly associated with an established political party or candidate, but are active in issue-related campaigning, and hence fall under the rubric of “significant third parties.” The same holds for trade associations such as the **Business Council of Australia (BCA)**, the **Minerals Council of Australia (MCA)**, and the **Australian Petroleum Production & Exploration Association (APPEA)**, along with many others. Some trade associations, such as the Minerals Council of Australia<sup>77</sup> and APPEA<sup>78</sup>, also make direct donations to political parties.

The disclosure requirements used by the AEC pursuant to federal electoral law do not draw a clear line between corporate money received by politically active associations— such as “associated entities” or “significant third parties”—and spent for political purposes, and payments received with no political dimension (e.g., those payments that companies report to the AEC under the category “Other Receipt”).<sup>79</sup> Therefore, the public information available, especially on indirect political expenditure, is often inadequate for a citizen or a shareholder to assess the extent to which a company’s money is being used for political activity.

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<sup>76</sup> AEC (2022), *Significant Third Parties*, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/significant-third-parties.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/significant-third-parties.htm).

<sup>77</sup> AEC (2021), *Minerals Council of Australia Disclosure Return*, <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BDGGEO>.

<sup>78</sup> AEC (2021), *APPEA Disclosure Return*, <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BDJBQ1>.

<sup>79</sup> See e.g., Associated Entity Disclosure Return for 2020-21 by the Australian Rail Tram & Bus Industry Union, Queensland Branch, which includes payments received as “Other Receipt” from the railway operator Aurizon: AEC (2021), *Australian Rail Tram & Bus Industry Union Associated Entity Disclosure Return*, <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BCVAF1>. Most likely this is employee union dues.

## Appendix E – Corporate political spending and its potential impacts on democracy in the U.S.

This case study examines the impact of unaccountable political spending on democracy, focusing on corporate political expenditures and their potential consequences. The Center for Political Accountability (CPA) published a report in April 2022, titled *Practical Stake – Corporations, Political Spending & Democracy*,<sup>80</sup> which investigates the flow of money from corporations to influential political decision-makers in democratic institutions in the United States. The report argues that unaccountable political spending poses a significant risk to democracy, ultimately affecting the companies operating within such an environment.

The 2010 *Citizens United* decision by the U.S. Supreme Court allowed unlimited corporate funds to be spent on campaign advertising by independent groups, such as Super PACs and non-profit groups,<sup>81</sup> to influence election outcomes, so long as they are not formally coordinated with a political party or candidate. As a result, independent political expenditures have soared,<sup>82</sup> with outside spending reaching US\$1.4 billion in the 2016 election cycle.<sup>83</sup> This development has raised concerns about how corporations utilize this channel to exert political influence.

While many companies publicly proclaim their commitment to democratic institutions, the CPA report highlights instances where a company's political spending contradicts its public commitments. Some companies support political outcomes that may be detrimental to their business interests or shareholders, or they provide support to organisations or campaigns that undermine democratic institutions and values. For instance, the report points to the alleged involvement of listed U.S. corporations in funding groups associated with the storming of the U.S. Capitol on January 6, 2021.

Research conducted by the CPA reveals that public companies and trade associations spent US\$17 million on the Republican Attorneys General Association (RAGA) during the 2020 election cycle.<sup>84</sup> RAGA is a 527 organization<sup>85</sup> allowed to receive unlimited contributions and spend unlimited amounts. The Rule of Law Defense Fund (RLDF), a branch of RAGA, is a 501(c)(4) organization<sup>86</sup> not required to disclose its donors, categorizing it as a dark money

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<sup>80</sup> Center for Political Accountability (2022), *Practical Stake – Corporations, Political Spending & Democracy*, <https://www.politicalaccountability.net/wp-content/uploads/2022/04/Practical-Stake.pdf>.

<sup>81</sup> <https://www.opensecrets.org/outsidespending/rules.php>.

<sup>82</sup> Evers-Hillstrom (2020), *More Money, Less Transparency: A Decade under Citizens United*, <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>.

<sup>83</sup> Lincoln (2020), *Ten Years After Citizens United*, <https://www.citizen.org/article/ten-years-after-citizens-united/>.

<sup>84</sup> Center for Political Accountability (2022), *Practical Stake*, p 19.

<sup>85</sup> <https://www.opensecrets.org/527s/basics.php>.

<sup>86</sup> <https://s3.documentcloud.org/documents/21164104/rule-of-law-defense-fund-2020-990.pdf>.

group. The RLDF's alleged involvement in the Capitol protest raises questions about its compliance with its stated mission.

While some voices argue that corporate political spending is generally detrimental to business due to associated risks and distractions from core operations,<sup>87</sup> numerous U.S. companies continue to engage in political spending. Therefore, companies must address the potential risks of such involvement.

The *CPA-Zicklin Model Code of Conduct for Corporate Political Spending*<sup>88</sup> offers a framework for U.S. companies to evaluate the objectives and risks of their political spending. The code provides guidance on governing political participation, not only to mitigate risks but also to demonstrate a company's commitment to responsible citizenship and accountable participation in the democratic process. By adhering to such standards, corporations can better navigate their role in political activities while upholding democratic values and integrity.

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<sup>87</sup> Strine & Lund (2022), *Corporate Political Spending Is Bad Business: How to Minimize the Risks and Focus on What Counts*, <https://corpgov.law.harvard.edu/2022/01/11/corporate-political-spending-is-bad-business-how-to-minimize-the-risks-and-focus-on-what-counts/>.

<sup>88</sup> CPA & Zicklin Center for Business Ethics Research (2020), *CPA-Zicklin Model Code of Conduct for Corporate Political Spending*, <https://www.politicalaccountability.net/wp-content/uploads/2022/06/CPA-Zicklin-Model-Code-of-Conduct-for-Corporate-Political-Spending.pdf>.

## Appendix F – Aligning corporate political activities with corporate values

As an increasing number of Australian companies commit to achieving net-zero emissions,<sup>89</sup> there is heightened public scrutiny of their performance in meeting their stated goals. Yet some companies and peak industry associations have taken positions supporting fossil fuels and opposing climate regulations.<sup>90</sup> Due to companies being able to engage in political expenditure and lobbying both directly and through industry associations, companies may have varying representation in political discussions.

Reports and analyses have shed light on the inconsistent climate-related engagement of certain industry associations. For instance, the U.S. Chamber of Commerce, despite presenting itself as an active player in combating climate change,<sup>91</sup> is said to have a history of obstructing climate action through its lobbying activities, with executives of energy companies variously funding, participating in, and sitting on the boards of directors of groups opposed to climate action.<sup>92</sup> Similarly, the Minerals Council of Australia's engagement on climate policy is deemed inconsistent with scientific advice from the Intergovernmental Panel on Climate Change (IPCC), even though it claims an ambition to achieve net-zero emissions.<sup>93</sup> In addition, an analysis by InfluenceMap revealed that in Australia the fossil fuel sector is highly engaged in climate lobbying, while “growing support by companies for net zero emissions targets for 2050 had not been backed by steps to push for the policies needed to meet the goals of the Paris agreement.”<sup>94</sup> Hence, there seems to be a gap between engagement levels of pro- and anti-climate representatives, adding yet another level of complexity to this issue.

Carefully managing corporate political engagement is essential to avoid inconsistencies between a company's commitments and its actions. To address potential inconsistencies, companies should transparently disclose industry memberships and establish processes to regularly review such memberships and the respective lobbying activities, so that investors can assess claimed company policies against their actions taken, both directly and indirectly.

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<sup>89</sup> Patten (2021), *ASX200 Companies Committed to Net Zero Targets Treble in a Year*, <https://www.afr.com/policy/energy-and-climate/asx200-companies-committed-to-net-zero-targets-treble-in-a-year-20210820-p58kkp>.

<sup>90</sup> InfluenceMap (2020), *Australian Industry Associations and Their Carbon Policy Footprint*, <https://influencemap.org/report/Australian-Industry-Groups-And-their-Carbon-Policy-Footprint-c0f1578c92f9c6782614da1b5a5ce94f>.

<sup>91</sup> <https://www.uschamber.com/climate-change/the-chambers-climate-position-inaction-is-not-an-option>.

<sup>92</sup> Triedman (2021), *Chamber of Obstruction: The U.S. Chamber of Commerce's Shifting Discourses on Climate Change, 1989-2009*, <http://www.climatedevlab.brown.edu/home/new-cdl-reports-chamber-of-obstruction>.

<sup>93</sup> <https://data.influencemap.org/influencer/Minerals-Council-of-Australia-MCA>.

<sup>94</sup> Kurlmelovs (2021), *Australia's Pro-climate Companies Urged to Lobby Government More*, <https://www.theguardian.com/australia-news/2021/sep/09/australias-pro-climate-companies-urged-to-lobby-government-more>.

This step will aid in managing the risks associated with potential gaps between public positions and actions taken.

Board oversight plays a crucial role in ensuring consistency between corporate policies and their implementation. Currently, limited information is available about Australian board oversight of political engagement, creating an opportunity for improved disclosure by companies and increased analysis by investors. Additionally, clear procedures to proactively involve shareholders in decisions regarding both corporate political expenditure and lobbying activities will be essential in advancing long-term shareholder interests.

## Appendix G – Investigating corporate political involvement through industry associations

Understanding corporate ties to industry associations and their influence on political outcomes is challenging in Australia due to a lack of systematic and consistent disclosure. While direct political donations are not tax-deductible, own-account expenditure and subscriptions to trade associations are. This situation potentially creates an incentive for companies to engage in political activities involving the latter expenditure. Although industry associations' impact on political outcomes are undisputed in Australia, boards are not obliged to disclose to shareholders the industry associations the company is affiliated with. Further, publicly available information on trade association memberships and financial contributions is limited, making it difficult to comprehend the extent of companies' involvement and the purposes of their funding.

The challenge lies in capturing trade association memberships of companies based on publicly available information. Taking a closer look at the companies **South32** and **Rio Tinto**, and their ties to trade associations such as the Business Council of Australia (BCA) and the Minerals Council of Australia (MCA), may provide some insights into potential challenges.

Payments to industry associations may be subject to Australian Electoral Commission (AEC) reporting requirements, if the receiving party is considered a “significant third party”<sup>95</sup> (previously a “political campaigner”). The BCA and the MCA are two associations that fall under this scope and are listed as significant third parties. In 2020-21, the BCA received more than AU\$14 million,<sup>96</sup> while the MCA received more than AU\$22 million for the same reporting period.<sup>97</sup> According to the AEC Significant Third Party disclosure, **South32** and **Rio Tinto** provided funds to both the BCA and the MCA in 2021 and in the past. However, no AEC Donor Return filings appear when searching the AEC Transparency Register for the two companies.<sup>98</sup> Comparing disclosed expenditure by the BCA and MCA to the AEC presents a mixed picture. In 2018-19, before the May 2019 federal election (the last election for which electoral expenditure for both organisations is available), the BCA reported AU\$245,564 in electoral expenditure,<sup>99</sup> while the MCA reported AU\$0.<sup>100</sup> While no electoral expenditure was reported by the MCA, it made direct donations to political parties, amounting to AU\$146,730,

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<sup>95</sup> [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/significant-third-parties.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/significant-third-parties.htm).

<sup>96</sup> <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BCVHC6>, p 3.

<sup>97</sup> <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=80-BCVFF9>, p 3.

<sup>98</sup> <https://transparency.aec.gov.au/AnnualDonor>.

<sup>99</sup> <https://transparency.aec.gov.au/AnnualSignificantThirdParty/ReturnDetail?returnId=64500>.

<sup>100</sup> <https://transparency.azure.aec.gov.au/Download/ReturnImageByMoniker?moniker=76-BAIIIG1>, p 4.

before the 2019 federal election.<sup>101</sup> Disclosed amounts received exceed disclosed amounts spent by far, which leaves a high level of uncertainty about the use of funds received.

When screening corporate disclosures on their company websites, **Rio Tinto** provides a document on industry association disclosures, listing its top five industry association memberships, by fees.<sup>102</sup> While the MCA is listed as the association with the highest annual fee paid, amounting to AU\$1,965,000, the BCA does not appear among the top five. The five membership fees disclosed by **Rio Tinto** give an indication of the volume of such payments, amounting to about AU\$5.5 million. A reference to Rio Tinto's membership with the BCA appears in an appendix of the document, listing industry associations that take positions on climate change and energy.<sup>103</sup> **South32** discloses both memberships on its website, though fees paid are provided only in ranges.<sup>104</sup> For both company examples, it is suggested that the lists provided are not exhaustive and it remains unclear what the underlying criteria for membership disclosures are.

Both companies publicly state that they rule out making "any type of payments to political parties or political candidates" (Rio Tinto),<sup>105</sup> or making "political donations in cash or in-kind to any political party, politician, political party official, elected official or candidate for public office in any country" (South32).<sup>106</sup> With the MCA making direct donations to political parties, it is hard to argue that corporate funds to the MCA do not fall under the scope of political donations, albeit indirectly. However, such indirect contributions do not seem to be covered by company statements, nor are they subject to mandatory AEC disclosure obligations for companies.

The lack of transparency regarding corporate involvement in industry associations poses challenges in understanding the influence companies exert via these associations. To address this issue, a comprehensive and transparent disclosure framework should be established to enable stakeholders, especially shareholders, to assess the alignment of corporate political activities with stated corporate values and commitments. Improved disclosure practices and clear reporting criteria could enhance accountability and transparency in corporate political engagement, contributing to a more informed and accountable political donations landscape in Australia.

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<sup>101</sup> <https://transparency.aec.gov.au/Download/ReturnImageByMoniker?moniker=76-BARJC3>, p 10.

<sup>102</sup> <https://cdn-rio.dataweavers.io/-/media/content/documents/sustainability/ethics-and-integrity/iad/rt-industry-association-disclosure-2022.pdf?rev=c9f8e891546e4480b80f9fd8d1b0862f>, p 4.

<sup>103</sup> <https://cdn-rio.dataweavers.io/-/media/content/documents/sustainability/ethics-and-integrity/iad/rt-industry-association-disclosure-2022.pdf?rev=c9f8e891546e4480b80f9fd8d1b0862f>, p 6.

<sup>104</sup> <https://www.south32.net/about-us/corporate-governance/industry-associations>.

<sup>105</sup> <https://cdn-rio.dataweavers.io/-/media/content/documents/sustainability/corporate-policies/rt-the-way-we-work.pdf?rev=49b13c62cf934ca6a4702a81d3b3347b>, p 20.

<sup>106</sup> [https://www.south32.net/docs/default-source/general-library/corporate-governance/2019/south32-code-speak-up-policy-english.pdf?sfvrsn=c4ed4d1d\\_3](https://www.south32.net/docs/default-source/general-library/corporate-governance/2019/south32-code-speak-up-policy-english.pdf?sfvrsn=c4ed4d1d_3), p 11.



## Appendix H – Spotlight on the Australian resources and energy industry

The mining sector remains a major contributor to Australia’s economy, accounting for around 14% of GDP in 2022, with resources and energy exports earnings forecasted to go up to AU\$459 billion in 2022-23.<sup>107</sup> While the importance of such resources and energy companies to the Australian economy are undisputed, those companies are also heavily dependent on access to land to conduct their operations, which is controlled by federal and local governments.

According to an analysis by the Centre for Public Integrity of donor-reported data to the Australian Electoral Commission (AEC) for the period 1999-2019, the resources and energy industry was identified as the largest single industry contributor to political donations and disclosable payments.<sup>108</sup> Companies from the resources and energy industry were found to exert influence both on the individual company level and through industry associations.

Examining the record of stakeholder meetings and teleconferences concerning the Carbon Tax Repeal Bill, a strong correlation is observed between companies donating considerable amounts of money and their opportunities to participate in discussions on the bill.<sup>109</sup> **Rio Tinto** for instance joined on six occasions, while **Glencore** and **Santos** joined on two. These companies were also represented through trade associations such as the Business Council of Australia and the Minerals Council of Australia, as well as other groups, on several additional occasions. In contrast, NGOs participated on only one occasion.

The Centre for Public Integrity highlights that such “enormous amounts donated by a sector whose existence depends on the issuing of government permits is highly problematic for public trust in the democratic process.”<sup>110</sup> While past corruption scandals have seen property developers banned from making political donations in New South Wales, the Australian Capital Territory, and Queensland,<sup>111</sup> no such bans exist for resources and energy companies, either at federal or state levels, despite the comparable nature of their businesses.

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<sup>107</sup> Australian Government – Department of Industry, Science and Resources – Office of the Chief Economist (2022), *Resources and Energy Quarterly December 2022*, <https://www.industry.gov.au/sites/default/files/2022-12/resources-and-energy-quarterly-december-2022.pdf>, p 6-7.

<sup>108</sup> The Centre for Public Integrity (2021), *Industry Political Donations and Disclosable Payments – Case Study: The Resources and Energy Industry*, <https://publicintegrity.org.au/wp-content/uploads/2021/01/Industry-briefs-resource-and-energy-companies-FINAL-UPDATED.pdf>, p 1.

<sup>109</sup> *Ibid.*, p 15.

<sup>110</sup> *Ibid.*, p 2.

<sup>111</sup> [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp\\_2122/Quick\\_Guides/ElectionFundingStates](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp_2122/Quick_Guides/ElectionFundingStates).

The significant political donations made by the resources and energy industry raise concerns about the democratic process's integrity and public trust. Enhanced disclosure, whether voluntary or mandatory, on lobbying efforts by companies and industry associations for political purposes is necessary to promote transparency in legislative consultation and decision-making processes. This increased transparency will empower shareholders to make informed judgments and address the risk of uneven consideration of stakeholders in the policymaking process.

## Appendix I – Different states and territories, different requirements in Australia

In Australia, legal requirements around political contributions differ quite significantly between the federal level and state level. Approaches taken among Australian states and territories in how to address governance around political contributions also vary. The dimensions addressed by various requirements range from applying different thresholds for triggering mandatory disclosure obligations, introducing donation caps, and specifying requirements on timeliness to prohibiting certain industry representatives from making political donations.

New South Wales has the highest number of industries classified as “prohibited donors,” as the state bans political donations from property developers and the tobacco, gambling, and liquor industries.<sup>112</sup> When timeliness, donation caps, disclosure thresholds, and additional disclosure obligation during election periods are taken into account, however, Queensland may be considered the state with the strictest political donations laws.<sup>113</sup> In Queensland, political donations must be disclosed within seven days, both during elections as well as in non-election periods; the disclosure threshold is at AU\$1,000; and donations are capped at AU\$4,000. In comparison, at the federal level, the disclosure threshold was at AU\$14,300 in FY2020-21;<sup>114</sup> disclosure is required on an annual basis only; and there are no caps on donations.

In a scenario whereby Company X would like to donate AU\$3,000 to a political party in Queensland, the size of the donation would need to be disclosed to the Electoral Commission of Queensland by the recipient within seven days. At the federal level, no disclosure would be required as it falls below the specified threshold. In an alternative scenario whereby Company Y would like to donate AU\$100,000 each to both the Labor Party and the Coalition, it would be unlawful to do so in Queensland, but the donation could be made at the federal level, as long as it is disclosed in the Donor Returns filed with the AEC once a year. However, this annual reporting cycle at the federal level may lead to delayed reporting, which may raise concerns around corporate political influence, especially during election periods.<sup>115</sup> Diverging rules around political contributions within Australia may result in political contributions being acceptable in some jurisdictions and unlawful in others.

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<sup>112</sup>[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2122/Quick\\_Guides/ElectionFundingStates](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/ElectionFundingStates).

<sup>113</sup> The Centre for Public Integrity (2022), *Shining Light on Political Finance for the Next Federal Election*, <https://publicintegrity.org.au/wp-content/uploads/2022/02/Hidden-money-2021.docx.pdf>, p 3.

<sup>114</sup> [https://www.aec.gov.au/parties\\_and\\_representatives/public\\_funding/threshold.htm](https://www.aec.gov.au/parties_and_representatives/public_funding/threshold.htm).

<sup>115</sup> Griffiths & Emslie (2022), *\$177 Million Flowed to Australian Political Parties Last Year, but Major Donors Can Easily Hide*, <https://theconversation.com/177-million-flowed-to-australian-political-parties-last-year-but-major-donors-can-easily-hide-176129>.

These discrepancies in rules can create confusion for companies operating in multiple jurisdictions and may hinder systematic and comparable disclosure. A cohesive approach to political donation regulations will enhance transparency and accountability, ensuring a level playing field and promoting public trust in the democratic process.