

Electoral Reform Bill

Analysis

The Albanese Government's proposed changes to Australian democracy would make elections less fair and the playing field more uneven, and cost an additional \$50 million per electoral cycle. With the exception of non-controversial transparency measures, they should go to a parliamentary inquiry for detailed analysis.

Discussion paper

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Contents

Summary.....	1
Introduction.....	3
Gift caps.....	6
Expenditure caps	12
Public funding.....	18
Donation disclosures	22
Public attitudes to election reform	25
Missing reforms.....	27
Negotiations and sticking points	31
Recommendations.....	33
Conclusion	35
Appendix: Polling.....	36

Summary

Late last year, the Albanese Government introduced the Electoral Reform Bill, with plans to pass it into law less than two weeks after it became public. Negotiations with the Coalition collapsed, causing the bill to be delayed until the February 2025 sitting.

The bill would increase public funding of political parties and candidates, introduce new “administrative funding” for sitting MPs and their parties, cap political donations, cap political spending and require stricter and more timely transparency around political donations. The changes would come into effect in 2026, after this year’s federal election.

While electoral reform is needed, the bill is not consistent with the nine principles of fair political finance reform outlined by the Australia Institute in 2023.

Among the concerns with the bill are:

- The **extreme haste** shown by the government in introducing and trying to pass the bill. Four in five Australians (81%) agree that major changes to electoral law should be reviewed by a multi-party committee, which has not happened.
- The **caps on political donations** are per “party” (or per independent candidate) but what Australians think of as political parties – like the Liberal, Labor, Greens and National parties – are actually groups of parties, each party in the group being able to receive donations up to the cap. This would limit the ability of independent candidates, new political parties, and political campaigners to fundraise, while leaving established parties much less constrained.
- The **nominated entity** exception to donation caps intended for the major parties may in practice allow a billionaire-funded minor party to escape spending limits.
- In exchange for having their fundraising limited, established parties and incumbent MPs would receive tens of millions of dollars more in **public funding**; in some cases, far more than the political donations that they are missing out on. Independent candidates, new parties, their candidates and political campaigners would receive nothing to compensate them for lost revenue.
- The bill would also limit **spending on election campaigns**. In practice, independent candidates will be far more limited in their spending than party candidates.

The bill does introduce improved transparency for some political donations – particularly those used to fund election campaigns. New Australia Institute polling research shows that real-time disclosure and a lower donation disclosure threshold are supported by more than four in five Australians. These changes are welcome and non-controversial, and could be separated from the rest of the bill and passed.

There are fairer alternatives to public funding, like the democracy voucher model used in the City of Seattle; and ways that the donation and spending caps could be tweaked to make them at the very least *less* unfair. Sending the bill to a parliamentary inquiry would allow the impact of the government's proposed changes to be carefully considered, and improvements identified.

Introduction

Early in the term, the Albanese Government indicated its interest in reforming the Australian political finance system. In August 2022, the Joint Standing Committee on Electoral Matters (JSCEM) was presented with terms of reference that included “reforms to political donation laws” and “potential reforms to funding of elections”.¹ In our October 2022 submission to the inquiry, the Australia Institute warned that donation and spending caps can have unintended consequences.²

JSCEM prioritised completing an interim report into the political finance-related terms of reference, in part to give the Albanese Government ample time to prepare legislation giving effect to electoral reform. That report was completed in June 2023.³

The Albanese Government announced that it was aiming to introduce legislation before the end of 2023,⁴ in August 2024,⁵ in September 2024⁶ and in October 2024.⁷ Instead, it was in November 2024, in the last sitting fortnight of the year, that the Electoral Reform Bill was introduced. It is about 200 pages long, with an explanatory memorandum of equal length. It passed the House of Representative just two days after it was introduced but still needed to pass the Senate.

¹ Joint Standing Committee on Electoral Matters (2022) *Inquiry into the 2022 federal election: Terms of reference*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2022federalelection/Terms_of_Reference

² Browne and Shields (2022) *Fortifying Australian democracy: submission to the inquiry into the 2022 election*, <https://australiainstitute.org.au/report/fortifying-australian-democracy/>

³ JSCEM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2022federalelection/Interim_Report

⁴ Grattan (2023) *Special Minister of State Don Farrell wants donation and spending caps for next election*, <http://theconversation.com/politics-with-michelle-grattan-special-minister-of-state-don-farrell-wants-donation-and-spending-caps-for-next-election-208107>

⁵ Grattan (2024) *Don Farrell has an electoral reform blueprint, but it could be a rough road to implementation*, <http://theconversation.com/grattan-on-friday-don-farrell-has-an-electoral-reform-blueprint-but-it-could-be-a-rough-road-to-implementation-234159>

⁶ Crowley (2024) *Government close to finalising electoral reforms but faces a sceptical parliament*, <https://www.abc.net.au/news/2024-08-07/changes-to-electoral-spending-donation-rules-delayed/104196716>

⁷ Sakkal (2024) *Labor slams teals over spending as movement targets Dutton's seat*, <https://www.smh.com.au/politics/federal/labor-slams-teals-over-spending-as-movement-targets-duttons-seat-20240924-p5kd37.html>

If passed, the bill would take effect from 1 July 2026, and the new provisions would be operative in time for the federal election after next (expected around 2028).

Special Minister of State Don Farrell, the minister responsible for the bill, initially said that he hoped for “broad” or “multiparty consensus” on the legislation,⁸ and that “electoral reform is complex and requires studious consultation across the Parliament”.⁹

By the time the bill was introduced, the strategy was to pass it with the support of the opposition. On the second last day of the 2024 sitting, negotiations with the Coalition fell apart,¹⁰ but at Parliament’s return in 2025 the Labor Party is reportedly “scrambling” to make a deal with the Liberal–National Coalition.¹¹

Senator Farrell has emphasised that he would prefer to work with the Coalition on the changes in preference to the crossbench, and has referred to “the centrality of the Westminster, two-party system”,¹² which journalist Rachel Withers describes as an admission that “the point of the electoral reforms is to protect the two-party system”.¹³ Senator Farrell reportedly replied “That’s the f---cking point” to a private complaint that his proposed legislation would lock in the major party system, although Senator Farrell denies saying this.¹⁴

In response to the rushed nature of the bill, the Australia Institute launched a petition that called on the parliament to “establish a parliamentary inquiry, with public hearings, to assess the proposed changes to Australia’s electoral laws”. At the time of writing, the petition has attracted 30,000 signatures.¹⁵

⁸ Crowley (2024) *Government close to finalising electoral reforms but faces a sceptical parliament*; Grattan (2023) *Special Minister of State Don Farrell wants donation and spending caps for next election*

⁹ Farrell (2023) *Letter to Susan Templeman, 18 September 2023, SMOS 23-24-044 Documents*, <https://www.finance.gov.au/sites/default/files/smos-23-24-044-documents.pdf>

¹⁰ Grattan (2024) *Anthony Albanese gets down and dirty in deal making and breaking as Senate rushes to Christmas finish*, <https://www.abc.net.au/news/2024-11-29/albanese-gets-down-and-dirty-in-deal-making-and-breaking/104662172>

¹¹ Greber (2025) *Labor scrambles to revive Coalition deal on political donation and funding rules*, <https://www.abc.net.au/news/2025-01-31/don-farrell-scrambles-to-clinch-political-expenditure-reform/104878804>

¹² Sakal (2024) *Labor slams teals over spending as movement targets Dutton’s seat*

¹³ Withers (2024) *In which Don Farrell admits that the point of the electoral reforms is to protect the two-party system. Cool!* <https://x.com/rachelwithers/status/1839138538971083091>

¹⁴ Godsell (2024) *‘Anointed by the billionaires’: Farrell hits back at Teals*, <https://www.skynews.com.au/australia-news/politics/special-minister-of-state-don-farrell-slams-billionaire-influence-on-teal-mps-as-he-pushes-electoral-reform/news-story/e40c83b26ac170b0b6504aefa20787ec>; Koutsoukis (2024) *‘That’s the f---king point’: Labor donor reforms explained*, <https://www.thesaturdaypaper.com.au/news/politics/2024/11/23/thats-the-f-king-point-labor-donor-reforms-explained>

¹⁵ Australia Institute (2024) *Petition: Protect our elections!* https://nb.australiainstitute.org.au/donations_bill_petition

The bill's delay from November to February has allowed more time to analyse it, although not long enough given the complexity, length and seriousness of the legislation.

In 2023, the Australia Institute identified nine principles for fair political finance reform.¹⁶ The principles fall into two main categories: that political finance laws should be fair and provide a level playing field and that they should be targeted and effective.

This analysis measures the new political finance laws proposed by the Albanese Labor Government against the principles. However, while amendments could improve the laws, only a parliamentary inquiry can identify the more substantial changes that would be needed to be fully aligned with the principles.

¹⁶ Browne (2023) *Principles for fair political finance reform*, <https://australiainstitute.org.au/report/principles-for-fair-political-finance-reform/>

Gift caps

Under the bill, donations for an electoral purpose would be capped. Donations for other purposes, even those to political parties, candidates and political campaigners, would not be capped.

EXISTING LAWS

There is no limit to how much can be donated to political parties from Australian citizens and residents, and companies incorporated in, or having their head office or principal place of activity in, Australia.

Foreign donations were banned in 2018.¹⁷

PROPOSED CHANGES

The bill would subject donations “for a federal purpose” to a cap of \$20,000 per donor per recipient per calendar year.¹⁸

Only donations used to fund an election campaign are capped. A federal purpose in this case means electoral expenditure and electoral matter. Other political donations, even those to a political party, candidate or political campaigner, would not be capped.¹⁹

The cap is per-recipient, but other caps apply per-donor. There are two further caps that apply in aggregate:

- A donor cannot give more than \$640,000 to all parties, MPs, senators, candidates and nominated entities, in a given calendar year.²⁰
- A donor cannot give more than \$100,000 to all parties, MPs, senators, candidates and nominated entities *in a particular state or territory*, in a given calendar year.²¹

¹⁷ Australian Electoral Commission (n.d.) *Foreign donations*, https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/; Karp (2018) *Coalition bill to ban foreign political donations passes Senate*, <https://www.theguardian.com/australia-news/2018/nov/15/coalition-bill-to-ban-foreign-political-donations-passes-senate>

¹⁸ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 4, 63–68

¹⁹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302CB

²⁰ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302B, 302CI

²¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302B, 302CJ

Again, these caps apply only to gifts for a federal purpose. A donor can still give unlimited amounts to political parties and candidates, provided those sums are not spent on election campaigning.

There are four capped periods per three-year election cycle: The cap resets after each election,²² so a donor can give \$20,000 before an election and another \$20,000 after the election, for a total of four opportunities to give to a single party’s election campaign in a three-year election cycle.

Donating to a candidate counts as donating to their party: The \$20,000 per year gift cap is per-recipient (so a donor could give \$20,000 each to the NSW Labor Party, the Liberal Party of NSW, the Victorian Labor Party and the Country Liberal Party, for example).²³

However, “related” donors have their donations aggregated, as do “related” recipients – which means a state branch of a political party and the candidates endorsed by that party in that state.²⁴ For example, if a donor gives \$20,000 in a calendar year to a Greens candidate in Ryan (in Queensland), that donor cannot give to the Queensland Greens without exceeding the cap.

However, different “registered parties” are not related. So a donor could give \$20,000 to the Queensland Greens, \$20,000 to the Victorian Greens, and \$20,000 to a Greens candidate in Perth, without exceeding the cap.

Table 1: Caps applying to donations for campaigning purposes in an ordinary election cycle

Type of cap	In a calendar year	Per election cycle
Annual gift cap (to one recipient)	\$20,000	\$80,000
State and Territory gift cap	\$100,000 (5 times the annual cap)	\$400,000
Overall gift cap	\$640,000 (32 times the annual cap)	\$2,560,000

Note: A separate cap of \$20,000 applies to each by-election.

Established parties can use “nominated entities” to receive payments in excess of the gift cap. These entities must be “closely associated with” a party but not “part” of the party, and they must operate “wholly, or to a significant extent, for the benefit of the party”.²⁵

Exactly how the nominated entities would work at the federal level is still unclear. However, in Victoria and South Australia nominated entities are used to allow the major parties to

²² Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302CG

²³ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 4, 66–67

²⁴ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302BA(4); Explanatory Memorandum pp. 66–67

²⁵ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec. 287MB

continue to use the tens of millions of dollars of assets that they have accumulated, without being limited by donation caps.²⁶

Exchanges between the federal fund of a registered political party and the federal fund of a nominated entity are not gifts.²⁷ This means even payments beyond the \$20,000 gift cap can be spent on electoral campaigning.

EFFECTS

Existing parties can receive more donations than new entrants. A new entrant only operating in one calendar year is capped at \$20,000 per donor while an established party can collect \$80,000 per donor over the three-year electoral cycle.

For example, successful Senate candidate David Pocock registered the David Pocock Party in March 2022,²⁸ ahead of the May 2022 federal election. A wealthy donor would only have been able to donate \$20,000 to the David Pocock Party but could have donated \$80,000 to the Canberra Liberals (\$20,000 in each of 2019, 2020, 2021 and 2022).

Some parties can receive more money than others. Political parties with several branches can accept multiple donations at the cap: one for the federal branch and one for each state branch.

For example, there are actually nine registered Labor parties: one for every state and territory and one federal, so there are nine opportunities to give to Labor in a given calendar year (\$180,000 per year or \$720,000 in an election cycle). The Liberal Party has eight parties, and the National Party five – so someone can still donate over a million dollars to the Coalition every election cycle.²⁹

²⁶ Browne (2024) *South Australian political finance changes*, p. 3, <https://australiainstitute.org.au/report/south-australian-political-finance-changes/>; Browne and Connolly (2023) *Submission: Money and power in Victorian elections*, <https://australiainstitute.org.au/report/submission-money-and-power-in-victorian-elections/>

²⁷ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.287D

²⁸ Pocock (2022) *Official 'above the line' party registration*, https://www.davidpocock.com.au/official_above_the_line_party_registration

²⁹ For number of registered parties, see AEC (2025) *Register of political parties*, https://www.aec.gov.au/Parties_and_Representatives/party_registration/Registered_parties/

Table 2: Effective cap for federated political parties

“Party”	Registered parties	Calendar year cap	Election cycle cap
Labor	9	\$180,000	\$720,000
Liberal	8	\$160,000	\$640,000
Nationals	5	\$100,000	\$400,000
Greens	5	\$100,000	\$400,000

A “party” could split, with each of its parliamentarians forming a new political party, and therefore receive many times more gifts.

This loophole is already known to the political parties: after the Liberal party room were briefed on the changes,

One participant in the debate quipped that the Liberal National party of Queensland should split so that there would be more entities for donors to give to.³⁰

Nominated entities give established parties a fundraising advantage. Nominated entities serve to allow political parties to use existing assets, despite the donation caps that ostensibly apply.

A cap on donations to nominated entities applies, which means new entrants will never be able to set up nominated entities of equivalent size to those of the major parties (the Cormack Foundation is estimated to be worth more than \$100 million, for example).³¹ In addition, nominated entities cannot be set up for independent candidates.³²

In Victoria, nominated entities are used to give large amounts of money to major parties outside of the donation caps that apply to everyone else. That state’s nominated entities are subject to potential constitutional challenge on the basis that they could infringe the constitutionally implied freedom of political communication.³³ An independent review including former Labor MP David Feeney recommended their abolition.³⁴

Nominated entities may leave a loophole for billionaires to continue to fund their preferred parties. The bill will only come into effect in the second half of 2026. A well-

³⁰ Karp (2024) *No decision in Coalition party room on spending and donation caps*, <https://www.theguardian.com/australia-news/live/2024/nov/19/politics-live-g20-summit-china-trade-foreign-policy-aukus-interest-rates-rba-housing-immigration-cost-of-living>

³¹ Baxendale (2022) *Rich list largesse fills Victorian ALP coffers*, <https://www.theaustralian.com.au/nation/rich-list-largesse-fills-victorian-alp-coffers/news-story/f410e81445dfe8a3c42432feda36bf05>

³² Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.287(1)

³³ Gordon (2024) *Former Victorian teal candidates threaten High Court challenge over donation laws*, <https://www.theage.com.au/politics/victoria/former-victorian-teal-candidates-threaten-high-court-challenge-over-donation-laws-20240803-p5jz46.html>

³⁴ Parker, Williams and Tully (2024) *Review of the Electoral (Accountability and Integrity) Amendment Bill 2024 (SA)*, South Australian Government, p. 19

prepared vested interest or very wealthy person could establish a third party entity before then, seeded with hundreds of millions or billions of dollars. Once the bill comes into effect, the entity could become a nominated entity, free to make uncapped payments to an existing or future political party.

In practice, this would presumably mean that a billionaire could set themselves up with a large campaigning war chest now and set up their political party later on. The gift caps would not inhibit large payments from the former to the latter.

Treatment of third parties

Member-based organisations and peak bodies

The bill would make third parties and significant third parties such as trade associations or trade unions subject to gift caps. Unlike political parties, these bodies are treated as single third parties or single significant third parties regardless of whether or not the entity has multiple branches.³⁵ Membership or affiliation fees would not be treated as gifts, unless or until a financial controller credited those funds to a federal account, at which point they would be regarded as gifts and subject to the same \$20,000 per donor per calendar year cap.³⁶

The campaign funds of membership-based organisations like trade unions are unlikely to be affected by such a cap because each union member only contributes a small amount.

However, peak bodies that receive large sums from a small number of member organisations – like the Business Council of Australia, the Australian Council of Commerce and Industry and the Minerals Council, or the Australian Council of Trade Unions – could be limited.

The Albanese Government apparently sought to amend these rules to “ease how the caps affect the war chests that advocacy and peak bodies build from member fees”.³⁷ Coalition MPs told *The Australian* that the impact of the bill on peak bodies still “needed to be clarified by the government”.³⁸

³⁵ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 67–69

³⁶ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 29; Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.287AAB(4)

³⁷ Giannini (2024) *Impasse over political donation limits torpedoes deal (archived)*, <https://web.archive.org/web/20241128055702/https://www.aap.com.au/news/impasse-over-political-donation-limits-torpedoes-deal/>

³⁸ Ison (2024) *Labor threatens deal with Greens on electoral reforms*, <https://www.theaustralian.com.au/nation/labor-threatens-deal-with-greens-on-electoral-reforms/news-story/67981fef70253536296e43120a7ed185>

Charities and other not-for-profits

Charities and other not-for-profits usually collect contributions for general purposes, rather than specifically for election spending. To a charity raising awareness of an issue, advocacy during an election campaign might not be distinct from their advocacy at any other time – but it may be at risk of becoming “electoral expenditure” due to the proximity of the election.

By requiring electoral expenditure to come only from a federal account,³⁹ even for not-for-profits that do not contest elections, the bill could significantly limit fundraising and advocacy by not-for-profits.

The bill already allows vested interests like trade associations to credit membership fees to a federal account when and only when they are needed for election spending. It is unfair that donation-funded not-for-profits are not permitted to do the same with donations received.

The Minister could vary exceptions to the gift cap

The bill identifies exceptions to the gift cap. For example, bequests, loans and transfers between two related parties can be credited to a federal account, outside of the gift cap provisions.⁴⁰

The bill allows the minister to create regulations that would identify other exceptions to the gift cap.⁴¹ This seems ripe for abuse, for example by allowing the major parties’ nominated entities to credit dividends, rents and other payments from their accumulated assets, beyond the cap.

Arbitrary targeting of donations for electoral purposes

The bill caps gifts for the purpose of electoral expenditure. If large political contributions have the danger to adversely affect decision-making, why would that adverse effect be limited to gifts for the purpose of electoral expenditure? Presumably a gift for administrative purposes or to support litigation⁴² would compromise a party or candidate in the same way.

³⁹ *Electoral Act 1918* (Cth), sec.302CA(4)(a–b)

⁴⁰ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.292FA(5)(c), (d), (e), (f)

⁴¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.292FA(5)(h)

⁴² Orr (2024) *At last, Labor’s campaign finance bill*, <https://insidestory.org.au/at-last-labors-campaign-finance-bill/>

Expenditure caps

Campaign spending caps proposed in the bill would have the perverse effect of entrenching existing advantages for incumbents and major parties.

EXISTING LAWS

Currently, there are no limits to how much can be spent in Australian federal elections.

A number of states and territories cap spending at the electorate level.

In NSW, independent candidates are capped at \$225,800 while a party and its candidate can spend up to \$301,400 in an electorate. The cost of establishing an office, up to \$20,000, is excluded from the cap. “Electoral district caps” apply to material that mentions the candidate or district explicitly, and is set at \$75,500.⁴³ Third party campaigners are capped at \$1.46 million across the state.⁴⁴

Recent changes legislated by the South Australian Parliament will make spending caps mandatory and reduce them to \$100,000 for lower house candidates and \$500,000 for upper house groups.⁴⁵

In Queensland, the caps are \$108,898 for an independent candidate and \$187,754 for a party and its endorsed candidate. Third parties are capped at \$108,898 per seat.⁴⁶

State spending caps have allowed parties to exceed caps in an electorate provided the electoral material “does not expressly mention or depict the candidate for that seat”.⁴⁷

⁴³ Browne (2024) *Submission - Review of the 2023 NSW election*, p. 25,
<https://australiainstitute.org.au/report/submission-review-of-the-2023-nsw-election/>

⁴⁴ The cap is \$732,200 if the third party was unregistered before the commencement of the capped expenditure period. JSCEM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, p. 187; NSW Electoral Commission (2024) *What are the expenditure caps for state elections?*, <https://elections.nsw.gov.au/funding-and-disclosure/electoral-expenditure/caps-on-electoral-expenditure/what-are-the-expenditure-caps-for-state-elections>

⁴⁵ Browne (2024) *Money and power in South Australian elections*, p. 19,
<https://australiainstitute.org.au/report/money-and-power-in-south-australian-elections/>

⁴⁶ Electoral Commission of Queensland (2024) *Electoral expenditure caps*,
<https://www.ecq.qld.gov.au/election-participants/state-election-participants/candidates/electoral-expenditure-caps>

⁴⁷ Browne (2024) *Money and power in South Australian elections*, p. 19

PROPOSED CHANGES

The bill introduces multiple types of federal electoral spending caps per calendar year:

- For each seat (also called a “division”), a party is capped at \$800,000 of electoral expenditure “targeted” at that seat.⁴⁸
- Each independent candidate is capped at \$800,000 total electoral expenditure,⁴⁹ regardless of whether or not it is “targeted” at a particular seat.
- Senate caps (for a State or Territory), which are to be calculated using a base amount (\$200,000) multiplied by the number of seats in that state or territory. For example, South Australia has 10 seats in the House of Representatives, so its Senate cap for each candidate would be \$2 million.⁵⁰
- Independent Senate candidates are capped at one sixth of the major party candidate cap in the case of the states, or half of the major party candidate cap in the case of the territories.⁵¹
- Federal caps, which are set at \$90 million for each party or candidate’s nationwide electoral expenditure.⁵²
- By-election caps, set at \$960,000.⁵³

Campaign expenditure for third parties such as trade unions, businesses and campaign organisations will be capped at \$11.25 million.⁵⁴

The bill deals with Senate groups by counting their expenditure against their party’s cap or dividing it among the candidates if the group is not endorsed by a party.⁵⁵

The bill introduces “expenditure group” as a new definition under the *Electoral Act*. The term encompasses candidates, registered political parties, State branches of parties, existing parliamentarians and nominated entities. Whereas federal and state branches of the same

⁴⁸ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALC

⁴⁹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ANA

⁵⁰ Note that this cap is described as a “State or Territory” cap, but our reading of the legislation is that it is limited to Senate candidates and to state-wide/territory-wide campaigns: Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALC; Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 90–91

⁵¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALA

⁵² Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALA

⁵³ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALA

⁵⁴ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 87

⁵⁵ Where multiple parties endorse the one Senate group (as with joint Liberal/National tickets in some states), the expenditure is divided between the endorsing parties: Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALB

political party are considered separate for gift caps, they are aggregated under the proposed expenditure caps.⁵⁶

Expenditure on electoral matter counts towards a seat or senate cap if the matter is communicated to voters in that seat/state/territory, and it either features a candidate or expressly names the seat or the Senate election.⁵⁷ Expenditure counted towards a seat or senate cap would also count towards the federal cap.⁵⁸

Only electoral expenditure is capped.⁵⁹ Some amount of taxpayer-funded administrative funding can be spent on electoral expenditure, outside of the gift cap.⁶⁰

Exemptions would be allowed for expenses relating to travel by candidate or their staff; campaign office accommodation for a party (but not for an independent candidate) up to \$20,000 per seat/state/territory; and design and printing of how-to-vote cards up to \$20,000.⁶¹

EFFECTS

Seat caps would entrench party advantages

A cap on per-seat spending may seem reasonable, but there are glaring loopholes that political parties can take advantage of.

All of an independent candidate's campaigning counts towards their \$800,000 cap.⁶²

A party's campaign material only counts towards the seat cap if it is "targeted" at the seat, which means:

- It either:
 - Names the seat or
 - Names or depicts the party's candidate in that seat
- And: it is mainly communicated to voters in that seat⁶³

⁵⁶ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALF

⁵⁷ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALC

⁵⁸ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302APA(3)

⁵⁹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302APA(1)

⁶⁰ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.292FA(5) Note 3

⁶¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 119

⁶² Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ANA

⁶³ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALC

If a party's campaign material names multiple candidates/seats/states/territories, expenditure can be divided between the relevant seats/states/territories for the purpose of calculating whether expenditure exceeds caps.⁶⁴

A party can therefore spend in excess of the seat cap by:

- Circulating material that mentions House of Representatives and Senate candidates *at the same time*. Half of the spending could be attributed to the Senate candidate instead of the seat cap. In practice this would allow a party could spend \$1.6 million promoting a candidate in a particular seat, provided they promoted a Senate candidate at the same time.
- Purchasing any amount of party advertising that doesn't mention the candidate or seat, even if it is targeted at that seat.
- Promoting its ministers and shadow ministers across a region or the whole state/territory, and therefore not needing to count that promotion towards the seat cap in the particular seat that the minister is running in.⁶⁵

Caps would not account for incumbency advantages

Sitting MPs have about \$3 million in taxpayer funded incumbency advantages over an election cycle.⁶⁶ A challenger needs to spend more money just to catch up. The \$800,000 cap would affect an incumbent far less than new entrants who are starting from scratch.

Senate caps would privilege parties over independents

Senate campaign caps are six times higher for parties than for independents in the states and double in the territories.

The argument in the Explanatory Memorandum is that parties are contesting all six seats in a state (or both seats in a territory), while an independent candidate is contesting one.⁶⁷ This is false. In practice, major parties win between one and three seats in a half-Senate election in a state, and one seat in a territory, and a party's Senate campaign would only make a difference of one seat at most.

⁶⁴ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.302ALC

⁶⁵ See for example the case study in Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 92–95

⁶⁶ Morison and Browne (2023) *Advantages of incumbency*, <https://australiainstitute.org.au/report/advantages-of-incumbency/>

⁶⁷ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 111

Liberals are more exposed to nationwide caps than Labor

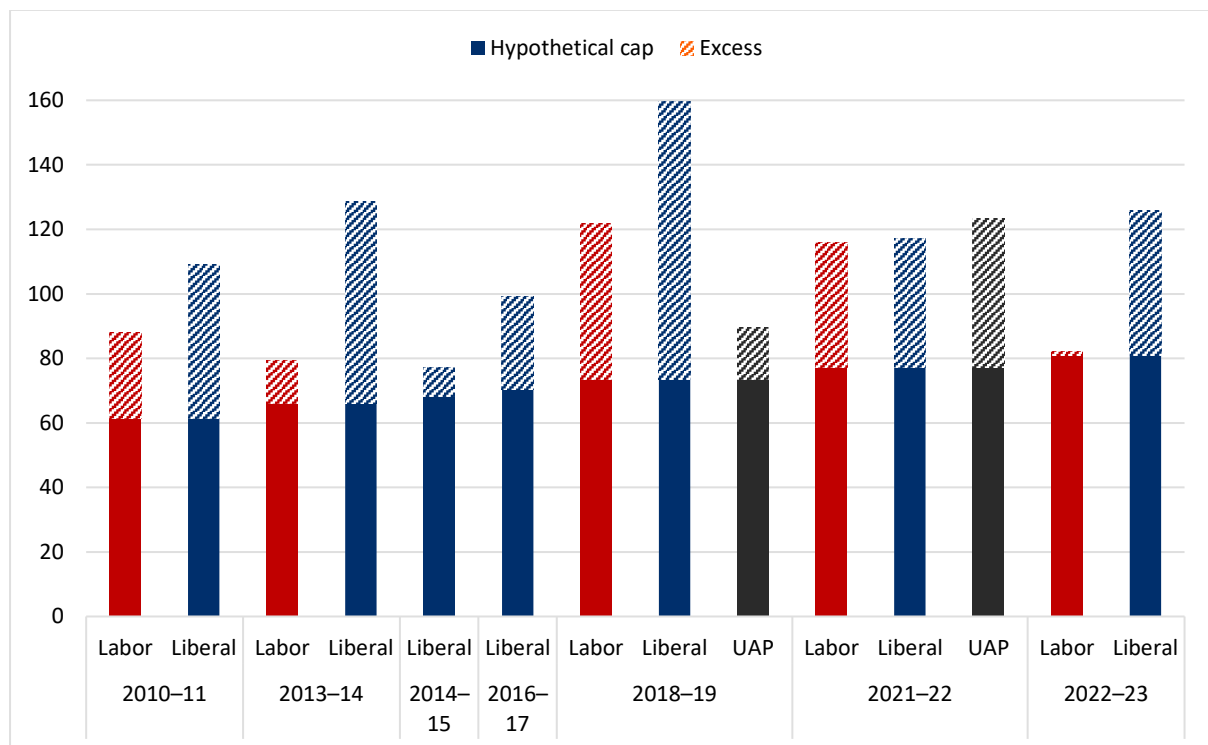
The bill’s Explanatory Memorandum compares party spending since 2009–10 to the proposed \$90 million federal cap.⁶⁸

While Labor, Liberal and United Australia Party all spent in excess of the cap in some years, the Liberal Party spent in excess of the cap in more years than any other party (seven, versus five for Labor).

There was also a large gap in total excess: \$320 million of Liberal expenditure was in excess of a hypothetical cap, compared to \$128 million for Labor and \$62 million for UAP.

The graph below shows years in which a political party spent in excess of the hypothetical \$90 million cap. Parties that never spent above the cap are not listed; and years in which Labor, the Liberals and the UAP did not spend above the cap are omitted.

Figure 1: Party expenditure in years that exceeded \$90 million (2024 dollars)



Source: Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 100–101

The cap has been “indexed” to reflect past inflation, so for example the cap of \$61 million in 2010–11 has the same buying power as the \$90 million cap proposed today.

There is an important caveat, also noted in the Explanatory Memorandum: the figures are for total expenditure by the party in that year, while the cap would apply only to (a)

⁶⁸ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, pp. 100–101

electoral expenditure (b) not on state or territory elections, and (c) not on by-elections. A large portion of party expenditure is state level and/or administrative, or intra-party transfers.

Political parties could also limit the effect of the cap by shifting spending into different calendar years or encouraging would-be donors to fund campaigns from coalition partners or associates if the party is approaching the cap.

Nonetheless, *if* the federal cap is effective at limiting political spending, then it is likely to affect the Liberal Party much more than the Labor Party.

Table 3: United Australia Party

Year	Total (\$m)	Cap (\$m)	Excess (\$m)	% over cap	Cumulative excess (\$m)
2018–19	89.45	73.49	15.96	17.8	15.96
2021–22	123.49	77.22	46.27	37.5	62.23

Table 4: Labor Party

Year	Total (\$m)	Cap (\$m)	Excess (\$m)	% over cap	Cumulative excess (\$m)
2010–11	87.90	61.24	26.66	30.3	26.66
2013–14	79.30	66.04	13.26	16.7	39.92
2018–19	121.76	73.49	48.27	39.6	88.19
2021–22	115.90	77.22	38.68	33.4	126.87
2022–23	82.11	80.95	1.16	1.4	128.03

Table 5: Liberal Party

Year	Total (\$m)	Cap (\$m)	Excess (\$m)	% over cap	Cumulative excess (\$m)
2010–11	109.09	61.24	47.85	43.9	47.85
2013–14	128.72	66.04	62.68	48.7	110.53
2014–15	77.31	68.17	9.14	11.8	119.67
2016–17	99.27	70.30	28.97	29.2	148.64
2018–19	159.53	73.49	86.04	53.9	234.68
2021–22	117.29	77.19	40.1	34.2	274.78
2022–23	125.94	80.94	45.00	35.7	319.78

Public funding

EXISTING LAWS

After each federal election, political parties and candidates are reimbursed about \$3.30 for every vote they won, up to the level of proved electoral expenditure. Voters cast two votes – one for the House of Representatives and one for the Senate – so at every federal election, each voter decides how about \$6.60 of taxpayer money is distributed.⁶⁹

Political scientist Graeme Orr explains the original rationale for public funding:

Public funding is “clean money”, to defray the cost of electioneering. (It has particularly helped minor parties, which attract few corporate donations.) Together [with disclosure requirements], these measures aimed for improved integrity and a modicum of political equality.⁷⁰

Because parties and candidates receive their per-vote entitlement after the votes are counted, it exclusively benefits those who are contesting subsequent elections.

As well as election funding, some Australian states, such as NSW and South Australia, also provide parties and parliamentarians with administrative funding.

PROPOSED CHANGES

The bill would increase per-vote election funding to \$5 per vote,⁷¹ and introduce a new form of public funding called “administrative funding” which is paid per parliamentarian.

Election funding

The increase in election funding would cost another \$41 million per three-year election cycle, with about three-quarters (75%, or \$32 million) going to major parties. That figure rises to 90% if the Greens are included as a major party.

⁶⁹ AEC (2025) *Election funding rates*,

https://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm

⁷⁰ Orr (2023) *Proposed spending and donations caps may at last bring genuine reform to national election rules*, <https://theconversation.com/proposed-spending-and-donations-caps-may-at-last-bring-genuine-reform-to-national-election-rules-208031>

⁷¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), p. 158

Advance funding

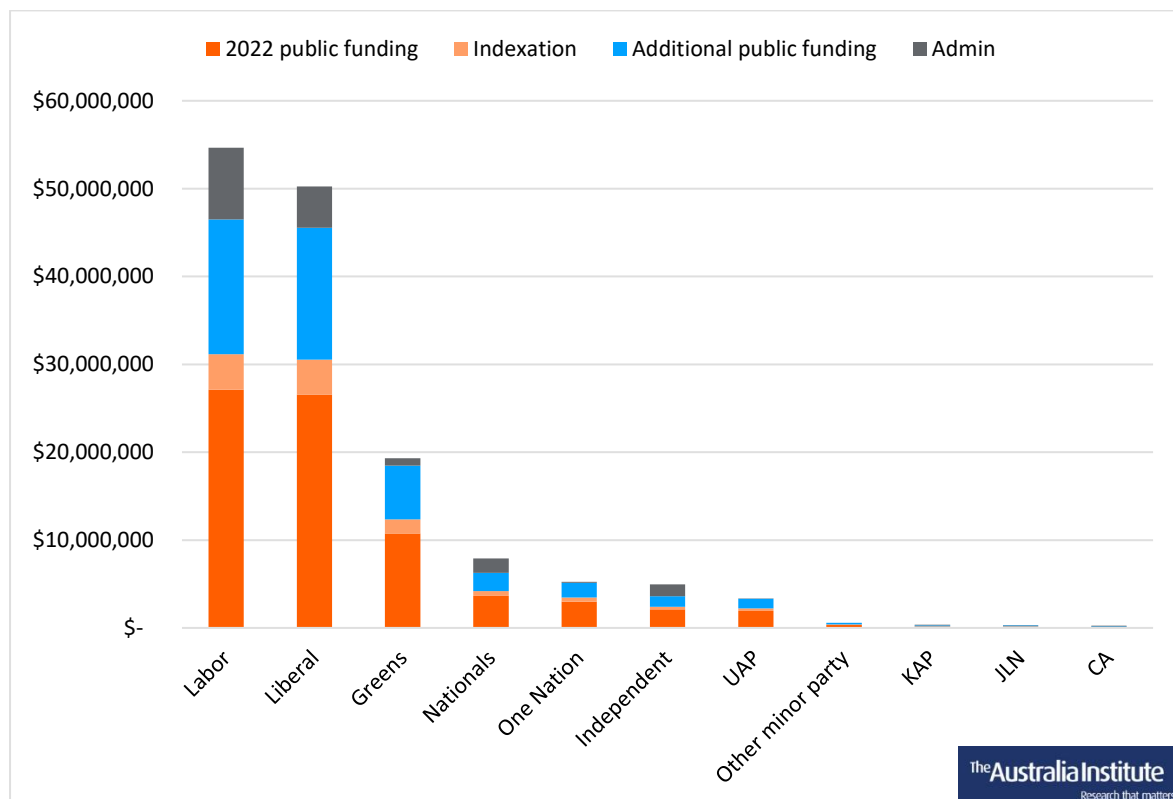
The bill would also create a “regulation-making power” to provide for advance payment of election funding. That advance payment would be payable only to candidates and parties who have been participants in a federal election.⁷² The advance funding would then count against their public funding entitlement following the election.⁷³

Administrative funding

The bill proposes quarterly administrative assistance funding for political parties with MPs and senators and for independent members of the House of Representatives and Senators. This is payable at rate of \$7,500 per quarter for a member of the House of Representatives (\$90,000 per election cycle) and \$3,750 per quarter for a senator (\$45,000 per election cycle) (indexed annually).

This equates to \$17 million in new administrative funding per election cycle. If this funding were already in place, it would have been worth \$8.1 million for Labor, \$4.7 million for the Liberals, \$1.6 million for the Nationals and \$0.9 million for the Greens between 2022 and 2025.

Figure 2: Total cost of new funding proposed in the bill, using 2022 votes and MPs elected



⁷² Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.298J(2)

⁷³ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.298J(1)

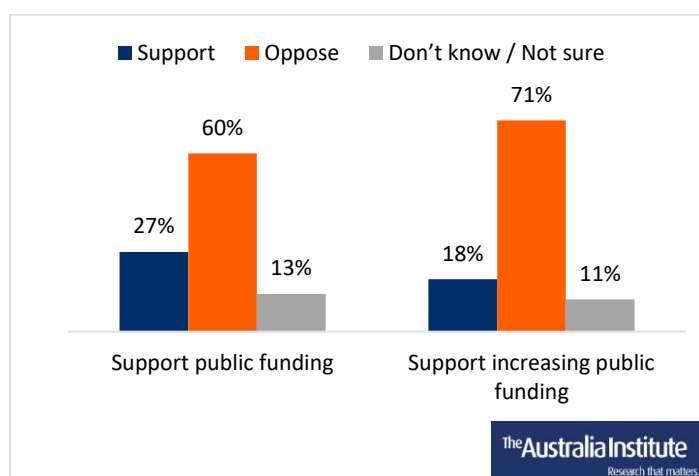
EFFECTS

Australians oppose increased public funding, and the Albanese Government has not made a convincing case for this increase.

If the bill passes, Labor and Liberal will each receive about \$50 million in public funding per election cycle, and about \$150 million total will be spent on parties, sitting MPs and candidates. \$60 million is new funding above what they are paid under existing laws.

Australia Institute polling research finds 71% of Australians oppose increased public funding.

Figure 3: Total support for public funding and increased public funding, August 2024



Source: Australia Institute (2024) *Polling – Public funding for political parties and candidates*, <https://australiainstitute.org.au/report/polling-public-funding-for-political-parties-and-candidates/>

Increased per-vote public funding is unfair to new entrants. Per-vote and per-MP public funding disadvantages new entrants, who by definition cannot receive either until after their campaigns have concluded, if at all.

Increasing public funding will increase political advertising – which in the absence of truth in political advertising laws could mean more misinformation and disinformation.

Increased administrative funding is unfair to new entrants, minor parties and senators.

The bill would introduce considerable compliance costs. Introducing administrative funding to account for these additional costs makes sense, but the model proposed in the bill – providing funding per MP – is not fit for purpose. New parties and candidates, and parties without parliamentary representation, get nothing.

Per-MP public funding is wasteful. Most of the costs of running a political party are fixed costs, so there is no justification for paying the same amount per-MP. It does not cost twice as much to run a political party with 60 MPs as it does a party with 30 MPs.

Providing double the admin funding to lower house MPs as to senators is unfair to minor parties, who are represented in greater numbers in the Senate than in the House of Representatives, and unfair to independent senators.

Advance funding should not be left to regulation. The allocation of advance funding is a question appropriate for the Parliament, not a minister belonging to a particular political party. Advance funding provisions are problematic:

- New entrants would not be eligible for advance funding. This is unlike the advance funding provisions in South Australia, which are still skewed towards existing parties but do provide some advance funding for new entrants.⁷⁴
- If a political party or candidate receives more advance funding than their “entitlement” (based on votes at the subsequent election), they would owe the remainder to the Commonwealth as a debt.⁷⁵ Concern about a similar provision in the South Australian bill was partially addressed by amendments.⁷⁶
- Election funding is *already* effectively an advance payment for incumbents, since it is received after each general election. It is unclear why advance funding would also be needed; it amounts to a one-off double dip.

⁷⁴ Browne (2024) *South Australian political finance changes*

⁷⁵ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.298J(7)

⁷⁶ Browne (2024) *South Australian political finance changes*

Donation disclosures

The bill would impose new disclosure obligations on donors and recipients of gifts above \$1,000.

EXISTING LAWS

Current electoral laws require donations above \$16,900 to be disclosed by both donor and recipient. The figure is indexed, so it increases each year.

Disclosures are required for donations that exceed the disclosure threshold, but not for multiple donations below the threshold, or donations to a range of associated entities that would otherwise be necessary to disclose if treated cumulatively. Parliamentarians have warned that ‘it is possible to “multiply” the threshold by giving to literally dozens of entities associated with a single political party’.⁷⁷

Most political contributions, if they are disclosed at all, are only published in “annual returns” in the February following the financial year in which the contribution was made. For example, a donation made on 1 July 2022 would become public in February 2024.

Within about six months of an election, candidates must disclose contributions received during the campaign.⁷⁸ In practice, these “election returns” mostly furnish information about independent candidates because party candidates direct contributions to their party, and parties disclose on the delayed “annual returns” timeframe.

Contributions are either “gifts” (also known as donations, in other words contributions made for no consideration) or “other receipts”. Other receipts include cash-for-access payments, “network” affiliation fees, fundraiser dinners, union affiliation fees and dividend payments.⁷⁹

Gifts are disclosed twice: once by the donor and once by the recipient. Other receipts are only disclosed by the recipient.

⁷⁷ Spender (2023) *Letter to Don Farrell, 29 September 2023, SMOS 23-24-044 Documents*, <https://www.finance.gov.au/sites/default/files/smos-23-24-044-documents.pdf>

⁷⁸ *Electoral Act 1918* (Cth), sec.304(2)

⁷⁹ Orr (2023) *Follow the money*, <https://insidestory.org.au/following-the-money-graeme-orr/>

PROPOSED CHANGES

Disclosure threshold

The bill would lower the “disclosure threshold” (the point at which a political contribution like a donation must be disclosed) from about \$17,000 to \$1,000. In cases where a single donor has made several smaller gifts, these are treated as cumulative for the disclosure threshold.⁸⁰

The bill would also require gifts donated “for a federal purpose” to be disclosed in “real-time” – both by the recipient and the donor.⁸¹ A federal purpose is “the purpose of incurring electoral expenditure, or creating or communicating electoral matter”.⁸²

The bill also requires “certain other gifts” to be disclosed in real-time, including “subscription” and “affiliation” fees and “annual levy” payments from MPs (provided these other gifts are credited to a federal account for federal purposes).⁸³

The disclosure threshold is indexed to CPI to keep the threshold the same in real terms.

Real-time disclosures

The bill requires gifts for a federal purpose to be disclosed monthly outside of an election campaign, weekly during an election campaign and daily in the week before and after polling day.⁸⁴

The Electoral Commissioner would then publish details within 24 hours of receipt (during election periods) or within 10 days (at all other times).⁸⁵

⁸⁰ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 133

⁸¹ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.303E

⁸² *Electoral Act 1918*, sec.287

⁸³ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth) Explanatory Memorandum, p. 51

⁸⁴ Technically, on the 21st of the month following the month in which the donation was made; within seven days; and within 24 hours, respectively: Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.303E

⁸⁵ Electoral Legislation Amendment (Electoral Reform) Bill 2024 (Cth), sec.303J

EFFECTS

The lower disclosure threshold for political contributions will cast a light on how political parties and candidates are funded. However, even at a threshold of \$1,000, it is likely that some cash-for-access payments will not be disclosed.

Real-time disclosure will ensure that more political contributions are public knowledge ahead of the elections or political decisions that those contributions are intended to influence.

Overly-strict disclosure laws may discourage donations to charities. At its inquiry into the conduct and administration of the 2022 federal election, the Joint Standing Committee on Electoral Matters considered the impact of potential reforms on charities and not-for-profit third parties.

Hands Off Our Charities (now the Stronger Charities Alliance) suggested that a disclosure threshold of \$2,500, rather than \$1,000, should apply to donations to charities and not-for-profits.⁸⁶

The Australian Charities and Not-for-profit Commission also advised that a lower threshold could “create an additional reporting burden” for smaller charities who are poorly placed to handle it.⁸⁷ The majority report expressed a desire for the committee to “further consider” these recommendations.⁸⁸

⁸⁶ JSC EM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, p. 32

⁸⁷ JSC EM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, p. 3

⁸⁸ JSC EM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, p. 225

Public attitudes to election reform

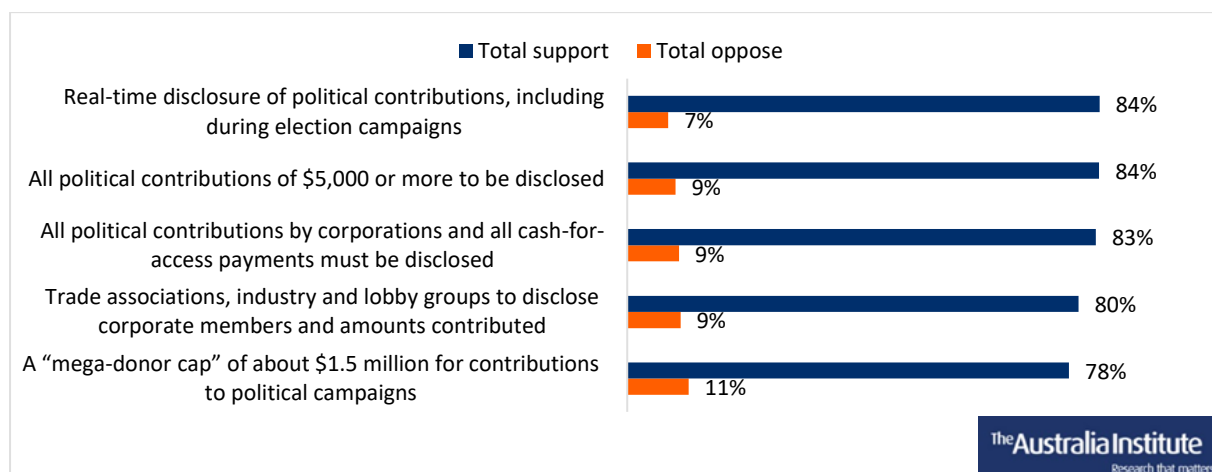
In November 2024, the Australia Institute surveyed a nationally representative sample of 1,009 Australians about elections and political party funding.

The results show overwhelming support among Australians for improved contribution transparency:

- Four in five Australians (84%) support requiring real time disclosure of political contributions, including during election campaigns.
- Four in five Australians support a disclosure threshold for political contributions of \$5,000, and for all political contributions by corporations and all cash-for-access payments to be disclosed, regardless of size (84% and 83% support respectively).
- Four in five Australians (80%) support requiring trade associations, industry and lobby groups to disclose corporate members and the amounts they each contribute.
- There is majority support for all these proposed policies across all voting intentions.

Australians also overwhelmingly support a “mega-donor cap” of about \$1.5 million for contributions to political campaigns (78% support, 11% oppose).

Figure 4: Total support for policies for party and candidate funding



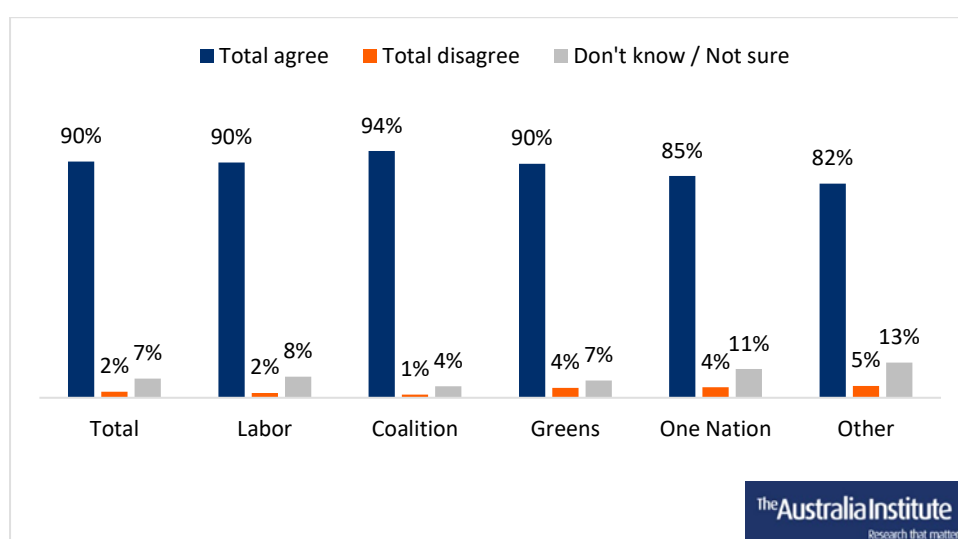
Respondents were also asked to what extent they agree or disagree with the following statement:

If a political party accepts public taxpayer funding, it should be subject to freedom of information law and required to publish annual reports on its revenue and spending.

Nine in ten Australians (90%) agree that if a political party accepts public taxpayer funding, it should be subject to freedom of information law and required to publish annual reports on its revenue and spending. Only 2% disagree.

- The highest level of agreement comes from Coalition voters (94%), closely followed by Labor (90%), Greens (90%), One Nation (85%), and Other (82%) voters.

Figure 5: FOI law and reporting requirements for political parties, by voting intention



Respondents were also asked whether they agreed or disagreed that any major change to electoral law should be reviewed by a multi-party committee of parliamentarians to consider its design and impacts.⁸⁹

- Four in five Australians (81%) agree that major changes to electoral law should be reviewed by a multi-party committee.
- Among every voting intention, the majority agree that major changes to electoral law should be reviewed by a multi-party committee.

⁸⁹ The Australia Institute (2024) *Polling – Parliamentary scrutiny of electoral law changes*, <https://australiainstitute.org.au/report/polling-parliamentary-scrutiny-of-electoral-law-changes/>

Missing reforms

IN-BUILT STATUTORY REVIEW

The South Australian government, hoping to placate concerns about its own electoral law changes, made provision for a compulsory review of its amendments to be conducted in 2027.⁹⁰ The bill stipulated that the three appointed reviewers tasked with evaluating the bill's effectiveness must have expertise in election funding, advocacy and engagement and regulatory compliance.⁹¹

Clancy Moore, CEO of Transparency International Australia, has said that one of the features of the federal bill in its current form is the lack of “an in-built statutory review”.⁹² If any version of the bill is to pass the federal parliament, it should include a compulsory provision for reviewing its efficacy no later than 2028.

GOVERNANCE EXPECTATIONS FOR PUBLICLY FUNDED PARTIES

The Australian public are already major funders of political parties through election funding. If election funding is increased and administrative funding introduced, this will only become more acute.

Other publicly-funded “quangos” (quasi non-government organisations) like art galleries and museums are expected to follow strict governance standards. They publish detailed annual reports, including audited financial statements. They are subject to freedom of information laws and whistleblower protections. They outline and commit to a code of ethics and varied policies, including work health and safety, corruption prevention, right to information and archives.⁹³

The bill introduces significant increases in public funding but without the governance standards expected of other publicly-funded organisations.

⁹⁰ Electoral (Accountability and Integrity) Amendment Bill 2024 (SA), sec.64(5)

⁹¹ Electoral (accountability and Integrity) Amendment Bill 2024 (SA), sec.64(3)

⁹² Moore quoted in Transparency International Australia (2024) *Joint statement on electoral reform from integrity and democracy groups*, <https://transparency.org.au/joint-statement-on-electoral-reform-from-integrity-and-democracy-groups/>

⁹³ See for example Art Gallery of NSW (n.d.) *Policy documents*, <https://www.artgallery.nsw.gov.au/about-us/corporate-information/policy-documents/>; National Gallery of Australia (n.d.) *Policies & plans*, <https://nga.gov.au/about-us/policies-and-plans/>; (n.d.) *Governance*, <https://nga.gov.au/about-us/governance/>

TRUTH IN ADVERTISING LAWS

There will be no guarantees that new public money will be spent on accurate advertising, just as there are no requirements for existing public funding to be spent in such a way.

Recent elections have given rise to increasing volumes of complaint across the political spectrum about “misinformation and misleading advertising”.⁹⁴ The 2023 referendum on an Indigenous Voice to Parliament further illustrated the need for reform in this area, with roughly seven in ten Australians concerned about lies and misinformation on social media during the referendum campaign.⁹⁵

Australia already has clear precedents to work with. South Australia has had these laws since 1985, and in 2020 the ACT followed suit. The pioneering laws in South Australia outlawed electoral advertisements that are materially inaccurate and misleading, and empowered the state’s Electoral Commission to request the withdrawal of such material, followed by a published retraction. Responsibility for enforcement lies with the Supreme Court of South Australia.⁹⁶

In November 2024, the Albanese Government proposed the Electoral Communications Bill,⁹⁷ which would implement truth in political advertising laws federally if legislated. Truth in advertising laws are supported by independents and Greens, and potentially the Coalition – with Opposition Leader Peter Dutton describing them as “probably welcome”.⁹⁸

Australia Institute polling research has consistently shown that voters want truth in political advertising laws. After the 2022 federal election, our polling showed that 73 per cent of voters encountered political messaging that they knew was misleading, and 86 per cent wanted truth in political advertising laws in place for the next federal election campaign.⁹⁹

⁹⁴ Browne (2022) *Democracy Agenda for the 47th Parliament of Australia*, p. 31,

<https://australiainstitute.org.au/report/democracy-agenda-for-the-47th-parliament-of-australia/>

⁹⁵ The Australia Institute (2023) *Misinformation and the referendum*, p. 1,

<https://australiainstitute.org.au/report/misinformation-and-the-referendum/>

⁹⁶ Browne (2019) *We can handle the truth: opportunities for truth in political advertising*, p. 7,

<https://australiainstitute.org.au/report/we-can-handle-the-truth-opportunities-for-truth-in-political-advertising/>

⁹⁷ Electoral Legislation Amendment (Electoral Communications) Bill 2024 (Cth),

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7279

⁹⁸ Karp (2024) *Peter Dutton says truth in political advertising ‘probably welcome’ but criticises Labor as scare campaign ‘experts’*, <https://www.theguardian.com/australia-news/2024/mar/14/peter-dutton-truth-in-political-advertising-laws-labor-policy>

⁹⁹ Arya (2022) *Political advertising on social media platforms during the 2022 federal election*,

<https://australiainstitute.org.au/report/political-advertising-on-social-media-platforms-during-the-2022-federal-election/>

Following the 2023 referendum, 87 per cent of respondents said that the reform should be introduced in time for the forthcoming election.¹⁰⁰

SOCIAL HARM DONATIONS BAN

The Australia Institute has encouraged politicians and the public to consider “a ban on political donations from dangerous or polluting industries”.¹⁰¹ In 2021, the Public Health Association of Australia recommended a federal ban on “all donations from specific business sectors for which there is clear evidence of association with harmful products, services, or industrial processes”. Tobacco, alcohol and gambling were among the “unhealthy corporate sectors” nominated for exclusion.¹⁰²

More recently, some crossbenchers have argued for the inclusion of a “social harm donations ban” in any suite of electoral reforms. In a letter to the special minister of state, Independent MP Kate Chaney claimed that there is “broad support for banning political donations from entities that inflict social harm for profit, starting with tobacco, gambling and liquor businesses”.¹⁰³

SHAREHOLDER CONSENT FOR DONATIONS

Regulation of corporate political donations in Australia is lax. A weak disclosure regime and the absence of any requirement for shareholder approval mean that it is often “impossible to tell the full amount of political expenditure” by corporate interests.¹⁰⁴

The Australia Institute has called for public companies to be required to secure shareholder approval of political donations and memberships of trade associations.¹⁰⁵

¹⁰⁰ The Australia Institute (2023) *Misinformation and the referendum*, p. 5

¹⁰¹ Browne & Walters (2023) *Securing transparency and diversity in political finance*, p. 1,

<https://australiainstitute.org.au/report/securing-transparency-and-diversity-in-political-finance/>

¹⁰² Public Health Association of Australia (2021) *Unhealthy political influence – policy position statement*,

<https://phaa.net.au/common/Uploaded%20files/SIG%20documents/PEH%20SIG/2021%20policy%20review%20-%202015-05%20-%20Unhealthy%20Political%20Influence.pdf>

¹⁰³ Chaney (2023) *Letter to Don Farrell, 19 September 2023, SMOS 23-24-044 Documents*,

<https://www.finance.gov.au/sites/default/files/smos-23-24-044-documents.pdf>

¹⁰⁴ Browne (2023) *The hidden political expenditure of Australian corporations*,

<https://australiainstitute.org.au/report/the-hidden-political-expenditure-of-australian-corporations/>; Pender (2016) *Corporate political expenditure in Australia*, p. 4, <https://www.accr.org.au/>

¹⁰⁵ Browne (2024) *Trade associations*, p. 22, <https://australiainstitute.org.au/report/trade-associations/>

INDEPENDENT CAMPAIGN ENTITY

Independent candidate campaigns are disadvantaged in the current electoral regime and would remain so under the proposed laws in this bill.

- Independent candidates are treated separately in several ways.
- Electoral funding and donations not spent in the financial year create significant tax liabilities for the candidate.
- Independent candidates only receive tax-deductibility status several weeks before the election, while parties have this status year-on-year.
- Independent candidates get late access to the electoral roll.
- An outgoing independent cannot pass their surplus funds on to a likeminded successor.

The introduction of independent campaign entities could address these issues.

Negotiations and sticking points

CROSSBENCH ATTITUDES TO THE BILL

Independent MPs have objected to the bill on several grounds.

- First, they have taken issue with the speed of its passage through the lower house and the government’s unwillingness to submit it for review by the relevant joint committee.
- Second, the bulk of the changes are identified as being of disproportionate benefit to major parties. Kate Chaney has said that the changes are largely “designed to get the Coalition on board”, while Senator David Pocock notes that the expenditure caps are designed to allow major parties to disseminate “four times more ads as [than] independent candidate that can only put their own name on their own advertisement”.¹⁰⁶
- Third, they have raised additional issues that are not included in the bill, such as the need for truth in advertising laws, and the imperative for increased Senate representation for the territories.¹⁰⁷

NEGOTIATIONS WITH THE COALITION

The West Australian has reported that some of the issues that led to the breakdown of Labor–Coalition negotiations to pass the bill in November 2024 included:

- The \$20,000 cap, which the Liberal Party wanted to double.
- The \$1,000 disclosure threshold, which the Liberal Party wanted to raise to \$5,000 so as not to impose disclosure obligations on small businesses.
- A “peak bodies” clause, which the Labor Party wanted to add so as to prevent peak body membership dues or affiliation fees being caught in the donation cap.

Negotiations on the first two points appeared to be bearing fruit, but the third proved a sticking point for the Coalition.¹⁰⁸

In anticipation of a court contest, the Coalition has proposed a “purpose of bill” provision that would allow a legal judgment against any individual part of the bill to invalidate the

¹⁰⁶ Koutsoukis (2024) *‘That’s the f--king point’: Labor donor reforms explained*

¹⁰⁷ Koutsoukis (2024) *‘That’s the f--king point’: Labor donor reforms explained*

¹⁰⁸ Curtis (2024) “Electoral funding talks collapse over late move to lock in union campaign power”, *West Australian*, 29 November 2024

legislation entirely.¹⁰⁹ The Australia Institute proposed something similar for South Australia’s (separate but just as extensive) electoral law changes.¹¹⁰

The Sydney Morning Herald also notes that Coalition MPs were concerned about the potential for donations disclosures to “attract vandals or union activists” to small business shopfronts in political protest.¹¹¹

CONSTITUTIONAL RISKS

The United Australia Party’s Clive Palmer has indicated a willingness to challenge the bill in the High Court if passed.¹¹² His contention is that the bill offends the “implied rights of freedom of speech” in the Constitution.¹¹³

Anne Twomey, professor emerita at the University of Sydney, has suggested that the High Court might strike down the bill on the grounds that it is not “reasonably appropriate and adapted to achieve” its goals, or that it favours incumbents in contravention of the implied freedom of political communication.¹¹⁴

¹⁰⁹ Grattan (2024) *Liberals argue Labor’s electoral reform package should stand or fall as a whole in any court challenge*, <https://theconversation.com/liberals-argue-labors-electoral-reform-package-should-stand-or-fall-as-a-whole-in-any-court-challenge-244930>

¹¹⁰ Browne (2024) *Money and power in South Australian elections*, p. 34

¹¹¹ Sakkal (2024) *Teals furious as Coalition to wave through tough laws cutting campaign donations*, <https://www.smh.com.au/politics/federal/teals-furious-as-coalition-wave-through-tough-new-laws-cutting-campaign-donations-20241119-p5krpl.html>

¹¹² Sakkal (2024) *Teals furious as Coalition to wave through tough laws cutting campaign donations*

¹¹³ Sakkal (2024) *Palmer plots High Court challenge as teals slam election funding overhaul*, <https://www.smh.com.au/politics/federal/palmer-plots-high-court-challenge-as-teals-slam-election-funding-overhaul-20241115-p5kqu8.html>

¹¹⁴ Twomey (2024) *Sneaky, excessive and unjustified: why Labor’s electoral reforms are vulnerable to constitutional challenge*, <https://www.theguardian.com/commentisfree/2024/nov/20/labor-electoral-campaign-finance-reforms-vulnerable-to-constitutional-challenge>

Recommendations

The Electoral Reform Bill is not suitable to pass in its current form.

- As recommended by integrity groups last year,¹¹⁵ the Parliament of Australia should spin-out the noncontroversial improvements to donation transparency and legislate those.
- The remainder of the bill should go to a parliamentary inquiry for detailed analysis.

If the remainder of the bill is *not* subject to an inquiry, then at the very least it should be amended:

Administrative funding

- There should be no per-MP administrative funding.
- Administrative funding could be based on the number of members a political party has, with a flat rate for independent MPs.
- If per-MP administrative funding is retained, the same rate ought to apply for members of the House of Representatives as for senators.
- If per-MP administrative funding is retained, the total a party can receive should be tapered or capped at a reasonable level. In South Australia (71 parliamentarians), the cap applies after 10 parliamentarians. The equivalent for the Commonwealth (226 parliamentarians) would be capping after 32 parliamentarians.

Election funding

- There should be no increase to per-vote public funding until truth in political advertising laws are implemented.
- Consider capping a party's per-vote public funding for a seat at House of Representatives votes or Senate votes in that seat, whichever is higher.

While there is a case for public funding, it should be in a form that is available to new entrants – like the democracy voucher system that operates in the City of Seattle.

Spending caps

- The spending caps should be amended to become a mega-donor cap.
- If spending caps are not amended in this way,

¹¹⁵ Australian Democracy Network (2024) *Joint statement on electoral reform from integrity and democracy groups*, <https://australiandemocracy.org.au/australian-democracy-network/posts/joint-statement-electoral-reform>

- independent senate campaigns should have the same or higher cap as party campaigns, not one that is between one-sixth and one-half of the party cap.
- new entrants should have a higher cap than incumbents, to account for the MP's communication allowance and other incumbency advantages.
- electoral expenditure spent in or for a seat should count against the seat cap, regardless of whether it mentions the candidate or seat.

Gift caps

- If a gift cap is retained, it should be set at \$80,000 per electoral cycle rather than \$20,000 per year. The effect is the same for existing political parties, but provides a level playing field for new entrants.
- References to nominated entities should be removed. All associated entities should be subject to the same rules.
- The bill should adopt the JSCEM's recommendation that "charities registered under the Australian Charities and Not-for-profits Commission be exempt from the donation caps".¹¹⁶ Electoral reform should seek to limit the influence of 'big money' in politics (including cash-for-access contributions), but without creating perverse outcomes for third parties such as charities and not-for-profit organisations.¹¹⁷
- If the gift cap is retained for charities, the bill should clarify how the \$20,000 cap will work for the federal accounts of charities.

¹¹⁶ JSCEM (2023) *Conduct of the 2022 federal election and other matters: Final report*, p. xv, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/~/_link.aspx?_id=B0EB44BCE6544D4488F8F90E44E0AA37&_z=z

¹¹⁷ Browne and Shields (2022) *Fortifying Australian democracy: submission to the inquiry into the 2022 election*

Conclusion

Negotiations between politicians behind closed doors are not good enough when it comes to fundamental changes to Australian democracy. While transparency and limits on political fundraising and spending are superficially attractive, the Electoral Reform Bill is unfair by design:

- The burden of donation caps falls disproportionately on smaller parties and independent candidates.
- Spending caps at the seat level have multiple loopholes that parties can exploit, but that independent candidates cannot.
- Public funding for existing political players would increase, while remaining unavailable for new entrants.

The major parties have continued their negotiation over the Electoral Reform Bill over the summer. They have the most to gain from a deal. But for Australians to have trust in the process, there must be genuine consultation that includes the public: informing Australians, listening to them and taking on their feedback. Democracy belongs to the people, not the politicians they elect.

Appendix: Polling

Method

Short disclosure statement

Panel provider	Dynata
Research company	The Australia Institute
Client commissioning the research	NA
Fieldwork dates	13 November 2024 to 15 November 2024
Mode of data collection	Online recruited from research panel
Target population	Australian adults aged 18+
Sample size	1,009
Australian Polling Council compliant	Yes
Voting intention published	No
Long disclosure statement	See below

Long disclosure statement

Effective sample size after weighting applied	982.94
Margin of error associated with effective sample size	±3.1%
Variables used in weighting	Age, gender, state/territory based on Australian Bureau of Statistics "National, state and territory population" data
Gender identity categorisation	Those who answered the gender identity question as "Non-binary", "I use a different term", or "Prefer not to answer" had their responses included with females for the purpose of reporting, due to constraints from weighting data availability
Weighting method used	Raking method
Full question text, responses categories and randomisation	See below
Source of online sample	Dynata's online panel
Positioning of voting intention questions in questionnaire	Immediately after demographics, before policy questions.
How were undecided voters handled?	Respondents who answered "Don't know / Not sure" for voting intention were then asked a leaning question; these leanings are included in voting intention crosstabs
Method of calculating ZPP	NA
Voting intention categorisation	Voting crosstabs show voting intentions for the House of Representatives. "Coalition" includes separate responses for Liberal and National. "Other" refers to Independent/Other, and minor parties in cases where they were included in the voting intention but represent too small a sample to be reported separately in the crosstabs
Location results	Results are shown only for larger states



Detailed results

Preceding questions in the poll are expected to have influenced the results of the questions published here. The questions, and the response options for each question, are as follows:

To what extent do you agree or disagree?

“Any major change to electoral law should be reviewed by a multi-party committee of parliamentarians to consider its design and impacts.”

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don’t know / Not sure

To what extent do you agree or disagree with the following statement?

“Truth in political advertising laws should be in place in time for the next federal election campaign.”

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don’t know / Not sure

If ‘truth in political advertising’ laws were adopted, which of the following do you think should be possible penalties for parties and candidates that published inaccurate and misleading ads? Choose as many as apply.

Response options were presented in random order.

- Fines and other financial penalties
- Being forced to publish retractions at their own expense
- Losing some or all public funding
- Criminal charges
- None of the above
- Don’t know / Not sure

If 'truth in political advertising' laws were adopted, who should adjudicate whether an ad is inaccurate and misleading?

Response options were presented in random order.

- Electoral commissions (for example, the Australian Electoral Commission for federal ads)
- Magistrates and judges through the legal system
- A special panel of former politicians convened for the election
- An industry body (for example, Ad Standards)
- None of the above
- Don't know / Not sure

The following statements are about truth in political advertising. For each statement, indicate whether you agree or disagree.

Statement options presented in random order. Response options were Strongly agree, Agree, Disagree, Strongly disagree, and Don't know / Not sure.

- Newspapers, TV channels and social media networks should have to run corrections if they publish inaccurate or misleading ads.
- The media should self-regulate by refusing to run ads that are obviously inaccurate and misleading.
- Political ads should be required to be submitted to a public archive so parties are accountable for the ads that they run.
- Legislation and policy should be given neutral and accurate names.
- Government advertising paid for by taxpayers should only be used to inform.
- It is not the media's fault if they run ads that are inaccurate or misleading.
- Political ads should be prepared by the public service to guarantee that they are factual and constructive.
- Government advertising paid for by the taxpayer should be assigned to policies based on how significant they are, not how controversial they are.

Would you support or oppose the following policies relating to Australian elections and how political parties and candidates are funded?

Policy options were presented in random order.

	Total	Male	Female	NSW	VIC	QLD	WA
<i>All political contributions by corporations and all cash-for-access payments must be disclosed, regardless of size.</i>							
Strongly support	47%	48%	46%	49%	44%	55%	38%
Support	36%	37%	35%	35%	38%	31%	44%
Oppose	7%	8%	6%	6%	9%	8%	7%
Strongly oppose	2%	2%	1%	2%	3%	1%	0%
Don't know / Not sure	8%	5%	10%	9%	7%	5%	11%
<i>Requiring all political contributions of \$5,000 or more to be disclosed.</i>							
Strongly support	48%	51%	46%	48%	42%	55%	48%
Support	36%	33%	38%	37%	37%	34%	37%
Oppose	6%	8%	5%	4%	10%	7%	3%
Strongly oppose	2%	3%	1%	2%	2%	2%	3%
Don't know / Not sure	8%	5%	10%	9%	9%	3%	8%
<i>Requiring real-time disclosure of political contributions, including weekly disclosures during election campaigns.</i>							
Strongly support	43%	45%	41%	46%	40%	48%	37%
Support	41%	39%	43%	37%	41%	42%	51%
Oppose	6%	8%	4%	6%	8%	4%	5%
Strongly oppose	1%	2%	0%	2%	1%	1%	0%
Don't know / Not sure	9%	6%	12%	10%	10%	5%	8%
<i>Introducing a "mega-donor cap" that prevents any one entity from contributing more than about \$1.5 million to political campaigns.</i>							
Strongly support	44%	45%	43%	43%	40%	52%	42%
Support	34%	35%	34%	35%	39%	31%	32%
Oppose	8%	10%	7%	8%	7%	8%	9%
Strongly oppose	3%	4%	1%	3%	3%	3%	2%
Don't know / Not sure	11%	7%	14%	12%	11%	5%	15%
<i>Requiring trade associations, industry peak bodies and industry lobby groups to disclose their corporate members and the amount of money contributed by each corporate member.</i>							
Strongly support	45%	46%	43%	43%	40%	53%	40%
Support	35%	36%	35%	35%	35%	32%	43%
Oppose	8%	10%	5%	9%	12%	4%	2%
Strongly oppose	2%	2%	2%	3%	1%	2%	1%
Don't know / Not sure	10%	6%	15%	10%	12%	8%	13%

	Total	Labor	Coalition	Greens	One Nation	Other
All political contributions by corporations and all cash-for-access payments must be disclosed, regardless of size.						
Strongly support	47%	45%	45%	51%	53%	50%
Support	36%	38%	41%	28%	30%	28%
Oppose	7%	8%	7%	11%	6%	6%
Strongly oppose	2%	2%	1%	4%	2%	0%
Don't know / Not sure	8%	7%	6%	6%	9%	17%
Requiring all political contributions of \$5,000 or more to be disclosed.						
Strongly support	48%	49%	46%	53%	51%	44%
Support	36%	39%	38%	26%	28%	33%
Oppose	6%	6%	6%	8%	9%	6%
Strongly oppose	2%	1%	2%	7%	0%	1%
Don't know / Not sure	8%	6%	7%	6%	11%	15%
Requiring real-time disclosure of political contributions, including weekly disclosures during election campaigns.						
Strongly support	43%	43%	43%	44%	42%	42%
Support	41%	44%	43%	35%	31%	35%
Oppose	6%	6%	5%	8%	11%	4%
Strongly oppose	1%	1%	2%	4%	2%	0%
Don't know / Not sure	9%	6%	8%	9%	15%	19%
Introducing a "mega-donor cap" that prevents any one entity from contributing more than about \$1.5 million to political campaigns.						
Strongly support	44%	46%	40%	49%	44%	44%
Support	34%	36%	39%	30%	24%	25%
Oppose	8%	8%	8%	11%	8%	7%
Strongly oppose	3%	2%	3%	3%	8%	2%
Don't know / Not sure	11%	9%	10%	6%	16%	21%
Requiring trade associations, industry peak bodies and industry lobby groups to disclose their corporate members and the amount of money contributed by each corporate member.						
Strongly support	45%	42%	46%	48%	47%	46%
Support	35%	39%	35%	32%	28%	30%
Oppose	8%	7%	9%	6%	9%	6%
Strongly oppose	2%	1%	2%	2%	0%	2%
Don't know / Not sure	10%	10%	8%	11%	15%	16%

To what extent do you agree or disagree with the following statement?

“If a political party accepts public taxpayer funding, it should be subject to freedom of information law and required to publish annual reports on its revenue and spending.”

	<i>Total</i>	Male	Female	NSW	VIC	QLD	WA
Strongly agree	52%	53%	51%	51%	46%	60%	48%
Agree	39%	40%	38%	41%	41%	34%	41%
Disagree	2%	2%	2%	2%	4%	0%	1%
Strongly disagree	0%	0%	0%	1%	0%	0%	0%
Don't know / Not sure	7%	5%	9%	6%	10%	5%	10%

	<i>Total</i>	Labor	Coalition	Greens	One Nation	Other
Strongly agree	52%	52%	50%	53%	58%	52%
Agree	39%	38%	44%	36%	27%	30%
Disagree	2%	2%	1%	4%	4%	4%
Strongly disagree	0%	0%	0%	0%	0%	1%
Don't know / Not sure	7%	8%	4%	7%	11%	13%