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A photograph showing the silhouettes of three people (two men and one woman) sitting around a table in a modern office or meeting room. They are positioned in front of a large window that looks out onto a city skyline. The lighting is soft, coming from the window, creating a professional and collaborative atmosphere.

## Who's in the room? Access and influence in Australian politics

Danielle Wood and Kate Griffiths

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## Overview

Australians are rightly concerned about the role of special interests in politics. Even a healthy democracy like Australia's can be vulnerable to policy capture. Well-resourced interests – such as big business, unions and not-for-profits – use money, resources and relationships to influence policy to serve their interests, at times at the expense of the public interest. Even if they are only sometimes successful, it's not the 'fair go' Australians expect.

Access to decision makers is vital for anyone seeking to influence policy. But some groups get more access than others. Businesses with the most at stake in government decisions lobby harder and get more meetings with senior ministers. Some industries – such as gambling and property construction – are hugely over-represented compared to their contribution to the economy.

Money and relationships can boost access: time with ministers and their shadows is explicitly 'for sale' at fundraising dinners, and major donors are more likely to get a meeting with a senior minister. And more than one-quarter of politicians go on to post-politics jobs for special interests, where their relationships can help open doors.

The major political parties rely on a handful of big donors: just 5 per cent of donors contributed more than half of the big parties' declared donations at the last election. Donations build relationships and a sense of reciprocity. And the fact that industries in the cross-hairs of policy debate sometimes donate generously and then withdraw once the debate has moved on suggests they believe, perhaps rightly, that money matters.

Special interests also seek influence through the public debate. The idea is simple: if you can capture the 'hearts and minds' of the public

then policy makers will usually follow. Major advertising campaigns are the preserve of well-resourced groups: unions, industry peak bodies and *GetUp!* were major spenders in the past decade. Some groups commission consultants or think tanks to lend credibility to their case. The media often publish their findings uncritically or fail to ask: 'who paid for this research?'

Who's in the room – and who's in the news – matters for policy outcomes. Powerful groups have triumphed over the public interest in some recent debates, from pokies reforms to pharmaceutical prices, to toll roads and superannuation governance.

This report shows how to strengthen checks and balances on policy influence. Publishing ministerial diaries and lists of lobbyists with passes to Parliament House could encourage politicians to seek more diverse input. More timely and comprehensive data would improve visibility of the major donors to political parties. Accountability should be strengthened through clear standards for MPs' conduct, enforced by an independent body. A cap on political advertising expenditure would reduce the donations 'arms race' between parties and their reliance on major donors. These reforms won't cure every ill, but they are likely to help. They would improve the incentives to act in the public interest and have done no obvious harm in jurisdictions where they have been implemented.

Australians want to drain the billabong: they don't like the current system and they don't trust it. This report proposes some simple changes that would improve the quality of policy debate and boost the public's confidence that policy is being made for all Australians – not just those in the room.

## Recommendations

Australian political institutions are generally robust, but there is room for improvement. This report proposes eight key reforms.

### Improve transparency in policy making

- Publish ministerial diaries to enable public scrutiny of who ministers are meeting – and not meeting – and encourage them to seek out a wider range of views.
- Link the lobbyists register to ‘orange passes’ to identify commercial and in-house lobbyists with privileged behind-the-scenes access to Parliament House, and ensure they comply with the lobbying code of conduct.
- Improve the visibility of political donations by lowering the donations disclosure threshold to \$5,000, requiring political parties to aggregate multiple donations from the same donor and requiring more timely release of donations data.

### Strengthen accountability of policy makers

- Clarify conflicts of interest for all parliamentarians – particularly around hospitality, gifts and secondary employment – and set a standard for the public, media and parliament to hold elected officials to.

- Independently administer codes of conduct, to build public confidence that people are complying with them. Appoint a separate ethics adviser to encourage current and former politicians to seek advice when they are in doubt.
- Establish a federal integrity or anti-corruption body to investigate potential misconduct or corruption, publish findings, and refer any corrupt activity to the Commonwealth Director of Public Prosecutions.

### Level the playing field

- Cap political advertising expenditure by political parties and third parties during election campaigns to reduce the imbalance between groups with different means to broadcast political views, and limit the reliance of major political parties on individual donors.
- Boost countervailing voices through more inclusive policy review processes and advocacy for under-represented groups to give politicians and public officials better information with which to adjudicate the public interest.

These recommendations are detailed in Chapter 5.

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## 1 Australia is vulnerable to policy capture

This report examines the influence of special interests on policy making in Australia. It demonstrates how individuals and organisations with the most to gain or lose from policy changes push their agenda. And it highlights the cost to other Australians when the voices of special interest groups are given too much weight in policy debates.

This chapter shows why – even in a healthy democracy like Australia's – special interests can sometimes successfully hijack the policy-making process. Indeed, many of the 'risk factors' for policy capture – financial dependence, cosy relationships and lack of transparency in dealings between special interests and parliamentarians – are present in our system.

Australians are concerned about special interest control over policy, and rightly so – this chapter underscores the economic and social costs of a political system that sometimes favours the few over the many.

### 1.1 Democratic institutions help protect against policy capture but aren't always a perfect defence

*In the ideal democracy, the mechanisms of government are devised so that the clash of contending opinions and interests is converted into policies that serve the common good.<sup>1</sup>*

Democracy is at its heart a contest of ideas. The policy-making process translates those ideas into actions: laws, regulations, taxes and spending.

In democracies like Australia, a number of safeguards, not least elections themselves, aim to promote policy made in the public interest, not for special interests. But these safeguards are not perfect, and in

some cases they are getting weaker. That's why many democracies have direct checks on the influence of special interest groups – particularly around political donations and access.

#### 1.1.1 The policy-making process has a number of checks against undue influence

Policy making is rarely linear or neat – politicians and other decision-makers draw information, analysis and views from a range of sources:

- Individuals represent their interests by writing to or talking with a local member or minister, signing a petition, joining a protest, expressing a view in the media, or donating to or volunteering for a political party or advocacy group.
- Special interests – such as unions, business, and not-for profit groups with an advocacy role – advance their views either privately through meetings with decision-makers or publicly through media and advertising.<sup>2</sup>
- The public service provides ministers with 'frank and fearless' analysis and advice, including on the public interest. Other public service institutions such as the Parliamentary Library and the Parliamentary Budget Office also assist all parliamentarians in analysing policy.
- Experts outside the public service – including professionals, academics and think tanks – volunteer or are asked for their policy analysis and advice.

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1. Lindsey and Teles (2017, p. 18).

2. Governments also lobby other governments, for example local councils or foreign governments might lobby the federal government.

Policy makers are expected to weigh these sources of information and make decisions in the public interest.<sup>3</sup> At the highest level, the public interest can be defined as for “the benefit of society, the public or the community as a whole”.<sup>4</sup> But reasonable minds can differ about what policies are in the ‘public interest’. Before policies can be implemented, individual politicians usually need to convince their party, and then the parliament, about the best course of action.<sup>5</sup> In practice, policy often compromises between competing views of the public interest.<sup>6</sup>

As part of this process, elected representatives and many others spend considerable time and effort thinking about, analysing and debating the public interest. Skilled and well-motivated politicians are a vital part of good policy-making.

But decision-makers at times also respond to other motivations. Self-interest, the interests of their political parties, and the concerns of special interests can also influence policy choices.

Elections help keep these other influences in check. They signal the public’s view of how their interests are best served, and provide an incentive for governments not to veer too far from that path. Governments that pursue policies that leave the majority of the electorate substantially worse off are unlikely to survive. The media has an important role in informing voters by shining a light on policy debates and political processes.

3. Under the Constitution, the Parliament makes laws for “the peace, order, and good government of the Commonwealth” (*Commonwealth of Australia Constitution Act* (1900, s. 51). Public office bearers are entrusted to only exercise their powers “for, and on behalf of, the people” (Lusty (2014)). Acting in the ‘public interest’ is fundamental to ‘good government’, see Wheeler (2006).
4. See Wheeler (ibid.) for a more detailed discussion of ‘the public interest’.
5. There are few policy areas where individual ministers have individual discretion (Section 1.3).
6. For example, the GST, pension reform, company tax cuts, and the National Energy Guarantee involved compromises within political parties, between parties, and with crossbenchers.

Party pre-selection processes are another check on the conduct and policy views of parliamentarians, at least for the major parties. Although pre-selection processes are a long way from perfectly democratic,<sup>7</sup> they generally require politicians and would-be politicians to periodically convince party members in their electorates that they are the best person to represent the party.

### 1.1.2 These safeguards are not perfect and in some cases are becoming weaker

Democracy isn’t a perfect safeguard of the public interest. Voting is ultimately a blunt check on bad policy and bad behaviour.

Voters often lack information. Governments preside over a vast range of policies and programs. But many people cast their vote on just a few highly visible policy issues.<sup>8</sup>

Some of the other checks on behaviour and decision-making are becoming weaker.

The media is not always an effective ‘watchdog’. Investigative journalism is costly, and with falling advertising revenues, many media outlets cannot fund much of it.<sup>9</sup> Australia’s media is more concentrated than almost anywhere else in the world,<sup>10</sup> which limits the avenues for alternative views. And Australia’s tough defamation laws make our media very cautious about calling out undue influence, let alone corruption.<sup>11</sup> All this weakens media oversight of policy – particularly more technical policy issues – and abuses of power.

7. Johns (2000); and Duffy (2016).
8. Or on party loyalties, or personalities. Many argue that voters pass judgement on the overall performance of politicians, not their policies, e.g. Lenz (2012).
9. Beecher (2013).
10. Dwyer and Muller (2016).
11. Some argue Australia’s defamation framework leads journalists to self-censor (S. Keane (2017)). Comparative analysis of news content in Australia and the US supports this (Dent and Kenyon (2004)).



There are concerns that the public service is losing policy capability<sup>12</sup> and is being sidelined as a source of policy advice.<sup>13</sup> The rise of ministerial office staff and the politicisation of the public service make it harder for public servants to provide robust, trusted policy advice.<sup>14</sup>

Pre-selection processes – to the extent they are influenced by party members – are becoming a less useful check on candidates' conduct and mainstream appeal because major party membership is falling and becoming less representative of the wider population.<sup>15</sup> A shrinking membership base also makes it easier for a narrow set of interests within a party to stack or control branches and pre-selections.<sup>16</sup>

## 1.2 How special interests convert economic power into political power

Special interests are individuals or organisations with much to gain or lose from a particular change in government policy. All of us have an interest in particular policy debates, but this report is concerned with people and groups that try to influence policy outcomes in their favour, when it is at the expense of the public interest. Special interests invariably claim that the outcomes they support are in the public interest. But what is good for General Motors is *not* always good for the country.

Well-resourced special interest groups – such as unions and big businesses – will sometimes exert considerable effort and resources to push for policies that benefit themselves, often at the expense of

others.<sup>17</sup> The most extreme version of this is graft – where an interest group pays for a vote or regulatory decision. This kind of 'black letter' corruption is illegal in Australia<sup>18</sup> and probably rare (Chapter 3).

But there are many legal ways that special interests can create a favourable political environment. These include donations, lobbying, hiring former ministers and staffers who have existing relationships with decision-makers, and seeking to convince the public that their interests align with the public interest.

These tools are more readily available to the well-resourced and highly motivated. They can increase the risk that policy makers make decisions based on an unbalanced view of an issue and – knowingly or unknowingly – give undue weight to special interests over the public interest. This 'grey area' of **undue influence** is the focus of this report.

It may not be the norm, but undue influence is real and can be costly. In a recent public survey, 56 per cent of respondents said they had 'personally witnessed' public officials making decisions that favoured a business or individual who gave them political donations or support, or at least 'suspected' that was happening. And the number was even higher among those who had worked in federal government (Figure 1.1).

### 1.2.1 Rent-seeking can pay off for special interests

Organised attempts to influence policy can create windfall gains for some, at the expense of others. Economists call this 'rent-seeking': when businesses try to influence government decisions to boost *their*

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12. Moran (2017).

13. Mitchell (2015); and Van Onselen (2014).

14. Banks (2013a). These issues are not the focus of this report, but will be considered in future work.

15. D. Wood et al. (2018); and Reece (2015a).

16. Duffy (2016).

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17. Lindsey and Teles (2017). 'Resources' can include money, staff, members, volunteers, information and expertise.

18. Bribing a public official, and receiving a bribe or 'corrupting benefit', are illegal under Australian law, but require proof of a dishonest or improper motive, *Criminal Code Act 1995* (Cth).



wealth but not wealth overall.<sup>19</sup> This report defines rent-seeking more broadly, to include the efforts of other groups – such as unions and not-for-profits – when they seek government interventions that further their interests at the expense of the public interest.

Lobbying does not always pay off for individual firms.<sup>20</sup> But one US study found economic elites or organised interests tended to prevail when their opinion was on one side of a debate and public opinion on the other.<sup>21</sup> Even occasional windfall gains for rent-seekers are a concern if they come at the expense of the public interest.

Rent-seeking is most likely to succeed when the benefits from a policy outcome are concentrated but the costs are diffuse. The few that stand to gain a lot tend to be more motivated to persuade decision-makers than the many that each stand to lose a little, even if the collective losses are substantial.<sup>22</sup>

Rent-seeking is also more likely to be successful where the policy area is technical, niche or complex.<sup>23</sup> These policy areas are more difficult for citizens, journalists and outsider groups to engage with, and policy makers themselves are more reliant on the expertise of special

19. Tullock et al. (2002).

20. “Individual lobbyists . . . try to spin their issues, but opponents fight back, ensuring that for most issues most of the time, a stable equilibrium continues” (Baumgartner et al. (2009)). Studies show mixed results on whether lobbying spend delivers bang for buck: e.g. Cao et al. (2018), Chen et al. (2015), Hadani and Schuler (2013), Hill et al. (2013) and Lux et al. (2011).

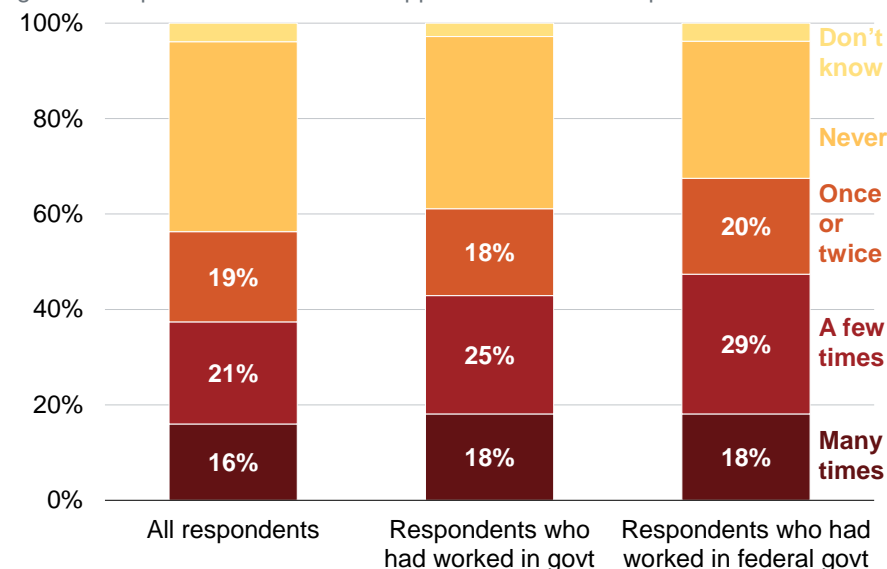
21. Gilens and Page (2014).

22. Olson (1965).

23. Few interest groups engage with these issues – a US study found 50 per cent of policy issues attracted only 3 per cent of lobbying activity, while 5 per cent of issues attracted more than 45 per cent of lobbying activity (Baumgartner and Leech (2001)). Political activity directed at specific issues tends to be more successful than general political activity (Burstein and Linton (2002) and Cao et al. (2018)). And lobbying aimed at maintaining the status quo is also more likely to be successful (Baumgartner et al. (2009)).

**Figure 1.1: Most people say they have seen, or suspect, public officials favour those that back them**

How many times have you ‘personally witnessed or suspected’ a government official or politician making a decision in favour of a business or individual who gave them political donations or support? Per cent of responses



Notes: This was a telephone poll of 2,218 adults in Australia conducted by Griffith University and Transparency International Australia in May-June 2018.

Source: Transparency International Australia (2018).

interests in formulating policy. “The power of [special] interests varies in direct proportion to the visibility of the issue in question.”<sup>24</sup>

Industries that are heavily regulated by government, such as property development, transport, and mining, are particularly prone to rent-seeking because complex regulations tend both to affect many areas of their business and are difficult for outsiders to understand.<sup>25</sup>

### 1.2.2 Economic and social costs of rent-seeking can be high

The economic costs of rent-seeking can be substantial. It can reduce economic activity – the ‘size of the pie’ – if firms devote their efforts to influencing policy rather than developing better and more innovative products and services.<sup>26</sup> Even the perception that government is in bed with particular interests can reduce entrepreneurial activity if new entrants believe that incumbents do not have to compete on their merits.<sup>27</sup>

The simplest measure of the cost of rent-seeking is the amount spent on it. In the US, special interests spent a total of US\$3.4 billion on lobbying activities in 2017.<sup>28</sup> Equivalent data is not collected in Australia, but we know that private interests donated more than \$40 million to political parties at the last federal election.<sup>29</sup> Estimates of the expenditure of major Australian peak bodies and advocacy

groups in 2015-16 range from \$400 million to \$700 million<sup>30</sup> – and those estimates do not include in-house or commercial lobbying staff employed by businesses, unions and not-for profits.

While lobbying spend gives a sense of the size of the industry, it cannot capture the costs to the public of poor policy encouraged by lobbying. Estimating this is inherently challenging,<sup>31</sup> but some US and Australian studies suggest the costs to citizens could be substantial.<sup>32</sup> International studies suggest corruption and perceived corruption tend to reduce economic growth.<sup>33</sup>

Lobbying can also cause governments to overlook important policy issues. A US study found little overlap between the issues that lobbyists work on and the issues the broader public considers most important.<sup>34</sup> Policy makers who spend more time talking to lobbyists than the general public may end up with a distorted sense of policy priorities.

Rent-seeking is also *socially* detrimental. Rent-seeking and corruption worsen inequality by increasing the share of the pie going to those already well-off.<sup>35</sup> When a political system favours ‘insiders’ or the powerful, the public’s trust in government is weakened.<sup>36</sup> And if the same interests seem to keep winning, the legitimacy of government is undermined and it becomes harder to promote policy changes that are unpopular but in the public interest.<sup>37</sup>

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24. Teles (2013).

25. Cao et al. (2018); Hadani and Schuler (2013); Bonardi et al. (2006); and Transparency International Australia (2017).

26. Tullock et al. (2002); Lindsey and Teles (2017); Zingales (2017); Brou and Ruta (2013); and Baumol (1996).

27. K. M. Murphy et al. (1993). And it may encourage people to choose careers specialising in rent-seeking work instead of entrepreneurial activity (K. M. Murphy et al. (1991)).

28. Lobbying spending grew rapidly through the 2000s but has plateaued since the global financial crisis (Center for Responsive Politics (2018)).

29. Counted over the two financial years containing the 2016 federal election campaign (Chapter 3).

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30. Bragg (2017); and West (2017a).

31. Del Rosal (2011).

32. e.g. Bessen (2016), Lindsey and Teles (2017) and Murray and Frijters (2017, pp. 153–155).

33. Mauro (1995) found indices of perceived corruption have a negative relationship with economic growth. Also Bardhan et al. (1997) reviews the evidence.

34. Baumgartner et al. (2009); and Kimball et al. (2012).

35. Tullock et al. (2002); Lindsey and Teles (2017) reviews the US evidence.

36. Banks (2013b); Tham (2010); and Lessig (2013).

37. Dur and Bievre (2007).

### 1.3 Australia is vulnerable to policy capture

'Policy capture' occurs when special interests succeed in swaying policy in their favour at the expense of the public interest.<sup>38</sup>

Australia has many of the risk factors that make policy capture more likely.<sup>39</sup> special interests have the resources and incentives to influence policy outcomes; current rules and norms create additional opportunities to influence; and existing checks and balances on influence are weak in some areas (Table 1.1). Several parliamentary committees and inquiries have recognised the need to address weaknesses in the system.<sup>40</sup>

Other democracies are similarly vulnerable, but many make access and influence more transparent, which enables voters to better hold government to account.<sup>41</sup>

#### Incentive to influence policy

Half the Australian economy is heavily dependent on government policy.<sup>42</sup> This includes the property, mining, financial services, transport, energy and telecommunications sectors. In these sectors government can create individual winners (e.g. by granting mining licenses, awarding a contract or rezoning land) and increase – or

38. OECD (2017, p. 9).

39. Ibid.

40. For example, a 2017 Senate Select Committee recommended "the Commonwealth Government prioritises strengthening the national integrity framework" (Senate Select Committee (2017)). Researchers have identified specific weaknesses in Australia's federal integrity system, including: a lack of coordinated oversight of high-risk misconduct; no independent supervision for large areas of corruption risk (such as procurement); and limited public accessibility and whistle-blower support (Brown et al. (2018)).

41. OECD (2017); OECD (2014); and OECD (2016).

42. IBISWorld 'heavy regulation and government policy' category.

Table 1.1: Australia is vulnerable to policy capture

	Risk factor	Risk in Australia?
<b>Incentive</b>	Government policy determines 'winners'	There are many sectors where government decisions have a big impact on returns.
	Existing inequality	Some sectors are highly concentrated.
<b>Ability</b>	Availability of resources	Many special interests are well-resourced (such as unions and large businesses).
	Reliance	Political parties are heavily reliant on major donors.
	Repeated interactions / relationships	Some interests have disproportionate access to policy makers; some donate regularly.
		Privileged access to Parliament House facilitates casual interactions between politicians and influence-seekers.
<b>Opportunity</b>		Lax 'revolving door' rules permit 'cosiness' between politicians and influence-seekers.
	Opacity of decision making	Limited transparency and poor accountability mechanisms.
	Technical complexity	In some policy areas, government (and particularly opposition parties) rely on interest groups to test policies.
	Unchecked discretion	Parties, parliament and media provide some checks. But these checks are less effective where losers are diffuse.

Notes: Red means the risk factor is present in Australia, orange means it is sometimes present, yellow means it is not present.

Source: Grattan Institute, adapted from OECD (2017).

destroy – profitability (*e.g.* by providing bank guarantees or changing regulatory settings).

Some of these sectors are concentrated,<sup>43</sup> and some are highly profitable natural monopolies<sup>44</sup> in which incumbents have a lot to lose from new entry, competitive challenge or tighter regulation.

In Australia, sectors with higher barriers to entry are a little more profitable than those with lower barriers.<sup>45</sup> These sectors earn more than \$16 billion in 'super-normal' profits.<sup>46</sup> These super-normal profits are not necessarily rents created by government – they often result from natural or government-created barriers to entry. But given these super-normal profits exist, incumbents may be strongly motivated to protect them through lobbying rather than innovation, at the expense of consumers and taxpayers.

#### Ability to influence policy

Regular interactions and stable networks make it easier to exert undue influence. Relationships between government and some special interests in Australia are often 'cosy'.

Many major political donors donate regularly, and political parties are highly reliant on a small number of donors for most of their funding (Chapter 3).

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43. *e.g.* Banking, insurance and mobile telecommunications, Minifie (2017).

44. *e.g.* Electricity distribution and transmission, rail freight transport, and wired telecommunications, Minifie (*ibid.*).

45. About 40 per cent of all above-normal profits are earned behind barriers to entry, even though those sectors account for less than 30 per cent of total equity (Minifie (*ibid.*)).

46. 'Super-normal' profits are those earned above the cost of equity. Profits and super-normal profits were calculated based on sector average returns (after tax) calculated from 2010-11 to 2015-16, weighted by firm equity, excluding goodwill. Sectors with high barriers to entry and super-normal profits include banking, insurance, supermarkets, gambling, electricity networks, transport and telecommunications (Minifie (*ibid.*)).

Businesses in highly regulated industries account for the lion's share of external meetings with senior politicians on both sides of politics. And there are plenty of opportunities for informal interactions as well, ranging from corridor catch-ups in Parliament House to corporate boxes at the AFL Grand Final (Chapter 2).

Many special interests also lobby through former ministers, advisers and senior bureaucrats using their existing relationships and know-how. Policy makers may be particularly vulnerable to policy capture when approached by former colleagues and friends (Chapter 2).

Many special interests have the financial resources to make the most of these various influence channels.

#### Opportunity to influence policy

Special interests have more opportunity to bend policy to their advantage in systems where checks and balances on influence are weak. Australia has a range of checks on policy decisions – including party pre-selections, public service advice, independent media and of course elections. But these checks are not perfect and in some cases they are weakening (Section 1.1).

### 1.4 Australians are concerned about the power of special interests

Surveys show that since the early 2000s, perceptions that 'people in government look after themselves' and that 'government is run for a few big interests' have risen significantly (Figure 1.2).<sup>47</sup>

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47. Cameron and McAllister (2016).

In 2018, 85 per cent of Australians surveyed thought at least 'some' federal MPs were corrupt (on par with perceptions of state MPs and worse than perceptions of local officials).<sup>48</sup>

Australia has also slipped in Transparency International's Corruption Perceptions Index in recent years.<sup>49</sup> The index scores countries on how corrupt their public sectors are seen to be, as measured by surveys of business people, analysts and other experts. While Australia is still among the best-ranked countries in the world, it is the only highly-ranked country to have experienced a significant decline in the index, slipping 8 points between 2012 and 2017 (Figure 1.3).

In recent months the federal government has voiced concerns about foreign interference in our political system, including the influence of foreign donors.<sup>50</sup> There are good reasons for concern: the 2016 US election showed how corrosive foreign influence can be, and the Australian intelligence community has warned that similar activities could happen here.<sup>51</sup> The Australian Parliament passed two bills in June 2018 that introduce new national security offences and require registration of foreign efforts to influence.<sup>52</sup> But a third bill attempting to ban foreign donations is yet to pass because of difficulties in identifying banned donations and fears of unintended consequences.<sup>53</sup>

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48. This was a telephone poll of 2,218 Australians as part of the Global Corruption Barometer, conducted by Griffith University and Transparency International Australia in May-June 2018 (Transparency International Australia (2018)).

49. Ibid.

50. The then Prime Minister, Malcolm Turnbull, cited 'disturbing reports about Chinese influence' when he announced new legislation in December 2017 to try to limit foreign interference (Belot (2018)).

51. Baxendale (2018); and Belot (2017a).

52. National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 (Cth); and Foreign Influence Transparency Scheme Bill 2018 (Cth).

53. The third bill is the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 which attempted to ban foreign donations, but faced significant challenges canvassed by Twomey (2018).

Australia needs a broader suite of reforms to restrict undue influence, including foreign influence.<sup>54</sup>

### Perceptions of undue influence are a problem for government

Even if policy makers do meet with a wide variety of interests and appropriately balance their views, the *perception* that some interests might be distorting policy-making is still a problem for government.

The perception of undue influence undermines trust in government and makes policy making harder: "Undue influence – whether real or perceived – erodes the social contract underpinning democracies, and hence the system's credibility and legitimacy".<sup>55</sup>

Falling trust and rising voter disillusionment appear to be behind the growing support for minor parties in Australia. More votes for minor parties makes majority government less likely. It's not necessarily a bad thing for policy when a government has to negotiate with crossbenchers, but it does make legislating policy change more complex.<sup>56</sup> Lower trust also makes it harder for government to enact 'difficult but necessary' reforms.<sup>57</sup>

## 1.5 Finding the right balance

The question of what to do about undue influence is tricky. Shutting special interests out of the policy process is not the answer. Interests *should* be able to advocate for themselves and make representations to government.<sup>58</sup> Different groups advancing their views is part of a healthy democratic process.

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54. Ibid.

55. OECD (2017, p. 3).

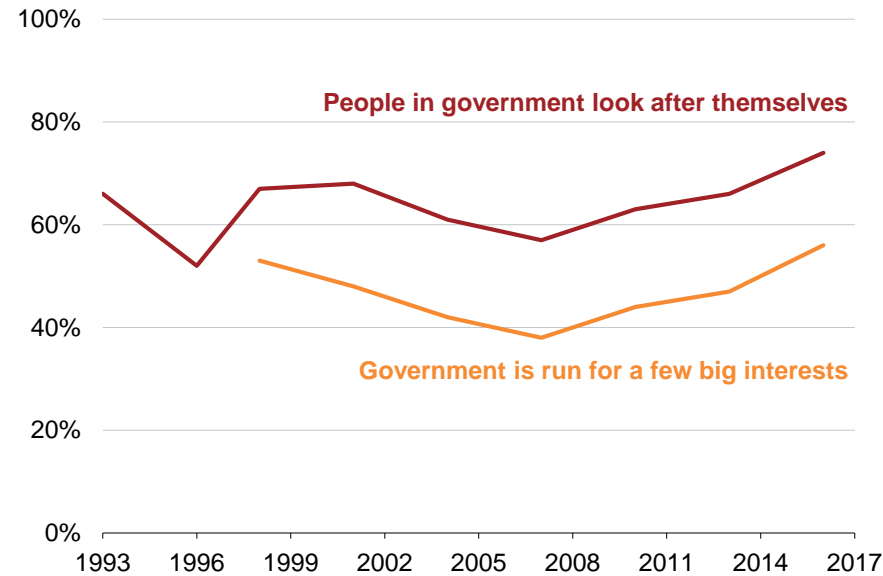
56. D. Wood et al. (2018).

57. Hetherington and Husser (2012).

58. Tham (2010); and OECD (2017).

**Figure 1.2: Public concern about special interests has risen**

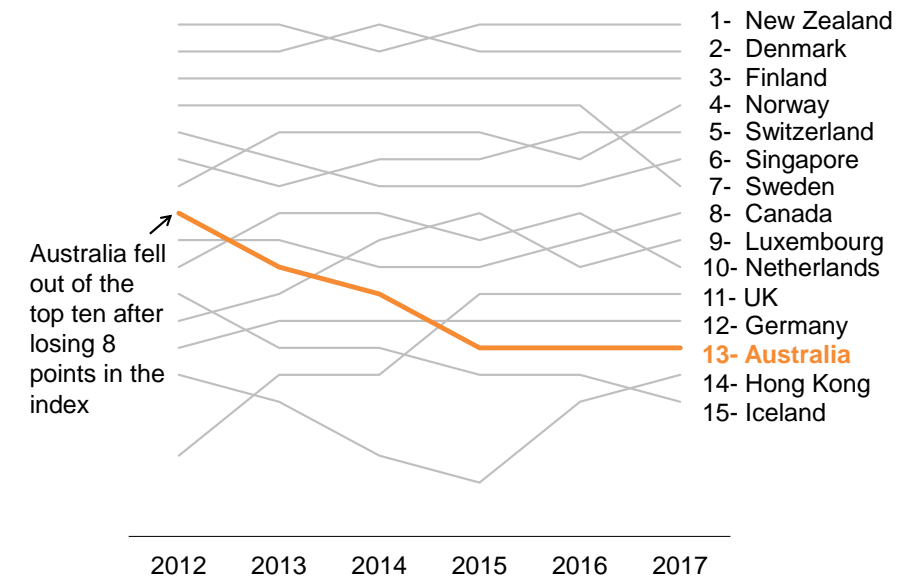
Survey respondents who agree with selected statements



Source: Cameron and McAllister (2016).

**Figure 1.3: Experts say Australia is falling behind on international measures of corruption**

Corruption Perceptions Index rank, 2012-2017, top 15 countries in 2017



Notes: The index scores countries on how corrupt their public sectors are seen to be according to surveys of business people, analysts and other experts. Australia is the only top ten-ranked country in 2012 to have had a statistically significant decline in the index since 2012 (from a score of 85 and a rank of 8th in 2012, to a score of 77 and a rank of 13th in 2017).

Source: Transparency International (2018).

But policy making can be distorted if some interests are consistently heard while others are not – whether because they invest more in lobbying, donations or public campaigns or because they are able to leverage political connections.

The remainder of this report tracks the ‘tools of influence’: political donations, lobbying, the ‘revolving door’ of politicians and staff into lobbying roles, and campaigns to capture the ‘hearts and minds’ of the public. Current checks and balances on special interest influence do not seem to be sufficient, given the evidence of disproportionate access and influence, and the many examples of special interest groups capturing the policy agenda. Of course good policy often prevails, but even some instances of policy capture are cause for concern.

The report is structured as follows:

Chapter 2 shows how some special interests invest much more in lobbying and gain substantially more access to policy makers. It shows how access often translates into policy influence.

Chapter 3 examines the role of political donations in building relationships with parties and policy makers, enabling access, and fostering a sense of reliance and reciprocity.

Chapter 4 looks at public campaigns on policy and how misinformation, and imbalance in coverage, can skew policy away from the public interest.

Chapter 5 recommends reforms to make policy making more transparent, tighten existing checks and balances on policy makers, and give less-powerful voices more opportunity to contribute to policy debates.



## 2 The access problem in Australian politics

Access to senior policy makers is crucial to influence. That's why unions, businesses and community groups spend time pressing the flesh with parliamentarians and advisers.

Lobbying plays an important role in policy development: it may help throw up new ideas and reduce the risk of uninformed or damaging decisions by those in office.<sup>59</sup>

But some individuals and groups get more access than others. Business interests get many more meetings with senior ministers than consumer and community groups – at least in the states where we can see ministerial diaries.

Highly regulated industries, where government decisions can have a big impact on the bottom line, use commercial lobbyists more, and gain a disproportionate share of meetings with senior ministers. It is not surprising that these businesses are knocking on the doors of government. The worry is that such a heavy skew means policy makers are not getting a balanced view of the issues.

Some interests also seek to boost their influence by hiring former ministers and staffers with existing relationships, or by building relationships in more relaxed settings such as at the football or on an overseas trip.

Access seems to pay off in terms of influence: there are plenty of examples of interest groups successfully lobbying for policy changes to be put on – or taken off – the table, which look contrary to the public interest.

Existing checks and balances on lobbying activities in Australia are weak and poorly enforced. Given the importance of access, voters

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59. ICAC (2010); and Australian Government (2018a).

have a right to know more about who gets meetings with senior politicians, and the system needs better checks on former politicians selling their relationships.

### 2.1 Who's in the room?

Access matters in politics. The policy process is becoming more open to outside influence (Box 1), with many different interests seeking time with politicians and their staff. At least 500 commercial lobbyists are paid to lobby federal politicians on behalf of a client.<sup>60</sup> Another 1,755 people hold sponsored security passes for federal Parliament House.<sup>61</sup> These 'orange passes' permit them to walk unescorted through the corridors of power.<sup>62</sup>

Private companies, many of them businesses in highly regulated industries, make up almost 80 per cent of the clients of commercial lobbyists on the federal register (Figure 2.1).

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60. Australian Government Lobbyists Register, as at August 2018 (PM&C (2018a)).

61. As at 31 July 2018 (Department of Parliamentary Services response to a Grattan Institute request for information). The identity of pass-holders is not on the public record (DPS (2017)).

62. This makes holding multiple meetings with MPs and advisers far more convenient and also increases the chance of spontaneous encounters – for example at the cafes inside the House that are not accessible to the general public. Orange passes require the holder to be sponsored by someone in the Parliament who has known the passholder for 12 months or longer, or provide a letter from their organisation vouching for their good character and their need for 'significant and regular business access' (Lambie (2017a)).

### Box 1: A more open policy process creates opportunities and risks

Sources of political influence have become more diverse in recent decades as the membership of the major parties has diminished. Policy development and agenda-setting no longer occur primarily in party forums.<sup>a</sup> A range of groups put issues on the agenda, including peak bodies, think tanks and grass-roots organisations.

Interest groups and issue movements, which organise and campaign outside party arenas, have become “more important vehicles for political participation and democratic accountability”.<sup>b</sup> And lobbying is one of their key political tools.<sup>c</sup> This creates a more open contest of ideas, but it also increases the risk of undue influence in areas where the major political parties don't have strong ideological or policy grounding.

Some interest groups go further and establish a political party. ‘Interest-based’ parties abound in Australia: the Animal Justice Party, Mature Australia, and Marriage Equality all fielded Senate candidates in the 2016 election. The ALP, of course, was established as the party of the union movement, and affiliated unions still retain substantial power over party conferences (which set policy) and pre-selections (which decide who stands for office).

Establishing a party is an open way to seek influence. But, as many groups find out, convincing the public of your case can be harder (and more expensive) than trying to influence an incumbent.

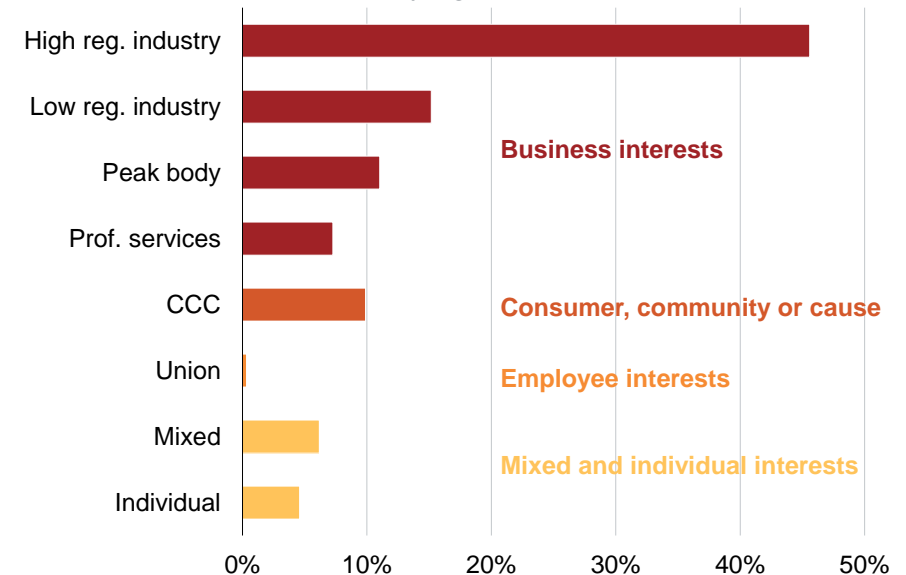
a. Marsh (1999); and Ward (2009).

b. Tham (2010); Ward (2009); and Marsh (1999).

c. Tham (2010, p. 219).

**Figure 2.1: Commercial lobbyists typically represent companies in highly regulated industries**

Share of clients on the federal lobby register in 2018



Note: ‘Mixed’ interests are organisations that have both business and non-profit interests, such as universities, hospitals, research institutes and local councils.

Source: Grattan analysis of clients on the Australian Government Lobbyists Register (PM&C (2018a)) as at April 2018 (total clients = 1848).

But commercial lobbyists are only a fraction of the access story. Most major corporates, unions and not-for-profits employ government relations or executive staff whose job is to manage relationships with policy makers. Yet their access is almost entirely invisible.

At the federal level, there is no information on who gets access to policy makers, how much lobbying takes place, or the policy issues involved.<sup>63</sup> But in two states – New South Wales and Queensland – information regarding ministers' meetings, and the purpose of those meetings, is publicly available.<sup>64</sup> And the data from these states show that some types of interests get a lot more access to senior ministers than others (Box 2 on page 21).

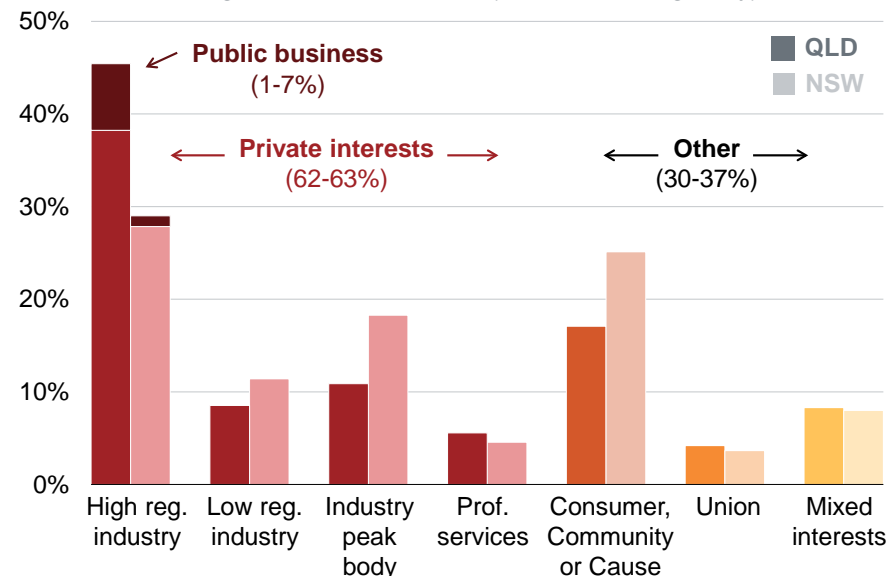
### 2.1.1 Groups with the most to gain get more access

In NSW and Queensland, most external meetings held by senior ministers were with private businesses or industry peak bodies (62 per cent in NSW and 63 per cent in Queensland). Highly regulated businesses got the most access, particularly in Queensland (Figure 2.2).<sup>65</sup>

The number of meetings with unions was surprisingly low in Queensland, given it has an ALP government. But unions have other channels to influence the ALP, including party conferences

**Figure 2.2: Queensland and NSW ministers meet most with highly regulated industries**

Per cent of meetings with senior ministers (external meetings only)



Notes: 'Mixed interests' are organisations that have both business and non-profit interests, such as universities, hospitals and schools. The data covers 1246 external meetings. It excludes external meetings with individuals, where the individual has no known connections to any of the industries or interests listed.

Sources: Grattan analysis of Queensland ministerial diaries (Premier, Deputy Premier and Treasurer), January 2017 to March 2018, and NSW ministerial diaries (Premier, Deputy Premier and Treasurer), July 2016 to September 2017 (Queensland Government (2018) and NSW Government (2018)).

63. PM&C (2018a).

64. Queensland has been publishing ministerial diaries since 2013, NSW since 2014, and in January 2018 the ACT also began publishing ministerial diaries.

65. Over a 15-month period, 800 external meetings were recorded for Queensland's Premier, Deputy Premier and Treasurer. Over a slightly different 15-month period, 500 external meetings were recorded for NSW's Premier, Deputy Premier and Treasurer. Meetings with local government officials were not included, because internal discussions could not be distinguished from lobbying efforts. The Queensland ministerial diaries include a broader range of meetings, such as events and site visits. The period in NSW is from July 2016 to September 2017. The period in Queensland is from January 2017 to March 2018, which includes a state election.

and sometimes personal relationships. The ministerial diaries in Queensland and NSW do not record these activities, and the NSW diaries do not record other important forums for influence such as official events, town hall meetings and community functions.

In Queensland, as well as getting more direct meetings with senior ministers, highly regulated businesses also gave more political donations and made more contacts through commercial lobbying firms than other groups (Figure 2.3).

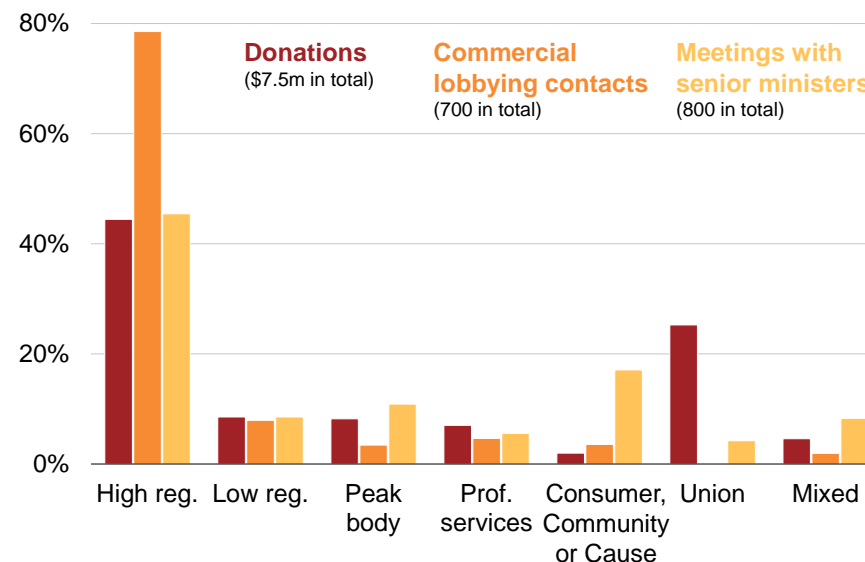
Businesses in highly regulated industries, such as transport, mining, energy, and property construction, all actively seek to influence politicians, although the channels of influence vary by industry. Property developers donate more, whereas mining and energy companies use commercial lobbyists more. The gambling industry punches above its weight on donations, commercial lobbying contacts and meetings with senior ministers (Figure 2.4).

Politicians are not the only target in the influence game. Influencing senior public servants can also matter. But again, much of this lobbying takes place out of public view. Public servants don't publish their diaries and we know little about who they consult with. In a recent survey, Australian federal and state public servants reported more frequent interactions – particularly in relation to 'policy analysis or development' – with 'representatives from industry, professional or community organisations' than with 'representatives from client or consumer groups' or 'members of the general public'.<sup>66</sup>

Highly motivated and well-resourced interests have greater capacity to organise and actively seek access to politicians and public servants. Researchers Bert Fraussen and Darren Halpin find there are a lot more business and professional associations than citizen advocacy groups,

**Figure 2.3: Highly regulated industries lobby hardest**

Share of external political donations, contacts and meetings in Queensland



Notes: Individuals and unknown entities excluded (individuals represented 13 per cent of major donations and unknown entities less than 1 per cent). All donations declared to April 2018. Lobbying contacts includes only clients that made at least five contacts. Analysis was only conducted for Queensland, where data on commercial lobbying contacts is available.

Sources: ECQ (2018), QIC (2018) and Queensland Government (2018).

66. The 2016 Future of Australia's Federation Survey of nearly 3,000 federal, state, and local government public servants (Levy (2018)).

trade unions or not-for-profits that deliver services but also advocate for community causes.<sup>67</sup> They were particularly concerned by the lack of voices for less privileged and less well-resourced groups.<sup>68</sup>

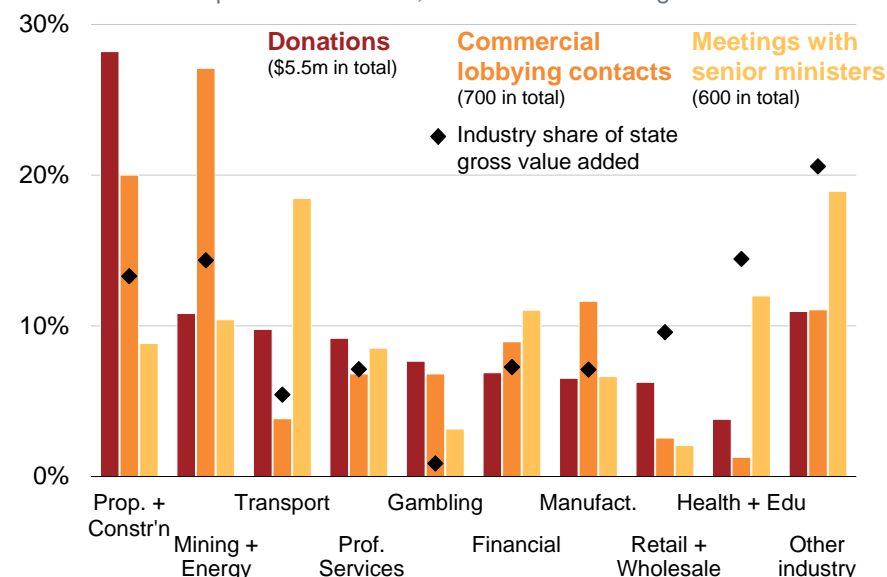
## 2.2 Relationships matter (and can be bought)

Relationships matter in politics because they affect both the opportunity to influence and the likelihood of influence. Individuals with personal connections are more likely to get time with policy makers and a sympathetic hearing when they do (Box 3). Studies in the US have found lobbyists are paid more for their connections than their expertise, and former government officials have more success in influencing policy than other lobbyists.<sup>69</sup>

Hiring or employing people with the right connections is another way to 'buy' influence.<sup>70</sup> The 'revolving door' between policy and lobbying roles is a growing feature of the Australian political landscape.

Former government officials make up a large and growing share of commercial lobbyists at the federal level (Figure 2.5).<sup>71</sup> There is a good reason for this: lobbying firms that employ former government officials are more successful at getting meetings with government. In Queensland, there are about 170 registered lobbying firms, but the top

**Figure 2.4: Different industries prioritise different channels of influence**  
Share of external political donations, contacts and meetings in Queensland



Notes: 'NA' and 'Multiple Categories' excluded (41 per cent of major donors, mostly individuals). All donations as at April 2018. Lobbying contacts includes only clients with at least five contacts. The gambling industry's share of gross value added is shown as all of 'Arts and Recreation', although gambling represents only a subset.

Sources: ECQ (2018), QIC (2018), Queensland Government (2018) and ABS (2017).

67. Fraussen and Halpin (2016). But they did note that the union sector has considerable organisational capacity.

68. Fraussen and Halpin (ibid.) suggest that hybrid groups, which are more services-oriented than advocacy-oriented, such as St Vincent De Paul, may be the main form of representation for the less-privileged.

69. Bertrand et al. (2011); La Pira and H. F. Thomas (2014); Blanes i Vidal et al. (2012); and Baumgartner et al. (2009).

70. Hiring people with the right connections can help 'outsiders' get a foot in the door. Arguably this enables access for more groups, but this avenue of influence is still only available to those that can afford it.

71. Former government officials includes former federal ministers, assistant ministers, ministerial staff, agency heads, public servants and members of the defence force (PM&C (2018a)).

### Box 2: What would balance look like?

There is no clear benchmark for 'balanced' political engagement.<sup>a</sup> But to gauge the access and influence of different groups, this report organises data on ministerial meetings and political donations according to three main criteria.

#### 1. What type of interest they represent

Employers, employees and consumers are often on different sides of policy debates, so we compare the access of these different interests. Community groups and single-issue groups may represent another point of view, or may align with the consumer interest on particular issues. We have gathered those representing the interests of consumers, a community, or a specific cause into a 'CCC' category for comparison to the access of more organised employer (business) and employee (union) interests.

#### 2. How likely they are to be seeking policy influence

There is huge diversity within employer, employee and CCC interests. We have separated these groups into sub-categories to differentiate those that are most likely to seek policy influence, such as dedicated advocacy groups and businesses with the most to gain from influencing government decisions. Our categories include:

- Lobbying firms, peak bodies and unions who specialise in advocacy and influence for their clients or members;
- Professional services firms that might be seeking access on behalf of a client or looking to win work themselves;

- Businesses that operate in industries heavily affected by government decisions (high regulation businesses) and those less affected by government regulation (low regulation businesses). Industries defined as high regulation include property development, transport, mining, energy, gambling, defence industries, financial services, telecommunications and media.<sup>b</sup>
- Publicly funded organisations and publicly owned businesses that might be reporting on their activities or seeking more funding or regulatory concessions.

#### 3. How important they are in the broader economy

Another benchmark is an industry's contribution to the economy. All else being equal, larger industries would be expected to command more access because they represent a bigger share of employers, employees and consumers. We have classified businesses and other interest groups by industry (where possible) and compared each industry's access against its share of gross value added.

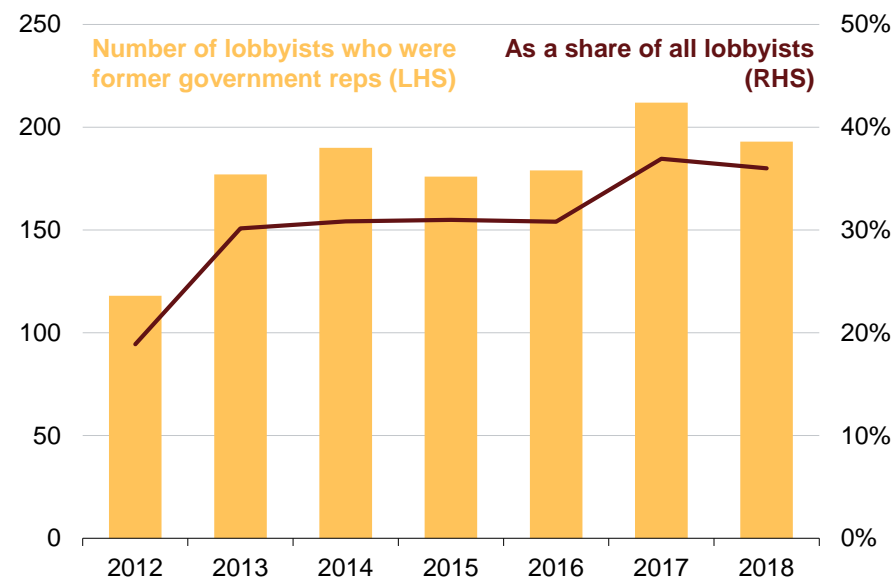
*Notes: (a) European Institute for Public Participation (2009); (b) Companies were individually classified based on their main industry and IBISWorld's assessment of the level of regulation and government policy in that industry (heavy, medium or light). Industries classified by IBISWorld as 'heavy' in terms of regulation and government policy we identify as 'high regulation'. Industries classified as 'medium' or 'light' we identify as 'low regulation'. In some cases we made our own assessments; for example, IBISWorld classifies sports clubs as heavily regulated because they must abide by the rules of their governing bodies, but because those governing bodies are not local, state or federal government, we classify sports clubs as 'low regulation' except if gambling is a major part of their business.*

10 firms have made 70 per cent of lobbying contacts since 2013. Eight of the top 10 lobbying firms employ former politicians or advisers.<sup>72</sup> At the federal level, seven out of the top 10 lobbying firms (by number of clients) employ former politicians or advisers.<sup>73</sup>

Since 1990, around a quarter of former federal ministers or assistant ministers have taken up roles with special interests after political life (Figure 2.6 on page 24).

While ministers are more likely to go from politics to lucrative lobbying roles (a 'golden escalator' rather than a revolving door),<sup>74</sup> ministerial staff move in both directions. Researchers have documented substantial movement between ministerial offices and lobbying roles in the energy and resources sectors and vice versa.<sup>75</sup> Such movement creates a certain 'cosiness' and increases the likelihood that the well-resourced are heard more often and more sympathetically in policy discussions. This poses a risk to good decision-making: policy makers should be listening to interest groups with the best ideas, not simply those with the right connections (Box 3).<sup>76</sup>

Figure 2.5: The 'revolving door' phenomenon is growing



Source: Grattan analysis of the Australian Government Lobbyists Register (PM&C (2018a)) in Feb/March each year since first made public in 2012.

72. Grattan analysis of Queensland's register of lobbying contacts (QIC (2018)). Queensland is the only state that publishes lobbying contacts.

73. While the firms with former government officials are more active, there doesn't appear to be much difference in the distribution of clients, by type of interest or by industry, between lobbying firms that include former government officials and those that don't (Grattan analysis of 1848 clients on the federal lobby register (PM&C (2018a)) as at April 2018).

74. A. Lucas (2018).

75. A. Lucas (2018); and A. Lucas and Holland (2018).

76. La Pira and H. F. Thomas (2014). Transparency International Australia documents several examples of 'mateship' between politicians and mining industry executives being used as a justification for misconduct or corruption (Transparency International Australia (2017)).



### Box 3: Who you know matters more than what you know

*'There are three important things to know about lobbying: contacts, contacts, contacts.'*<sup>a</sup>

Studies in the US have shown that political connections make a big difference in the lobbying industry.<sup>b</sup> Lobbyists switch issues as the politicians they are connected to move to new portfolios.<sup>c</sup> Lobbyists with connections to a senator lose 24 per cent of their revenue, on average, when that senator leaves office.<sup>d</sup> And lobbyists get more revenue when the party they are aligned with is in power.<sup>e</sup>

In Australia, the fortunes of two of the biggest lobbying firms also rise and fall with particular political parties. In 2012, when Labor was in office, the ALP-aligned lobbying firm Hawker Britton was Australia's largest (by number of clients).<sup>f</sup> In 2018, with the Coalition in office, it had fallen to eighth, and the Coalition-aligned Barton Deakin had become the top lobbying firm.<sup>g</sup>

Senior lobbyists in Washington, London and Brussels have said in interviews that "it is all about who you know", and identify one-on-one relationships as a key to getting the job done.<sup>h</sup>

It's human nature that we're more likely to listen to those we know and like. Establishing credibility is critical to persuasion, and existing relationships help clear that initial barrier.<sup>i</sup> Psychological studies show that interpersonal concerns and emotions affect decision making.<sup>j</sup>

*Notes: (a) McGrath (2006); (b) McGrath (2006), Baumgartner et al. (2009), Blanes i Vidal et al. (2012) and La Pira and H. F. Thomas (2014); (c) Bertrand et al. (2011); (d) Blanes i Vidal et al. (2012); (e) Bertrand et al. (2011); (f) Halpin and Warhurst (2015); (g) Grattan analysis of PM&C (2018a); (h) McGrath (2006); (i) Conger (1998); (j) e.g. Loewenstein et al. (1989) and Clore and Huntsinger (2007).*

### Case study: Adani leverages relationships

Mining company Adani has been particularly active in using lobbyists with the right connections. Adani hired former Queensland ALP State Secretary Cameron Milner to lead its lobbying of the Queensland ALP Government.<sup>k</sup> Between 2015 and 2017, Milner's lobbying firm made 33 contacts with government officials, more than any other firm on behalf of any other client. Six out of ten of the Premier's personal meetings with lobbyists were with Adani's lobbyists, and at least three of these included Milner.<sup>l</sup>

Adani has also been lobbying federal politicians through a firm with powerful connections on both sides of politics. The firm is led by former Queensland ALP Treasurer Damien Power and former Queensland Nationals Premier Rob Borbidge.<sup>m</sup>

After Adani's extraordinary level of access to senior policy makers, it won policy concessions for its proposed Carmichael mine, including deferment of mining royalties, compulsory acquisition of land, and a 'critical infrastructure' declaration.<sup>n</sup> The federal government considered a \$900 million loan for a rail line to the mine, but it was vetoed by the Queensland Government after controversy arose about the extent of the Premier's dealings with Adani.<sup>o</sup> The state and federal governments are, however, still considering other ways to support the mine.<sup>p</sup>

*Notes: (k) Long (2017a); (l) Grattan analysis of QIC (2018); (m) PM&C (2018b); (n) Long (2017a); (o) Robertson (2017); (p) Hasham (2018).*

## 2.3 Hospitality and travel: gifts that buy access

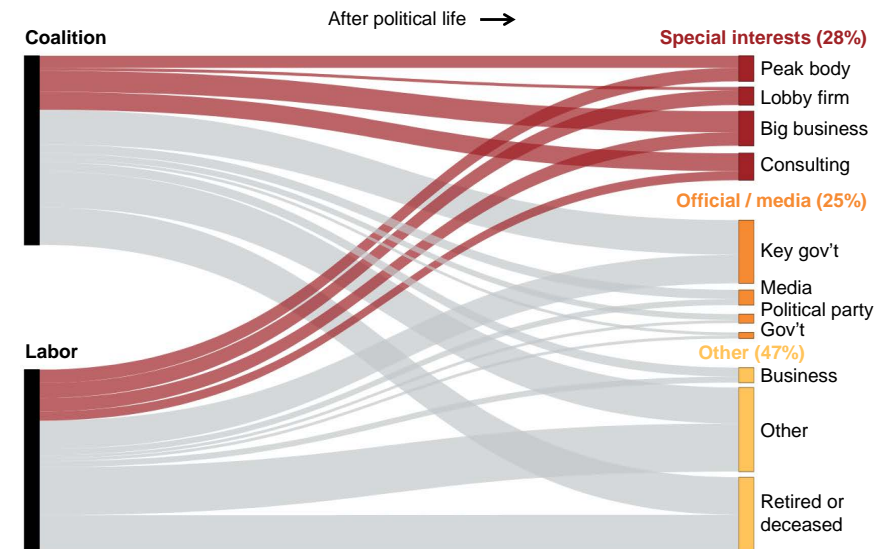
Politicians meet in a variety of places with a variety of people pushing particular views. It's part of their job. But it can be a slippery slope from meetings in the office, to meetings over lunch (who pays?) to hospitality in corporate boxes at sporting events and sponsored international travel.

Sponsored hospitality is another way well-resourced interests can get more access to decision makers. Events and travel offer a more relaxed and less time-constrained setting to build relationships.

Federal politicians have accepted at least 55 corporate-sponsored overseas trips since 2010, according to analysis by the Australian Strategic Policy Institute of politicians' disclosures.<sup>77</sup> About 68 per cent of federal ministers and shadow ministers have declared corporate-sponsored hospitality (events or travel)<sup>78</sup> and 7 per cent have accepted overseas trips sponsored by a foreign government or agency.<sup>79</sup> Such hospitality can create an actual or perceived conflict of interest. And gifts and benefits can make favoured treatment more likely.<sup>80</sup>

There are some rules for federal ministers designed to reduce conflicts of interest, but not for other MPs. The Ministerial Standards require that ministers "do not come under any financial or other obligation to individuals or organisations to the extent that they may appear to be influenced improperly in the performance of their official duties". But

Figure 2.6: A quarter of federal ministers or assistant ministers take on roles with special interests after politics



Notes: Includes 191 people who were either federal ministers or assistant ministers and left politics in the 1990s or later. Some have had more than one role since. 'Big business' is Top 2000 Australian firms by revenue in 2016.

Source: Grattan analysis of [Parlinfo.aph.gov.au](http://Parlinfo.aph.gov.au) (2018), LinkedIn (2018), Wikipedia (2018), news articles and various internet sources.

77. Clarence (2018).

78. Ministers, assistant ministers, shadow ministers and shadow assistant ministers declared 242 instances of sponsored events and travel, at an average of 2.7 each.

79. Grattan analysis of all ministers', assistant ministers', shadow ministers' and shadow assistant ministers' declarations, as at August 2018 (Registrar of Members' Interests (2018) and Senate Standing Committee of Senators' Interests (2018)).

80. Axelrod (1986); and Malmendier and Schmidt (2017).

ministers are still allowed to accept “customary official gifts, hospitality, tokens of appreciation, and similar formal gestures”.<sup>81</sup>

The Queensland code of conduct is stricter: it specifies that ministers should not accept sponsored hospitality.<sup>82</sup> Yet senior ministers in Queensland attended sports events with corporate interests on at least 15 occasions in 2017.<sup>83</sup> This is not necessarily a breach of the code – they may have paid their own way, for example – but clearly this approach to relationship-building and influence is commonplace, and has the potential to create conflicts of interest.

## 2.4 Access can lead to undue influence

When certain interests get a lot more access to decision makers, there is a risk that policy gets skewed in their favour. Our analysis shows that highly regulated businesses have the most meetings with senior politicians, make the most use of commercial lobbyists and, as the next chapter shows, are also disproportionately large donors. Many of these businesses have the resources to hire former politicians and advisers, and to woo politicians through hospitality. And unions are significant donors and have substantial avenues of influence in the ALP, including outside of formal meetings.

When access skews heavily towards a narrow range of interests, policy makers may end up with a narrow perspective (Chapter 1). Some perspectives are conspicuously under-represented, such as broad constituencies that are difficult to organise (e.g. consumers and young people) and disadvantaged groups that lack the capacity to engage with policy processes (Chapter 4).<sup>84</sup>

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81. Australian Government (2018b).

82. Queensland Government (2016).

83. Grattan analysis of published diaries of the Premier, Deputy Premier and Treasurer (Queensland Government (2018)). Queensland is the only state that publishes events attended.

84. Schlozman et al. (2012); Fraussen and Halpin (2016); and Head (2007).

Disparity in access is a concern if it translates into policy decisions that benefit the few at the expense of the many. Government procurement decisions can be lucrative targets for special interest influence, so they are usually subject to strict rules. Yet there are still examples where those with relationships and disproportionate access appear to have extracted ‘**special deals**’:

- James Packer’s unsolicited proposal for a new Sydney casino was accepted without a competitive tender process,<sup>85</sup> influenced its own tax rate and achieved an exemption from smoke-free laws.<sup>86</sup> The site was also carved out of the CBD ‘lockout law’ zone.<sup>87</sup> Packer personally pitched the project to NSW Premier Barry O’Farrell – and just a week after the meeting (and two weeks before Packer formally lodged his proposal) a requirement for independent evaluation of unsolicited proposals was removed.<sup>88</sup>
- The Catholic schools lobby, unhappy with the federal Coalition government’s proposed move to a sector-neutral, needs-based school funding formula, received a pledge of an additional \$250 million from Labor.<sup>89</sup> This coincided with the 2018 Batman by-election, and the lobby threw its weight behind Labor in the by-election.<sup>90</sup>
- The private toll road operator Transurban has successfully pitched five major infrastructure projects to state governments via

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85. There was a late counter-bid by Star Casino, considered by an independent steering committee, but no formal tender process (Glennell and Lehmann (2013) and Saulwick (2013)).

86. Saulwick (2013); Markham and M. Young (2015); and Patrick (2016).

87. Bradley (2016).

88. Independent evaluation had previously been required before an unsolicited proposal could proceed without a tender process (Nicholls (2012)).

89. McGowan (2018).

90. Benson (2018).

unsolicited proposals, risking poorer outcomes for taxpayers and drivers compared to a competitive tender process.<sup>91</sup>

In other cases, special interests effectively have **'a seat at the table'** when it comes to policy design in their sector:

- The pharmaceuticals industry has substantial influence over government pricing arrangements for medicines, including the technical details of how prices are determined. The effect of the pricing regime is that prices are higher than in comparable countries, and Australian taxpayers and consumers pay more than they should.<sup>92</sup>
- Affiliated unions have substantial influence in the ALP. Some of this is out in the open (such as voting rights at state and national conferences), but some is quite opaque (such as back-room deals to secure pre-selection of candidates). A problem arises when union influence over party policy appears to protect the interests of union officials at the expense of workers and the general public. For example, Labor opposes having more independent directors on the boards of superannuation funds despite it being a recommendation of three independent inquiries. The change would reduce the power of unions to choose directors for industry funds.<sup>93</sup>

Special interests also commonly focus their lobbying efforts on **blocking reforms that have broad support**:

- In 2007, both major parties went to the federal election with plans to introduce an emissions trading scheme to help combat climate change. But the policy consensus was quickly derailed

– partly because of political ideology and manoeuvring and partly by aggressive lobbying to expand industry compensation arrangements and a public advertising campaign.<sup>94</sup> No government since has been able to deliver an effective and durable policy to address climate change.

- Intense lobbying by the beverages industry has so far kept a sugar-sweetened beverages tax at bay, despite good public health arguments and the support of the general public.<sup>95</sup>
- Clubs and hotels have aggressively and successfully rallied against poker machine reforms to reduce problem gambling. The main lobby groups used a combination of lobbying, keenly timed political donations (Chapter 3) and public campaigns to dissuade governments from implementing reforms such as mandatory pre-commitment.

Appendix A details these examples. None of them suggest outright corruption or that buying off special interest groups was the only political factor at play. But they do indicate that policy with limited merit and little public support can nevertheless prevail if motivated and well-resourced groups support it.

## 2.5 Existing checks and balances are weak

The checks and balances on lobbying activity in Australia are weak. Existing instruments such as registration of lobbyists and codes of conduct are ineffective because they apply selectively and are not enforced. There is barely any public information about contact between lobbyists and officials at the federal level.

The only real restriction on lobbying activity is the undertaking by ministers, ministerial advisers, and senior public servants not to lobby

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91. C. Lucas (2017a); C. Lucas (2017b); and Ludlow and Wiggins (2018).

92. Duckett et al. (2013); and PC (2015).

93. Mather and Coorey (2018); and Minifie (2015).

94. Pezzey et al. (2010); T. Wood and Edis (2011); and Lane (2011).

95. WHO (2015); Duckett et al. (2016); and Essential (2018).

within 12-18 months of leaving office.<sup>96</sup> This is important because of the privileged information they have access to, and the risk that a minister might make decisions in office with future career prospects in mind. But the waiting period is only an administrative obligation, it applies narrowly (Table 2.1), and there is no penalty for a breach.

There are also gaps in the checks on public officials. In democratic societies, codes of conduct are widely considered to be the norm for public officials.<sup>97</sup> Yet our federal parliament has no such code, and about a third of the Commonwealth workforce is not covered by either the Australian Public Service code of conduct or an authority that investigates misconduct.<sup>98</sup>

### 2.5.1 Checks on lobbying activity

All Australian states and the Commonwealth Government have lobbying codes of conduct and maintain registers of lobbyists. At the federal level, these were introduced “to ensure that contact between lobbyists and Commonwealth Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty”.<sup>99</sup> But in their current form, these instruments do not fulfil that objective. They apply only to a narrow subset of lobbyists and largely go unpoliced.

Only ‘third party’ lobbyists are captured by the register and the code. Many large companies and interest groups have in-house public affairs and government relations personnel who are not required to register. Peak bodies, such as the Business Council of Australia, and campaign organisations, such as *GetUp!*, are not required to register either. Nor

are unions. As Figure 2.6 shows, more former ministers take up roles as in-house lobbyists than in commercial lobbying firms.<sup>100</sup>

Third party lobbyists who are not registered are not supposed to lobby. But the onus is on government representatives to identify lobbyists, check they are registered, and report any breaches to the relevant department.<sup>101</sup> This is a stretch for busy politicians and their offices, and if they do report breaches and the department follows them up, then the penalty is laughable: deregistration.<sup>102</sup>

Many lobbyists walk the corridors of Parliament House unregistered, either because they fall outside the narrow subset required to register, because they never bothered to register, or because they have been deregistered. The number of sponsored security passes for access to Parliament House gives a sense of the scale of ‘invisible’ lobbying activity:<sup>103</sup> there are more than three times as many passes as there are individuals on the lobbyists register.<sup>104</sup>

The lobbying register provides (limited) information about who lobbies but nothing about who is being lobbied, how frequently, or on what issues. The Australian National Audit Office found that the lobby register “does not, on its own, provide transparency into the integrity of the contact between lobbyists and government representatives or the matters discussed”.<sup>105</sup>

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96. 18 months for ministers (Australian Government (2018b)) and 12 months for advisers and senior public servants (Australian Government (2018a)).

97. House of Representatives Standing Committee (2011, pp. 23–24).

98. Brown et al. (2018).

99. PM&C (2018a).

100. Tham (2010, p. 248) makes a similar observation.

101. The Department of Prime Minister and Cabinet has been responsible since 2008, but responsibility recently shifted to the Attorney-General's Department.

102. Easton (2018a); and Special Minister Of State (2018).

103. Sponsored security passes grant unescorted access to secure areas of Parliament House to people who need ‘significant and regular business access’. Jacqui Lambie argues that if your job requires this level of access to politicians, then what you are doing should be considered lobbying and you should be required to register as a lobbyist (Lambie (2017a)), Chapter 5.

104. As at 31 July 2018, there were 1,755 sponsored security passes, compared to 500 lobbyists on the register.

105. Easton (2018a).



Regulation of lobbying activity in Australia is considered weak among OECD countries<sup>106</sup> and in other international rankings (Figure 2.7).<sup>107</sup> Australia appears to be particularly behind in visibility of contact between lobbyists and government officials, and in enforcement (Figure 2.8).

NSW, Queensland and the ACT make lobbying more transparent by publishing ministerial diaries.<sup>108</sup> The diaries provide some insights but are not searchable, and rarely identify the policy issues discussed.

### 2.5.2 'Revolving door' ban

Most OECD countries don't restrict senior policy makers moving to lobbying roles, so Australia appears to be ahead of the game in this area.<sup>109</sup> But given the restrictions are not enforced, this is a win on paper only.

When someone becomes a federal minister in Australia, they must commit to waiting at least 18 months after their ministerial duties cease before lobbying on any issue they were officially involved with in their final 18 months in office. Table 2.1 highlights examples of Ministers moving into special interest roles soon after leaving office which likely do not breach the current code but which nonetheless may raise concerns.

The Ministerial Standards are merely administrative – former ministers who move straight into a lobbying position are breaking the rules, not the law, and the only sanction is loss of ministerial duties, which is

106. OECD (2014).

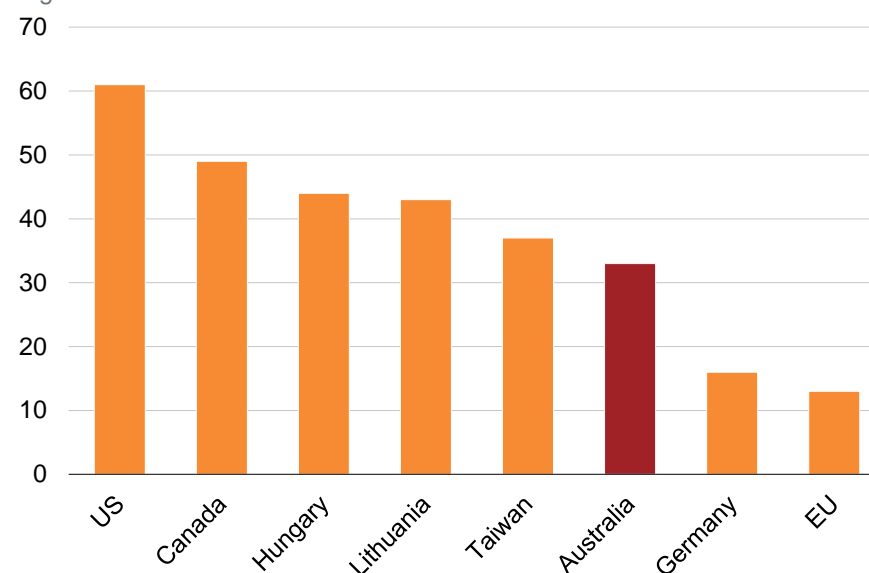
107. Hogan et al. (2011).

108. Queensland (since January 2013), NSW (since July 2014), and the ACT (since January 2018). But the NSW diaries only cover a narrow range of meetings; they miss events and other official engagements where lobbying might take place.

109. OECD (Vol.3 2014, p. 74).

**Figure 2.7: Australia's lobbying regulation is not particularly robust by international standards**

Centre for Public Integrity's index for assessing the strength of lobbying regulations



Notes: The index is built from 48 survey questions on lobbying disclosure rules. The index methodology was developed by the US Centre for Public Integrity and was applied to lobbying regulation in various countries by Chari et al. (2010). This chart reports their findings. The implications for Australia are further summarised in Hogan et al. (2011).

Sources: Chari et al. (2010) and Hogan et al. (2011).

of little consequence to a former minister.<sup>110</sup> The revolving door ban appears to be toothless in practice.

Ministerial advisers and senior public servants are also subject to a revolving door ban for a period of 12 months.<sup>111</sup> But again, if a breach is reported and established, the sanction is merely deregistration. The successful French bid to supply Australia with a new fleet of submarines was led by the former Chief of Staff to the Defence Minister, who left his position in January 2015 and joined the French bid four months later.<sup>112</sup> There was no sanction.

### 2.5.3 Conclusion

Special interests with much to gain or lose from policy outcomes will always look for opportunities to put their case and attempt to influence decision makers. Lobbying regulations are supposed to shine light on their influence to ensure that other groups, the media and parliament can provide a counter-balance. But Australia's existing rules on lobbying activity are weak and provide little comfort to anyone concerned about undue influence over policy. Chapter 5 sets out some proposals to improve the regulation of lobbying.

**Figure 2.8: Australia is behind Canada, the UK and the US in the transparency and accountability of lobbying activity**

	Canada	UK	US	Australia
<b>Lobbying regime</b>	Law	Law for lobbyist register	Law	Administrative
<b>Code of conduct</b>	Yes	Industry code(s)	No	Yes
<b>Lobbyists covered</b>	Third party and in-house	Third party	Third party and in-house	Third party
<b>Revolving door bans</b>	Yes (5 years)	Yes	Yes	Yes (18 months)
<b>Administrative responsibility</b>	Commissioner of Lobbying (independent)	Registrar appointed by govt, funded by registration fees	Secretary of the Senate and Clerk of the House of Reps	Attorney-General's Dept / PM&C
<b>Sanctions</b>	Fines, prison	Fines	Fines, prison	Deregistration
<b>Meetings with lobbyists</b>	Register contains details of those lobbied and subject matter, updated monthly	Details of ministerial meetings published on departmental websites	Lobbyists report quarterly on their activities for each client, including details of the subject matter	Only NSW, QLD and ACT publish meetings

Source: Adapted from McKeown (2014).

110. Take one example: Bruce Billson accepted a lobbying role within six months of retiring as minister, but while still a sitting MP. He was censured by parliament for failing to declare his new paid employment – but not for accepting the paid employment in the first place, nor for breaching the revolving door ban. Billson's offence was not even deemed worthy of a \$5,000 fine (Fantin (2018)).

111. Australian Government (2018a, section 7.2).

112. McPhedran (2015).



**Table 2.1: Many former ministers have moved into special interest roles but usually do not breach the letter of the code**

<b>Name</b>	<b>Retirement</b>	<b>Interest group</b>	<b>&lt;18 months?</b>	<b>Justification</b>
Ian Macfarlane, Industry Minister	Sep 2015	Queensland Resources Council	Yes – appointed Sep 2016	Peak bodies not required to register as lobbyists <sup>a</sup>
Bruce Billson, Small Business Minister	Sep 2015 (minister); May 2016 (parliament)	Franchise Council of Australia	Yes – appointed Mar 2016 while still in parliament	Payments in office 'commonplace and acceptable'; <sup>b</sup> Peak bodies not required to register as lobbyists
Andrew Robb, Trade Minister	Feb 2016	Landbridge Group (Chinese multinational)	Yes – appointed Jul 2016	'Broad portfolio', "must be careful he isn't prohibited completely from work"; <sup>c</sup> in-house lobbyists not required to register
Martin Ferguson, Resources Minister	Mar 2013	APPEA (oil and gas peak body)	Yes – appointed Oct 2013 <sup>d</sup>	Peak bodies not required to register as lobbyists
Mark Arbib, Small Business Minister	Mar 2012	Consolidated Press Holdings (Packer)	Yes – appointed Jun 2012 <sup>e</sup>	In-house lobbyists not required to register
Nick Sherry, Small Business Minister	Dec 2011	Citi (financial services multinational)	Yes – joined in Oct 2012 <sup>f</sup>	In-house lobbyists not required to register
<i>Examples outside the 18-month window</i>				
Stephen Conroy, Minister for Communications	Jul 2013 (Minister); Sep 2016 (parliament)	Responsible Wagering Australia (gambling peak body)	No – appointed Nov 2016	Revolving door ban only applies to ministers, not those retiring in opposition
Simon Crean, Minister for Regional Australia	Mar 2013	Australian Livestock Exporters Council	No – appointed Oct 2014	Waited 18-months

*Notes: Restrictions on the post-separation employment of ministers were first introduced in December 2007. The 'retirement' date is retirement from ministerial duties unless otherwise specified. (a) Henderson and Bradfield (2016); (b) Long (2017b); (c) Belot (2017b); (d) Manning (2014); (e) Nicholls and Feneley (2012); (f) Sherry (2018). This table has been updated from the original release of this report.*

*Source: Grattan analysis.*

### 3 The money problem in Australian politics

Australian politics has a money problem. Political parties received \$43 million in declared donations at the 2016 federal election. These donations were remarkably concentrated – just 5 per cent of donors contributed more than 50 per cent of donated funds. And the lion's share of donations came from donors with the most to gain from government policy decisions.

Political donations give well-resourced groups more face-time with our politicians. Donations build relationships and a sense of reciprocity. Explicit quid pro quo is probably rare: 'you never bribe someone when you need them', as the saying goes. But given how often industries in the crosshairs of a policy debate make large donations – and then stop donating after the policy battle is won – it seems that some donors believe, perhaps rightly, that money can influence policy.

Commonwealth regulation of political donations is weak. There is a lot of 'hidden' money in the Australian political system. Forty per cent of the money received by political parties at the last election had no identifiable source. Donations are not made public until long after they are made, and there are few sanctions when political parties or donors don't follow the rules. Stronger legislation in some states can be circumvented through looser regulations at the federal level.

More needs to be done to ensure that money does not corrupt our public debate.

#### 3.1 Donations play an important role in Australia's political system...

Some commentators suggest private money has no place in politics.<sup>113</sup> But banning donations altogether is neither possible nor desirable.

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113. Caldwell (2016); Steketee (2017); and McDermott et al. (2016).

Political donations are protected under the Constitution's implied freedom of political communication,<sup>114</sup> so a blanket ban would almost certainly be struck down by the High Court (Box 4).<sup>115</sup>

Political donations can contribute to a healthy democracy. Private funds make it easier for smaller parties to contest elections. And the fundraising process can make politicians more accountable to their constituents.<sup>116</sup>

Private funding is particularly important during election campaigns, which are expensive in Australia (Section 3.3). Federal and state governments, via the Australian Electoral Commission (AEC) and state electoral commissions, reimburse parties for some of their campaign expenditure. However, this is usually paid *after* the election. To bridge the gap, parties rely on loans and private money, including donations, to fund campaign costs.

But just because political donations can be beneficial doesn't mean the current donations regime is working. Lax controls, regulatory loopholes and a lack of transparency have left our political system vulnerable to undue influence.

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114. The Constitution prescribes a system of representative democracy for our federal government (*Commonwealth of Australia Constitution Act* (1900, s 7, 24, 128)). By implication, the Constitution contains a freedom of political communication because public discussion is deemed necessary for people to make reasoned political choices (*Nationwide News Pty Ltd v Wills* (1992 108 ALR 681, 704)).

115. Schott et al. (2014).

116. Ibid.

### 3.2 ...but without proper regulation, there is a risk donations can 'buy' policy

Political donations cause problems if they encourage policy makers to put the interests of donors ahead of others. When money can buy political access and influence, there is a greater risk of crony capitalism and government run for the few and not the many.<sup>117</sup>

Corruption and bribery are illegal<sup>118</sup> and rare in Australia's political system. Only one federal MP has ever been jailed for corruption offences.<sup>119</sup> But a focus on outright corruption is a distraction from other ways political donations can serve well-resourced groups at the expense of the national interest.<sup>120</sup> Donations may distort policymaking even when the link between money and outcomes is indirect.<sup>121</sup>

Donations can directly or indirectly buy access to politicians. And access matters: it's human nature for people to be persuaded by arguments put to them by people they know.<sup>122</sup> If one side of a policy debate gets disproportionate access, their views will often be given disproportionate weight (Chapter 2).<sup>123</sup> Professor Joo-Cheong Tham

117. Crony capitalism, where an individual's success in business depends on maintaining a close relationship with government officials, encourages rent-seeking (Chapter 1), thereby slowing economic growth (Abdel Fadil (2013), Acemoglu and Robinson (2012) and Haber (2002)). Cronyism also generates economic inequality by allowing privileged asset-holders to earn rents, usually at the expense of everyone else (Haber (2002, p. xvi)).

118. Illegal corruption requires establishing a direct link between a financial contribution and a specific outcome as well as a corrupt or dishonest motive, which is a high bar (Tham (2010, p. 73)).

119. Andrew Theophanous. Tham (ibid., p. 71).

120. Ibid.

121. Ibid. (p. 75).

122. As shown by the use of celebrities in advertising, e.g. Petty et al. (1983)). Donations to a party can signal shared values, which is important to persuasion too (e.g. Nelson and Garst (2005)). Box 3 on page 23 discusses the importance of relationships in lobbying.

123. Powell (2012, p. 2).

#### Box 4: Political donations are protected by the Constitution's implied freedom of political communication

Political donations provide resources for political activity and advertising, and therefore restrictions on donations indirectly impinge on the Constitution's implied freedom of political communication.<sup>a</sup> As a result, there are limits on how political donations can be regulated.

The High Court has ruled that restrictions on political donations are valid only if they are compatible with representative democracy, and if they are reasonably appropriate and adapted to their stated purpose.<sup>b</sup> To determine whether a law is valid under the Constitution, the High Court considers whether it is suitable, necessary and 'adequate in its balance'.<sup>c</sup> The Court would be likely to view full public funding – equivalent to a ban on political donations – as unnecessary to protect representative democracy.<sup>d</sup> But other, less extreme, measures such as donations caps have been ruled as constitutionally valid.<sup>e</sup>

a. *Unions NSW v New South Wales* (2013) 252 CLR 530, 554.

b. *McCloy v New South Wales* (2015).

c. *McCloy v New South Wales* (2015), 194-195.

d. Schott et al. (2014). Chapter 5.

e. For instance, in *McCloy v New South Wales* (2015) the Court found that donations caps and bans on donations from property developers were valid because the provisions "in fact enhance the system of representative government" (178, 194). But in *Unions NSW v New South Wales* (2013), the Court found that provisions to restrict potential donors to those people on the electoral roll were invalid, because there was no accepted reason why a donation from an organisation was more conducive to corruption than a donation from an individual (*Unions NSW*, 557).

has argued that putting a price on access not only illegitimately empowers those who can afford to pay for it, but also illegitimately disempowers those who can't.<sup>124</sup>

The link between access and influence can be compounded by a sense of reciprocity.<sup>125</sup> Sociologist Alvin Gouldner (1960) established that there is an almost universal tendency to respond to a gift or positive action with a positive action in return.<sup>126</sup> Donations, especially large ones, may trigger this natural desire to 'give back' or be helpful – even without any dishonest motive. Regular interactions between donors and politicians build relationships and a sense of obligation.<sup>127</sup>

Ultimately the risk is that donations introduce a conflict between the financial interests of political parties, and their assessment of the national interest.<sup>128</sup> If donations undermine merit-based decision-making, they corrode representative democracy.<sup>129</sup>

International evidence linking political donations to companies' returns is mixed (Box 5). But given the measurement difficulties – it is particularly hard to quantify the benefits to an interest group when an unfavourable policy is taken off the table – this is little comfort. We

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124. Tham (2010, p. 86).

125. Justice Stephen Gageler AC cited evidence that “the basic human tendency towards reciprocity means that payments all too readily tend to result in favours” in his judgement on *McCloy v New South Wales* (2015 257 CLR 175).

126. Gouldner (1960). See also Berg et al. (1995), Fehr and Gächter (2000), Komter (2007) and Schwartz (1967).

127. McMenamin (2013); Muller (2017a); and Tham (2010).

128. Powell (2012).

129. Tham (2010, p. 86). In a joint judgement on *McCloy v NSW* (2015, 36), four High Court judges cited a 2003 ruling to suggest there are different forms of corruption aside from explicit quid pro quo exchange. The judges held that another “more subtle” form of corruption arises from “the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder”.

should still be concerned if political donations are an effective tool of influence only *sometimes*.<sup>130</sup>

### 3.3 The campaign finance ‘triad’

There's a lot of money involved in Australian federal elections. Political parties received more than \$185 million in the lead-up to the 2016 federal election, and another \$208 million in the following financial year (which included the final days of the election campaign).<sup>131</sup> Parties collectively spent \$368 million over the two financial years spanning the election.<sup>132</sup>

Election funding comes from three sources (Figure 3.1). About a third of party receipts are government funding, distributed by the AEC and

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130. Like other tools of influence, donations are more likely to be more influential when the public is less engaged in the policy debate, such as when the policy area is technical, or the losers from the policy change are diffuse (Chapter 1).

131. Including intra-party receipts, tax returns and non-electoral funding from public bodies e.g. Dept of Finance (Grattan analysis of party declarations to the AEC 2015-16 and 2016-17). The 2016 election was held on Saturday 2 July, so campaign income and expenditure bridge two financial years. Public funding for the 2016 election campaign appears in parties' 2016-17 annual returns, as do large private donations that were clearly intended to support their 2016 federal election campaign (Gartrell and Bagshaw (2018)).

132. Party declarations to the AEC 2015-16 and 2016-17 (AEC (2018a)). Parties spent \$155 million in 2015-16 and \$213 million in 2016-17. Not all reported expenditure was campaign related – parties are not required to separate ongoing costs from campaign expenses. Nevertheless, election expenditure seems high in Australia compared to most countries. Australian political parties spent more than those in the UK (AU\$66 million in 2017), Canada (AU\$126 million in 2015), and New Zealand (AU\$11 million in 2017). But Australian party expenditure was a drop in the ocean compared to US Presidential elections (AU\$8.7 billion in 2016) (Elections Canada (2018a), Elections NZ (2018), Sultan (2017) and UK Electoral Commission (2018a)).

state electoral commissions.<sup>133</sup> Public funding in Australia is neither high nor low by international standards (Figure 3.2).

A quarter comes from known private sources: declared donations and 'other receipts' from private sources.<sup>134</sup> Donations are a 'gift', a transfer of money or property that is not given in exchange for something of equal value. 'Other receipts' include income from investments and loans, but also payments for a service, such as fundraising dinners.<sup>135</sup>

The remaining 40 per cent is money from sources we know nothing about.<sup>136</sup> A lot of this is likely to be donations below the disclosure threshold. Some of these will be from 'mum and dad' donors who give small amounts to support a political cause. But some is probably 'donation splitting'<sup>137</sup> – where donors make multiple payments below the threshold – which the parties don't need to disclose.<sup>138</sup> If this

133. \$63 million in federal public funding flowed to parties via the AEC for the 2016 election campaign. The parties also declared \$52 million from state electoral commissions on their federal receipts in 2015-16 and 2016-17.

134. \$94 million in the two financial years around the 2016 federal election.

135. B. Keane (2016). Parties often declare income from the ATO, the Department of Finance, electoral commissions and other public sources as an 'other receipt', which adds to the opacity of the disclosure system. We have removed this income from our calculation of parties' private receipts.

136. Parties received \$91 million in non-itemised funding in the lead-up to the election, and \$63 million in the following financial year.

137. B. Edwards (2018).

138. AEC (2018c, Attachment 1). Donors are required to aggregate their own donations and declare them separately to the AEC if they reach the disclosure threshold. However, inconsistencies in donor declarations and party declarations make collating the two sources difficult. Donor declarations rely on donors knowing their obligations, and some clearly do not: a study by the ABC found donors failed to declare nearly \$1.3 million in donations listed on party declarations as well as 80 instances where donors declared their payment as a donation, but the parties listed it as an 'other receipt' or subscription (McGhee (2016)). Donors are not required to declare 'other receipts', so we rely on party declarations for information about income from fundraising dinners or membership fora.

### Box 5: Why donate to political parties?

The international evidence on corporate donations and firm performance is mixed. A major study of firms in the United States found companies that make large political contributions have *lower* returns than firms that don't.<sup>a</sup> Studies in the United Kingdom show that corporate political donations fell when shareholders were given more say on corporate political activity.<sup>b</sup> A meta-analysis of studies on donations and votes cast by members of the US Congress found evidence of donor influence is "thin".<sup>c</sup>

Other research suggests it is difficult to trace the link between private money and political outcomes, because the inputs and outcomes are hard to measure. For instance, it may be possible for donors to prevent unfavourable proposals from becoming policy, in which case the full impact of contributions is difficult for researchers to quantify (Appendix A details examples of this).<sup>d</sup>

Studies that look at broader policy outcomes tend to find more evidence of donor influence, especially when donations are coupled with access and lobbying.<sup>e</sup> If money does talk in politics, it does so "softly and subtly".<sup>f</sup>

a. Aggarwal et al. (2012). Hadani and Schuler (2013) came to a similar conclusion, but not for firms in regulated industries – their market performance improves.

b. Pender (2016).

c. Ansolabehere et al. (2003).

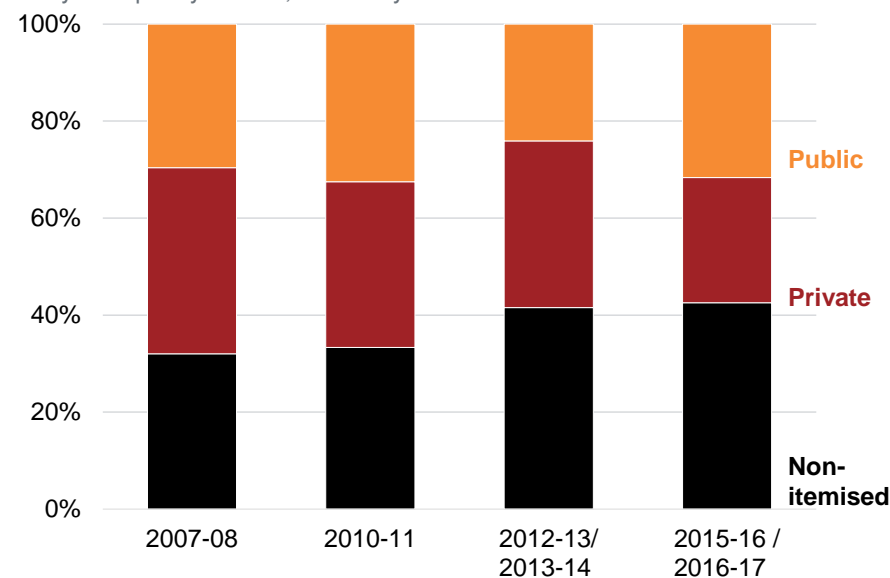
d. Powell (2012).

e. Smith (2015). Policy outcomes studied include government contracts to contributing firms (Witko (2011) and Zullo (2006)), taxation policy (Chirinko and Wilson (2010)), industry subsidies (Liebman and Reynolds (2006) and Lopez (2003)), regulatory outcomes (De Figueiredo and G. Edwards (2007)), and political favours (Claessens et al. (2008)). A survey of US legislators found campaign contributions *do* influence policy (Powell (2012)).

f. McMenamin (2013).

**Figure 3.1: Public funding makes up 30 per cent of election campaign funding**

Party receipts by source, election years

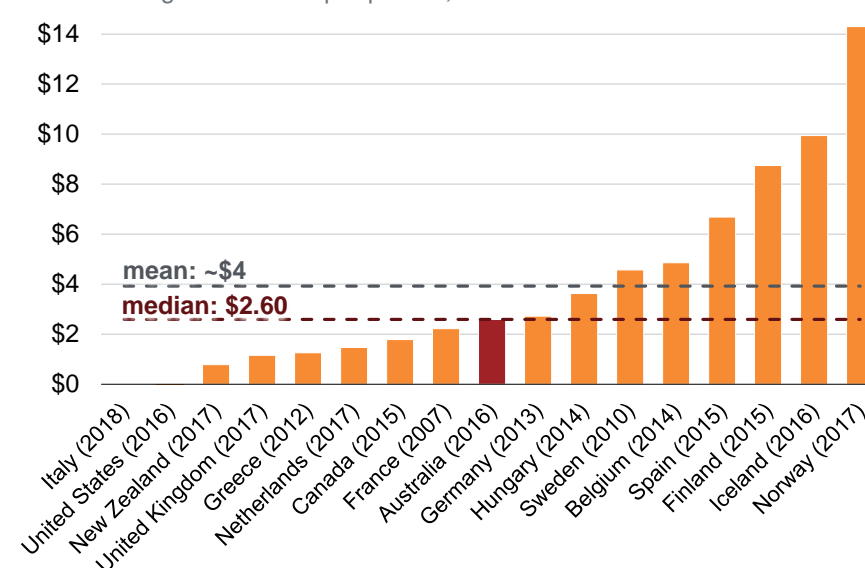


Notes: 'Public' money includes both state and federal government funding declared by parties to the AEC. It is not clear how much of state funding went towards the federal election campaign. Tax returns and non-electoral funding from public bodies (e.g. Dept of Finance) are excluded. Itemised payments from different branches of the same party are excluded. 'Non-itemised' receipts are the difference between total party receipts and all itemised receipts. Under the unlikely assumption that all non-itemised funding came from non-itemised party-to-party payments, public funding would still make up less than 50 per cent of party receipts. We combine data for election campaigns that spanned two financial years.

Source: Grattan analysis of party declarations to the AEC 2007-08, 2010-11, 2012-13 and 2013-14, and 2015-16 and 2016-17 (AEC (2018a)) and AEC annual reports.

**Figure 3.2: Public funding in Australia is neither high nor low by international standards**

Public funding for elections per person, AUD 2016



Note: Public funds have been adjusted to Australian dollars according to the average exchange rate for the year of the election. Chart excludes public funding for state or local elections.

Sources: AEC (2018b), Elections Canada (provided), EuroPAM (2018), OSCE (2018), UK Electoral Commission (2018b) and The World Bank (2018).



'non-itemised' funding is largely private donations – which many have assumed – then Australia has remarkably high levels of private funding per person by international standards.<sup>139</sup>

As Dr Belinda Edwards states, “there is so much we don’t know” about where political parties get their money.<sup>140</sup> But the little we know raises red flags about the risk of policy capture. A small group of big donors contribute most donated funds. Regular donors build relationships with parties and candidates. And most donations come from organisations and individuals who stand to gain a lot if policy shifted in their favour.

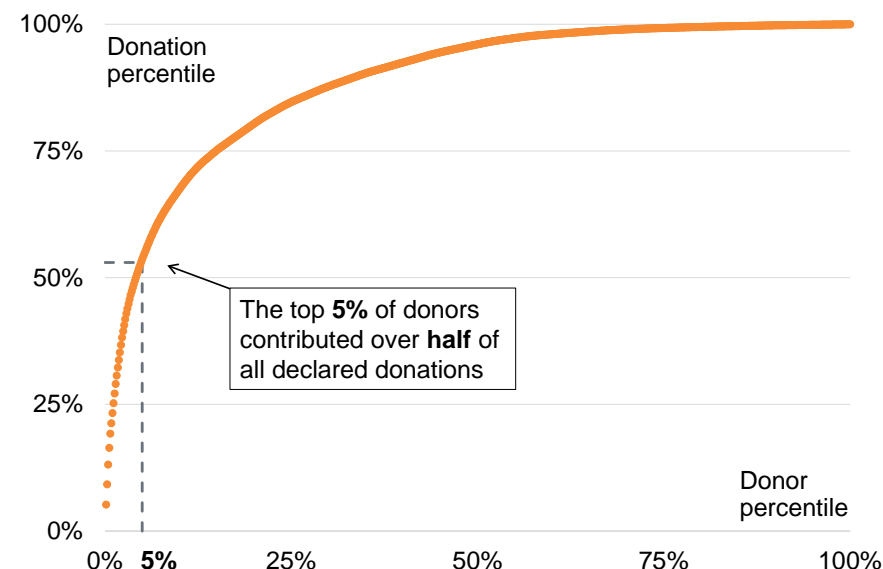
### 3.3.1 A large share of donations comes from a small share of donors

Most identified donations come from a handful of individuals and entities. Excluding funds from associated entities that run fundraising events or manage investments for the parties,<sup>141</sup> the top 5 per cent of donors contributed more than half of all declared donations in 2015-16 and 2016-17 (Figure 3.3). With all associated entities included, the top 5 per cent of donors contributed nearly 60 per cent of declared donations. In other words, 36 people or organisations contributed \$25 million over the course of the 2016 campaign.

Most big donors have a strong relationship with the party they support. The top ten union donors (some of whom are associated entities) collectively contributed more than \$6 million to the ALP. These unions, including the Shop, Distributive and Allied Employees Association (SDA), United Voice, and the CFMEU, have significant influence over policy development and candidate selection.<sup>142</sup> Heavy reliance on

**Figure 3.3: The bulk of declared donations come from a small share of donors**

Percentage of total disclosed donations by percentage of donors, cumulative sum, 2015-16 and 2016-17 combined



*Notes: Chart excludes intra-party receipts declared as donations, and donations without an identified donor. Parties were not required to declare donations of less than \$13,500, but the ALP and the Greens have set lower disclosure thresholds (\$1,000 and \$1,500 respectively). Non-union associated entities excluded – see Appendix B. With associated entities included, the top 5 per cent of donors contributed nearly 60 per cent of all declared donations.*

*Source: Grattan analysis of party declarations to the AEC 2015-16 and 2016-17 (AEC (2018a)).*

139. OECD (2016).

140. B. Edwards (2018).

141. Associated entities are organisations that are closely linked to political parties. See Appendix B for a full definition.

142. Millar and Schneiders (2015), Perpitch and Taylor (2013) and Willingham (2015). A candidate's seat in the Victorian upper house was filled by a CFMEU official



these donors reduces scope for the ALP to push back on policy and process issues.<sup>143</sup>

Large donors also wield influence on the other side of the aisle. The Cormack Foundation, an associated entity of the Liberal Party, contributed the largest amount of any single donor at the last election (\$4.5 million in the two financial years). The Foundation is an independent body with close links to the Victorian Liberals, and it has recently threatened to withhold funding unless the party implements governance reforms.<sup>144</sup> Malcolm Turnbull poured the next highest amount into party coffers, followed by mining magnate Paul Marks,<sup>145</sup> and AusGold Mining Group, owned by the Chinese businesswoman who set up the 'Julie Bishop Glorious Foundation' last year.<sup>146</sup>

Most of the top 5 per cent of donors in 2016 also donated in the 2013 election, and a third of them were in the top 5 per cent of donors then too.<sup>147</sup> Regular major donors include unions, the Australian Hotels Association, Village Roadshow, ANZ and Ms Roslyn Packer.<sup>148</sup>

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in 2017, contravening legal advice from party lawyers. A party official reportedly stated: "If this was challenged, you wouldn't be able to defend it in any court. . . But the CFMEU has taken over the branch and everyone is too scared to do anything about it" (cited in Hannan (2017)).

143. B. Keane (2017).

144. The Cormack Foundation, a \$70 million investment fund, cut off regular donations to the Liberal Party in Victoria in 2016. In March 2018, the Victorian Liberals launched legal action over control of the funds, and in June a Federal Court judge ruled the Victorian Liberal Party held a claim over about 25 per cent of the shares of the foundation but no right to seats on the board or its funds. The Foundation has since announced it will fund Victorian MPs but will continue to withhold funding to the party's administrative arm until reforms are implemented (Hutchinson (2018a), Hutchinson (2018b) and J. Murphy (2018)).

145. Drill et al. (2015).

146. Yaxley (2017).

147. 65 per cent of the major donors (top 5 per cent) in 2015-16 and 2016-17 also donated in the two financial years covering the 2013 election.

148. Grattan analysis of AEC receipts 2012-13.

It is difficult to identify foreign donors in party receipts (Box 6). Two organisations<sup>149</sup> in the top 5 per cent of donors at the last election are run by Chau Chak Wing, a Chinese-Australian citizen with alleged links to the Chinese Communist Party.<sup>150</sup> ABC analysis found that Chinese-linked companies and individuals gave around \$5.5 million between 2013 and 2015.<sup>151</sup>

### 3.3.2 Donors with the most to gain contribute more

Highly regulated industries contribute the biggest share of political donations, followed by unions, and individuals with no known industry links (Figure 3.4 on the following page).

Such a high share of donations from heavily regulated industries suggests that a prime motive for donating is access and influence, or at least a desire to see the more favourably-inclined party win power. Businesses in some of these industries – property and construction, mining, and gambling, for example – donate much more than would be expected given their economic size (Figure 3.5 on the next page).

Most donors say they contribute to political parties and their associated entities to support Australian democracy or to create a stable political environment in which businesses can prosper.<sup>152</sup>

This may well be a sincere motive. But if it was the primary consideration we would expect to see more donors contributing to both major parties<sup>153</sup> and fewer donations from industries with a lot of skin in the political game.

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149. Kingold Group and Hong Kong Kingson Investments.

150. Dr Chau has also been accused of conspiring to bribe a UN official (Gribbin and Conifer (2018)).

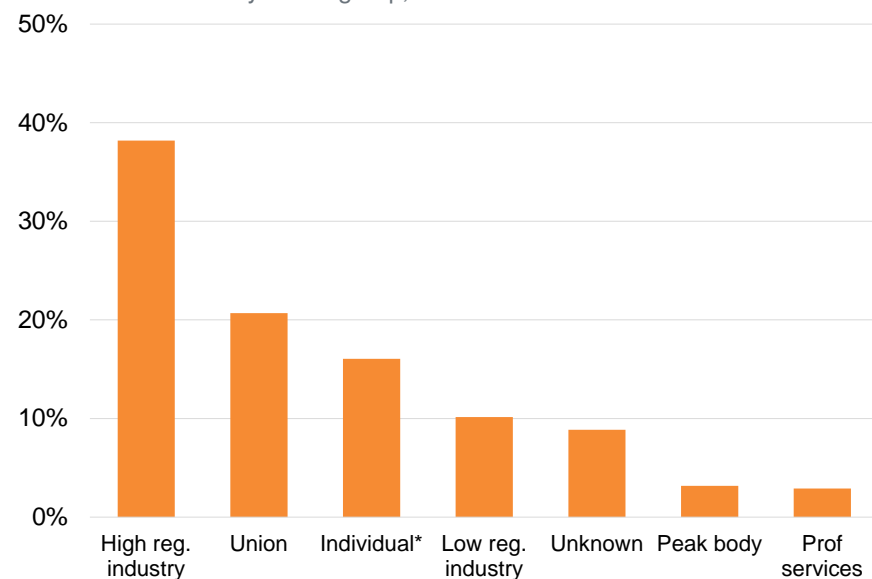
151. Uhlmann and Greene (2017).

152. Select Committee into the Political Influence of Donations (2018).

153. Between 5 and 6 per cent of donors contributed to both Labor and the Coalition in 2015-16 (and in 2016-17).

**Figure 3.4: Corporates in highly regulated industries donate the largest share, followed by unions**

Share of donations by donor group, 2015-16 and 2016-17



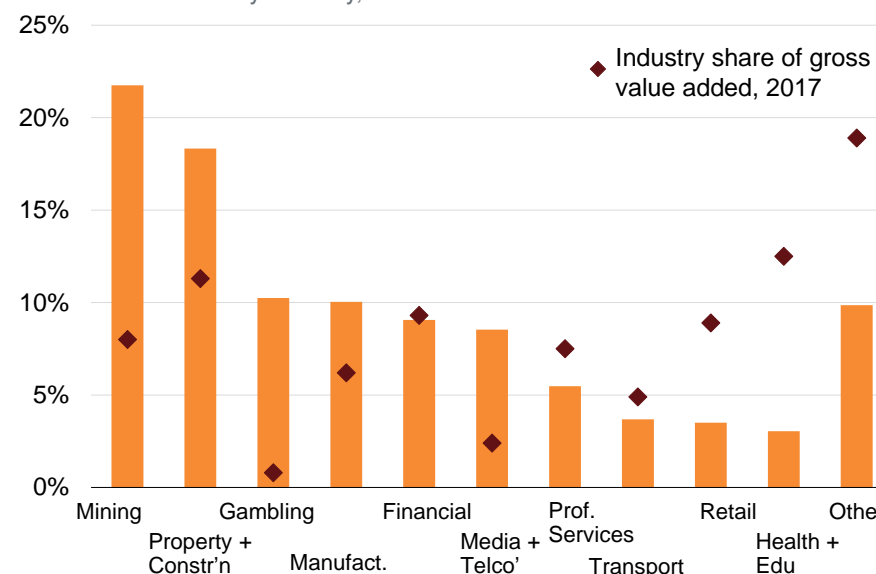
Notes: Level of industry regulation derived from IBISWorld Industry Reports.

\*'Individual' refers to individuals with no known industry connections, or those who donated less than \$60,000. If industry connections were known, individual donors were categorised by industry. Non-union associated entities excluded.

Sources: Grattan analysis of party declarations to the AEC 2015-16 and 2016-17 (AEC (2018a)) and IBISWorld database.

**Figure 3.5: Some industries dominate corporate donations**

Share of donations by industry, 2015-16 and 2016-17



Notes: Individuals who donated more than \$60,000 have been categorised by industry if publicly available information showed they have financial interests in a given industry. The gambling industry's share of gross value added shown is all of 'Arts and Recreation', although gambling is only a subset of this.

Sources: Grattan analysis of party declarations to the AEC 2015-16 and 2016-17 (AEC (ibid.)) and IBISWorld database.

### 3.4 Donations buy access and, perhaps, influence

Money in politics is regulated to overcome concerns about 'buying' influence. But in Australia money can buy access, which researchers argue is inseparable from influence.<sup>154</sup> Political fundraising events explicitly sell access to senior politicians, and big donors are more likely to get meetings with ministers.

While it is difficult to draw a direct line between donations, access, and policy influence, it is telling that donors themselves think personal interactions are important, and value opportunities to 'bend the ear'<sup>155</sup> of politicians. Similarly, the fact that donations tend to ramp up during policy debates and then fall away afterwards suggests that at least some donors perceive a link between money and favourable policy outcomes.

#### 3.4.1 'Pay for access' fundraisers: buying a seat at the table

The link between money and access is most explicit in political fundraising events. As a senior ALP official reportedly said, "we use our political leadership to raise funds because they are the best product we have to sell".<sup>156</sup>

Associated entities that run fundraising events contribute a large amount of money to the major parties (Figure 3.6 on page 41). Attendees pay hundreds – and often thousands – of dollars for a seat at a table with politicians, generally ministers or shadow ministers.<sup>157</sup>

Many donors openly say that they believe the benefits of attending fundraiser events include access to key decision makers and facilitating policy discussion (Box 7).

154. Tham (2010).

155. As stated by one person who paid \$10,000 to sit next to the then-Premier of Victoria, John Brumby, at a fundraising dinner (Austin and Millar (2009)).

156. Tham (2010, p. 83).

157. Ibid. (pp. 81–87).

#### Box 6: It's tricky to regulate foreign donors

There is a risk that foreign actors might use political donations to garner favour among Australian politicians. In a high-profile case last year, Labor Senator Sam Dastyari was found to have contradicted his own party's policy on a matter of concern to the Chinese Government, after taking payments from a Chinese businessman.<sup>a</sup> It was later reported that he warned a wealthy donor that his phone may be tapped.<sup>b</sup> Dastyari resigned from parliament soon after.<sup>c</sup>

The episode led to a push for a ban on donations from foreign actors. It's a worthy aim, but the legislation proposed at the time would have had sweeping implications for third-party campaigners,<sup>d</sup> and would not have prevented donations from the individual involved in the Dastyari case anyway.<sup>e</sup> There were also significant questions about who should 'count' as a foreign actor.<sup>f</sup>

Australian democracy must be protected from foreign influence, but a ban on foreign donations will always be limited. A broader suite of reforms (as proposed in Chapter 5) would capture substantial foreign influence (and *any* major donor influence) while sidestepping the problem of trying to define who counts as a foreign actor subject to a specific ban.

a. Walker (2017).

b. Sweeney (2017).

c. Ibid.

d. Twomey (2018).

e. Or similar individuals who may be of concern (Twomey (2018)).

f. Tham and Anderson (2016).

### Box 7: Why attend a political fundraiser?

The recent Senate inquiry into political donations delved into the motives for attending fundraising dinners. Some attendees highlighted the benefits of political access. For example, according to David Byers, chief executive at the Minerals Council of Australia (MCA):

*The MCA makes the political contributions detailed above because they provide additional opportunities for the MCA to meet with members of parliament. The MCA uses these opportunities to update members of parliament about conditions in the Australian minerals industry and the policy priorities of the MCA.<sup>a</sup>*

Allan Blood, Chair of Latrobe Fertilisers, valued the opportunity to ‘bend the ear’ of the then Victorian Premier John Brumby at an event held by Progressive Business.<sup>b</sup>

And Nine Entertainment Co. noted that attending policy briefings and network events provided “informative policy briefings and networking events”. They noted that, being a heavily regulated industry, “regular interaction with members of parliament and policy makers to discuss

issues which affect our business” is necessary to “ensure that our industry’s regulatory settings are fit for purpose”.<sup>c</sup>

But many attendees denied that their attendance gave them a favourable hearing on policy.

For instance, Mr Byers said the MCA has “no expectation of obtaining any direct benefit from attendance at [fundraising] functions”.<sup>d</sup>

Similarly, Annabelle Herd from Network Ten strongly denied that the company used political donations and attendance at events to further a political agenda: *At the events that we go to . . . you actually don’t end up talking that much about your own political issues. It’s more about understanding what the environment is and just general relationship-building and networking with other people that are at these events. But, no, we certainly don’t rely on political donations to further our policy or regulatory cause.<sup>e</sup>*

Paul Marriott from Macquarie Bank said, “it’s about being part of the conversation”, rather than expecting “preferential access”.<sup>f</sup>

a. MCA (2017).

b. Austin and Millar (2009).

c. McNally (2017).

d. Mr David Byers, Interim Chief Executive, Minerals Council of Australia, cited in Select Committee into the Political Influence of Donations (sec 3.73 2018).

e. Ms Annabelle Herd, Chief Operating Officer, Network Ten, cited in Select Committee into the Political Influence of Donations (sec 3.75 *ibid.*).

f. Mr Paul Marriott, Head of Corporate Communications, Macquarie Group, cited in Select Committee into the Political Influence of Donations (*ibid.*).

### 3.4.2 Large donations open ministerial doors

It's not possible to know how often federal politicians meet with donors, because they are not required to disclose who they meet with (Chapter 2). However, ministerial diaries from Queensland suggest that big donors have a good chance of access to senior ministers (Figure 3.7 on the next page).

Half of the ALP's major donors in Queensland secured a meeting with the Premier, Deputy Premier or Treasurer.<sup>158</sup> Donors who gave more than \$10,000 made up 15 per cent of all donors and contributed 70 per cent of all donated funds. Donors that specialise in political advocacy – peak bodies, professional services and lobbying firms – were most likely to get a meeting. Donating unions got fewer meetings – but they may get access through other avenues (Chapter 2).

In NSW, only a quarter of major donors to the party in power secured a meeting with the Premier, Deputy Premier or Treasurer.<sup>159</sup> A donations cap applies in NSW,<sup>160</sup> so the major donors (the top 15 per cent) represented a smaller share of total donations (40 per cent).<sup>161</sup> The donations cap reduces the importance of any one donor, so this might lead to less access for major donors. But the contrast may also be partly explained by differences in the data. The NSW diaries do not include events, where about a fifth of the meetings with major donors in Queensland took place. The Queensland analysis period also included

158. Grattan analysis of all political donations to the ALP in Queensland from January 2017 to March 2018, and diaries of senior ministers over the same period (Queensland Government (2018)). Note this period included an election (November 2017).

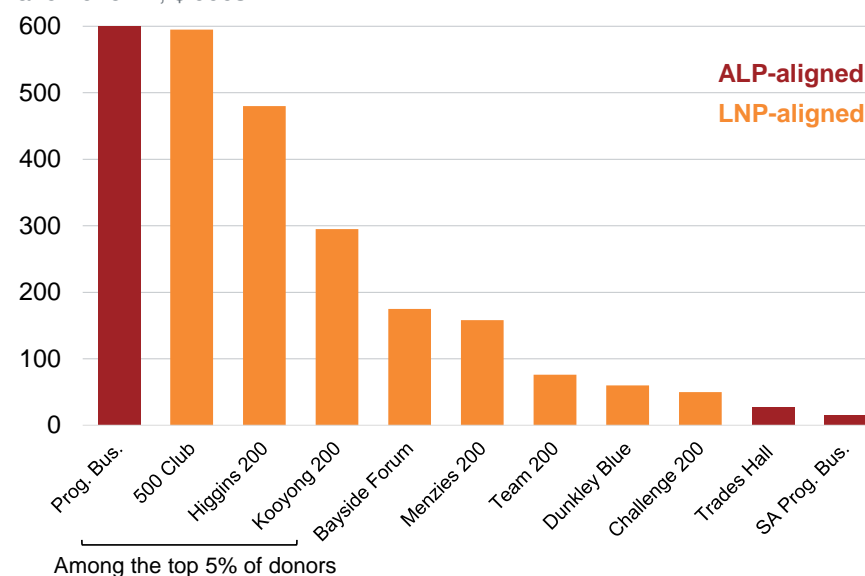
159. Grattan analysis of all political donations to the LNP in NSW in 2016-17 (the most recent data available), and diaries of senior ministers from July 2016 to September 2017 (NSW Government (2018)).

160. The cap is currently \$6,300 for donations to a registered political party (NSW Electoral Commission (2017a)).

161. The threshold for 'major donors' in NSW (top 15 per cent) was a donation of \$4,000.

**Figure 3.6: 'Pay-for-access' events are lucrative fundraisers for political parties**

Donations from associated entities known to host fundraising events, 2015-16 and 2016-17, \$'000s



Notes: Unions and investment companies excluded, because their fundraising activities appear to be different from those of other event-focused associated entities. 'Prog. Bus.' = Progressive Business. Top 5 per cent includes non-union associated entities, which contributed nearly 60 per cent of declared donations. Fundraising bodies contributed 6 per cent of all party receipts.

Source: Grattan analysis of party declarations to the AEC 2015-16 and 2016-17 (AEC (2018a)).

an election, and donors may get more access in the lead-up to an election.

### 3.5 Donations increase when political heat rises, and fall away when it cools

If supporting democracy were the only motive for making political donations, we would expect to see donors contribute roughly consistent amounts over time. But for many donors this is not the case.

Donations from gambling bodies shift with policy debates (Figure 3.8 on the following page). The spike in donations in 2010-11 came when the industry was campaigning against poker machine regulations proposed by then Prime Minister Julia Gillard in conjunction with Independent Andrew Wilkie.<sup>162</sup> Labor ultimately backed down, and soon after, donations dropped back to lower levels. The hotels lobby appears to have used similar tactics in state elections (Appendix A).

There are many other examples of donations ramping up before a relevant policy decision and then dropping away when the political environment for the industry is more benign:

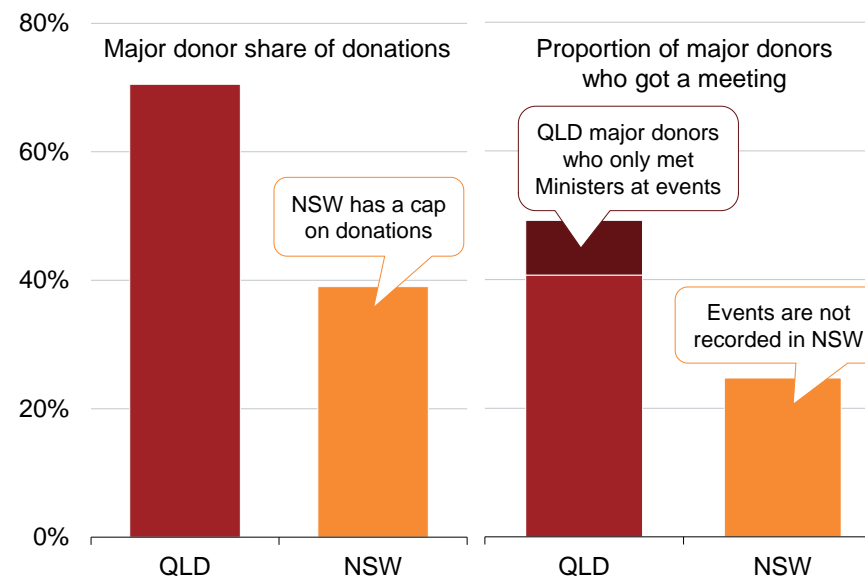
- **Salary packaging industry associations** donated \$250,000 to the Liberal Party and nothing to the Labor Party in the lead-up to the 2013 federal election.<sup>163</sup> Before the election, the Coalition announced it would reintroduce tax breaks for novated leases. At the 2016 election, Labor announced it would keep these tax breaks if elected. At that election, both parties declared \$165,500 in donations and other receipts from the industry associations.<sup>164</sup>

162. ClubsNSW, the organisation leading the industry's response to the changes, also contributed "uncharacteristic and large" donations to the minister responsible for repealing the laws after the change in government in 2013 (Livingstone and Johnson (2017)).

163. AEC (2014).

164. AEC (2016); and Pascoe (2016).

**Figure 3.7: Major donors provide a large share of funding and many get access to a senior minister**



Note: 'Major donor' refers to the top 15 per cent of donors to the party in power in each state, excluding donations to oneself (i.e. an MP donating to their own party).

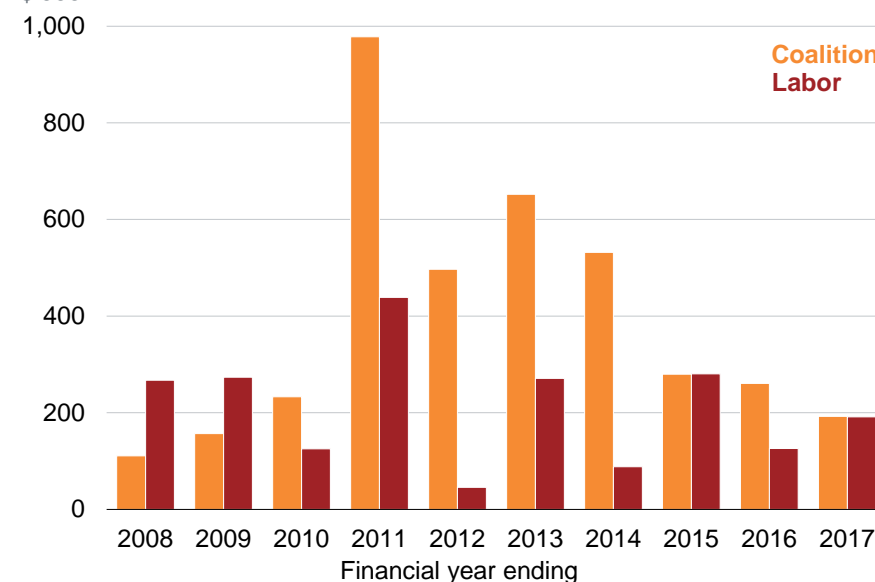
Sources: For NSW: major donors to the state Liberal and Nationals parties (85 donors who gave \$4000 or more) in 2016-17 (NSWEC (2017)), and senior ministerial diaries (Premier, Deputy Premier and Treasurer), July 2016 to September 2017 (NSW Government (2018)). For Queensland: major donors to the state Labor Party (59 donors who gave more than \$10,000, ECQ (2018)), and senior ministerial diaries, January 2017 to March 2018 (Queensland Government (2018)).



- Political donations from the **alcohol industry** increase when there are changes to the alcohol tax system. Wine and traditional cider are taxed according to their wholesale price under a system known as the Wine Equalisation Tax (WET), whereas other alcohol products are taxed on the basis of their alcohol content. The scheme favours large-scale wine producers and provides an incentive to produce large volumes of cheap wine. Southcorp, a large wine producer, contributed \$675,000 to the Coalition in the lead-up to and immediately after the introduction of the WET in 2000. Industry donations to the Coalition and the ALP fell in the years following but rose again after the Henry tax review concluded in 2010 that “current taxes on beer, wine and spirits are incoherent” and suggested abolishing the WET.<sup>165</sup>
- A report on donations from the **mining industry** found that contributions increase in line with the election cycle, shifts in policy debates that affect the industry, and with project timelines. Donations to the major parties peaked at nearly \$4 million in 2010-11 – which encompassed the 2010 federal election and the start of a heated national debate about the government’s proposed mining tax (Chapter 4).<sup>166</sup> Before 2008-09, donations from the industry were evenly split between the Coalition and Labor, but during the mining tax campaign and the ‘carbon tax election’ of 2013 funds were heavily skewed towards the Coalition.<sup>167</sup> Since then, the industry has donated a little over \$1 million a year, more evenly split between the Coalition and Labor.<sup>168</sup>

**Figure 3.8: Political contributions from the pokies industry peaked in 2011 when the heat was on**

Donations and other receipts from industry associations for hotels and clubs, \$'000



Notes: ‘Industry associations’ include federal and state branches of the Hotels Association and Clubs Australia (mainly ClubsNSW).

Sources: Grattan analysis of party declarations to the AEC 2007-08 to 2016-17 (AEC (2018a)). See also Livingstone and Johnson (2017).

165. Grattan analysis of FARE (2018) and AEC (2018a).

166. Aulby (2017a); and Select Committee into the Political Influence of Donations (2018).

167. Select Committee into the Political Influence of Donations (2018).

168. Ibid.

These examples don't establish a direct link between donations and policy decisions, but at the very least they suggest some players believe there is one.

### 3.6 Existing checks and balances are insufficient

Commonwealth rules on political donations are weak. Most states have stronger disclosure requirements than the Commonwealth does,<sup>169</sup> and checks and balances on federal parties are soft compared to those in place in other countries (Figure 3.9).

And the current regime promotes an 'arms race'<sup>170</sup> between the parties, making them increasingly reliant on a small number of large donors.

Stronger disclosure requirements and better enforcement could go a long way to improving the system at a federal level, and a cap on political advertising expenditure would help reduce parties' reliance on individual donors – and therefore their influence (Chapter 5).

#### 3.6.1 Voters are in the dark about who is donating to whom

Disclosure of party (and associated entity) receipts is supposed to make party funding more transparent. But the public and the media have only a limited view of who is donating to whom. A lot of 'hidden money' flows to political parties – nearly \$63 million in 2016-17.<sup>171</sup>

The disclosure threshold for party receipts is high and is indexed to inflation. Parties are not required to aggregate donations from the same donor towards the disclosure threshold, so it is possible to 'split' donations into smaller amounts that parties don't have to disclose<sup>172</sup>

169. Chivers et al. (2018); and Muller (2017b).

170. Term used by Senator Dastyari (McDermott et al. (2016)).

171. And \$91 million in 2015-16.

172. B. Edwards (2018). Donors are required to aggregate their own donations and declare them separately to the AEC (Section 3.3 on page 33).

**Figure 3.9: Australia is behind other countries on regulating political donations**

Rules for political parties

	Canada	UK	NZ	Australia
<b>Disclosure threshold</b>	\$202	\$13,600	\$13,500*	\$13,800
<b>Aggregation under the threshold</b>	Yes	Yes	Yes	Not for parties
<b>Due dates for disclosure</b>	Quarterly during election, yearly otherwise	Weekly during an election, quarterly otherwise	Immediately for large donations, yearly otherwise	Yearly
<b>Expenditure caps</b>	Yes	Yes	Yes	No
<b>Donations caps</b>	\$1,600	No	No	No

Notes: \* Donations between \$1,350 and \$13,500 are registered in NZ party returns, but the identity of the donor is not disclosed. NZ donors are required to disclose donations of \$1,350 or more. Australian donors are required to keep track of their donations to parties and disclose when the sum of their donations equals more than \$13,800. Party disclosures may take some time to be revealed to the public after lodgement with the relevant electoral commission. Red text means Australian legislation is behind the rest. Dollars in \$AUD.

Sources: Elections Canada (2018b), Elections NZ (2017) and UK Electoral Commission (2018c).

(although the ALP and the Greens both choose to disclose receipts below the threshold).<sup>173</sup>

The money that is declared is still sometimes difficult to trace back to its original source. Opaque entities<sup>174</sup> donated nearly \$3 million at the last election.<sup>175</sup> And associated entities tend to donate large sums, but most of their funding comes from unknown sources (Appendix B).<sup>176</sup> In some cases associated entities have passed on donations from banned donors to state party branches in the very states where those donors are banned.<sup>177</sup>

Many contributions are declared as 'other receipts' by parties, even though the contributors report them as 'donations'.<sup>178</sup> Large sums paid to attend fundraising breakfasts, lunches or dinners are commonly counted in the 'other receipt' column on the basis that services – such as a meal and access to politicians – are also provided.<sup>179</sup> Yet fundraising events are, by definition, raising money for a political party, so attendance should be considered a political donation.<sup>180</sup>

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173. The ALP and the Greens have policies to disclose donations over \$1,000 and \$1,500 respectively. However, some branches of the ALP appear to use the normal threshold instead.

174. That is, trusts or corporations with no digital footprint and an address on their donor form that doesn't correspond with commercial real estate.

175. \$2.2 million in 2015-16 and \$740,000 in 2016-17.

176. With the exception of investment vehicles such as the Cormack Foundation and the 1973 Foundation, which declare most of their funding sources (Appendix B).

177. ICAC (2016). This is illegal, but might be hard to pick up.

178. McGhee (2016).

179. As discussed in Section 3.3, a donation is a 'gift'. Any payment (or gift-in-kind) for which something of equal worth is received in return does not fit this definition. So income from fundraising dinners is classified as an 'other receipt' because the payments are in return for a service – a meal, an event, and an opportunity to meet with policy makers. This is not the case in NSW, Victoria or Queensland, where payments for a fundraising event (over \$200 in Queensland) are considered donations and must be declared as such (NSW Electoral Commission (2017b), Queensland Electoral Commission (2018) and *Electoral Act 2002* (Vic)).

180. B. Edwards (2018).

Disclosures at a federal level are also not timely. Returns do not have to be lodged until the end of the financial year, and they are not published until the following February. Nineteen months can go by before the public finds out who donated how much to whom.

Many states have stricter rules on disclosure and party funding than the Commonwealth Government. For instance, most states have a lower disclosure threshold.<sup>181</sup> Some have also banned donations from certain groups, instituted donations caps, and capped political expenditure.<sup>182</sup> And several states are moving towards more timely disclosure. For instance, NSW recently legislated for disclosure of donations every six months, and within 21 days during election campaigns.<sup>183</sup> Queensland was the first state in Australia to hold an election with 'real time' disclosure in 2017,<sup>184</sup> and South Australia followed soon after.<sup>185</sup>

### 3.6.2 Sanctions are weak

The Commonwealth donations regime has no teeth. Even the AEC, the body responsible for administering the Electoral Act, has noted that the regime combines "relatively low penalties" with "high thresholds for establishing an offence".<sup>186</sup> It's rare for political actors to face serious consequences for breaching the Act.

The AEC conducts compliance reviews on annual returns by political parties and associated entities. Not all entities are reviewed – the AEC chooses which returns to examine based on a risk assessment, professional judgement or random selection. Parties and associated entities are asked to amend their return if a mistake is found. If they fail to do so, the AEC can investigate the breach and refer the matter to the

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181. Muller (2017b).

182. Ibid.

183. NSWEC (2016).

184. Blackwood (2017); and QLD Electoral Commission (2017).

185. Chivers et al. (2018).

186. AEC (Attachment 11 2017a, p. 3).

Commonwealth Director of Public Prosecutions.<sup>187</sup> No penalties have resulted from a breach of the Act in the past decade.<sup>188</sup>

These measures are soft compared to the donations regime in states such as NSW. The NSW Electoral Commission is required to withhold public funding from political parties if they breach their disclosure requirements. The amounts withheld can be large: the Commission withheld \$4.4 million for a particularly egregious case of non-compliance in 2016.<sup>189</sup> Penalties for individuals are also very high in NSW. If a court finds a person has circumvented the legislation, they could face 10 years in prison. Fines can be up to \$44,000 for misleading conduct, or \$22,000 for repeated failure to lodge a disclosure return.<sup>190</sup>

Weaknesses in the Commonwealth donations regime makes Australia vulnerable to policy capture. Chapter 5 proposes ways to reduce this vulnerability.

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187. AEC (2017b).

188. As at 2016. A Senate inquiry on the regulation of associated entities questioned whether the AEC "... has created a regulatory environment that encourages proactive disclosure" (Senate Finance and Public Administration Committees (2016)).

189. Statement by Chairperson, NSW Electoral Commission (2016). Funds are returned when obligations are met, less any amount that the party received through improper conduct. In this case, \$3.8 million of public funding was ultimately returned to the party in question and \$600,000 was retained by the NSWEC to offset the value of unlawful donations received by the party (Statement by Chairperson, NSW Electoral Commission (ibid.)).

190. *Electoral Funding Act 2018* (NSW) Part 10 Division 1.

## 4 Winning hearts and minds

Special interests do not seek influence only behind closed doors. Increasingly they also try to influence the public debate. If you can capture the 'hearts and minds' of the public then policy makers usually follow.

Public campaigns can take many forms, but include major advertising campaigns in mainstream media, targeted marginal-seat and social media campaigns, commissioning economic consultants or think tanks to publish work designed to influence the public debate, and direct communication with the public by groups like pharmacies and schools.

Interests have every right to argue their case in these ways. Public campaigning is of concern only if claims are misleading or if pertinent information – such as who is paying for modelling or research – is withheld.

But the success some interests have had translating their claims into uncritical press coverage raises questions about balance. Is the point of view of groups that aren't so organised or well-funded, such as consumers or young people, adequately represented in public debates?

### 4.1 The hearts and minds toolbox

*The new paradigm is one of public contest through the popular media more so than rational, considered development and implementation.*<sup>191</sup>

Public campaigns or publicity for a policy 'cause' are now a standard part of the influence toolbox. Once seen as the province of outsiders

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191. Mitchell Hooke, former head of the Minerals Council of Australia, quoted in Orr and Gauja (2014).

– those with relatively little direct access to decision makers<sup>192</sup> – campaigns are now used to complement direct influence through lobbying and donating. As the policy agenda is increasingly set by a wider variety of interests, rather than the grass-roots of political parties, 'going public' may become increasingly important.<sup>193</sup> Groups such as *GetUp!* have emerged that seek influence almost entirely through public campaigns and grassroots activism.<sup>194</sup>

There are two main channels of public influence: communication with the public, directly, or via advertising and social media, and attracting media coverage.

#### 4.1.1 The public campaign

Advertising campaigns are the most visible way special interests seek to sway public sentiment. Campaigns can be persuasive (building support for policy change) or defensive (highlighting the costs or risks of changing the status quo).

Major advertising campaigns in mainstream media are expensive. Nonetheless, since the mining industry campaign against the Resource Super Profits Tax (Box 8) was seen to be successful, threats of a 'mining tax-style campaign' have become standard operating procedure for well-resourced groups fighting policy battles (Box 9).

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192. Ward (2009).

193. Ward (ibid.) and Box 1.

194. *GetUp!* employs a range of grassroots and public campaign strategies including encouraging members to email or call their elected representatives, sign petitions, attend rallies, and contribute towards media and advertising campaigns (*GetUp!* (2018a)). Their campaigns are usually ideological, rather than linked to the material interests of their supporters.

Merely foreshadowing a big-spending campaign can bring governments to the negotiating table. The mining industry spent only an estimated \$22 million of its reported \$100 million advertising budget (Box 8).<sup>195</sup> Similarly, the successful campaign by ClubsNSW against the 2011 pokies reforms used just \$3.4 million of its announced \$40 million budget.<sup>196</sup>

Of course, heavy spending by vested interests can also generate a response in kind by the government (Box 8). Despite many attempts to curtail government advertising, the Commonwealth Government has spent at least \$100 million a year in advertising over the past six financial years.<sup>197</sup>

Interest groups and issue movements are becoming more sophisticated in their public campaigning. *GetUp!* campaigned on climate change and multi-national tax avoidance in the 2016 election using candidate forums, door-knocking programs, community phone banks, and television and print advertising.<sup>198</sup> It also ran targeted campaigns in the seats of some Coalition MPs,<sup>199</sup> leading to protests that it should be classified as an associated entity of Labor or the Greens.<sup>200</sup> A few industry special interest groups that interact directly with the public – such as pharmacists, pathology companies and schools – can also threaten to lobby the public directly.<sup>201</sup>

Large national campaigns are necessarily the preserve of well-resourced organisations in terms of both money and ‘people power’: unions, industry peak bodies and *GetUp!* stand out as the major

spenders in the past decade (Figure 4.1). Indeed, the 15 biggest-spending groups account for 88 per cent of authorised advertising expenditure over the past 11 years.<sup>202</sup> In most instances, a single policy issue precipitated these campaigns – the most advertising dollars were spent on WorkChoices, the mining tax, plain packaging of cigarettes, and the carbon tax.

Social media also plays an important role in contemporary advocacy. Although it is widely seen as a way for smaller groups to highlight issues, international research suggests that well-resourced groups have a much broader and more active social media presence than smaller advocacy groups.<sup>203</sup>

#### 4.1.2 Sympathetic media coverage

Generating media coverage is another way to persuade the public and influence decision-makers. Issues canvassed in the media are more likely to grab the attention of policy makers.<sup>204</sup> ‘Going public’ can also enhance the leverage of an interest group in their lobbying behind closed doors.<sup>205</sup>

But to get the coverage they want, groups have to get past the ‘gate-keepers’ – editors and journalists have to be persuaded to cover the story, present a particular angle, or frame the issue in favourable terms.

One way of doing this is to *create* the story. New research or modelling work about a contested policy almost always gets some coverage. Consultants can be called on to produce numbers on almost anything

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195. Carbonell (2010).

196. Panichi (2013).

197. Department of Finance (2017).

198. *GetUp!* (2018b).

199. Vromen (2016).

200. Norington (2018).

201. Knott (2015).

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202. Expenditure by national bodies includes expenditure by associated local or state entities, 2006-07 to 2016-2017. Authorised advertising expenditure refers to all declared expenditure on print or broadcast advertising which is required by law to be authorised (AEC (2018d)).

203. Van der Graaf et al. (2016).

204. e.g. McCombs and Shaw (1972), Yanovitzky (2002) and Nisbet and Hume (2006).

205. Ward (2009).



**Box 8: The making of a campaign: the mining industry campaign against the Resource Super Profits Tax**

In 2010, the Rudd Government announced a new Resource Super Profits Tax (RSPT). In line with a recommendation from the Henry tax review, the government proposed a 40 per cent tax on all mining company returns above the government bond rate.

The Minerals Council of Australia (MCA) immediately initiated a public advertising campaign against the tax, based on focus group research commissioned by BHP Billiton.<sup>a</sup> The campaign was launched on May 7, backed by a reported \$100 million war chest, and focused on the economic risks of taxing companies seen to have saved Australia's economy from recession during the global financial crisis. At the same time, executives at BHP Billiton, Rio Tinto and Xstrata publicly threatened to cancel future Australian operations if the tax was implemented.<sup>b</sup>

An initial round of negotiations on the design of the tax failed. The government then announced that it would launch its own \$38 million advertising campaign to counter the MCA's message.<sup>c</sup>

In the event, neither the mining industry nor the government fully spent their mammoth budgets. In total, the MCA and its allies spent \$22 million on advertising; the government spent \$9 million.

a. Cleary (2011, p. 42).

b. Bell and Hindmoor (2014, p. 146).

c. McKnight and Hobbs (2013, p. 315).

d. Steel (2010).

e. Shanahan (2011).

Labor MPs looking ahead to that year's election were reportedly concerned by the MCA's campaign, despite little observable reduction in public support for the tax. By the end of June, Julia Gillard had replaced Kevin Rudd as prime minister, and the government and the MCA ended their advertising campaigns.

Following negotiations with BHP Billiton, Rio Tinto and Xstrata, Gillard agreed to lower the tax's headline rate and limit its scope. On July 2, Gillard announced the renamed Minerals Resource Rent Tax (MRRT) would replace the RSPT. At the time, it was estimated that these changes would cost the government \$60 billion in revenue over ten years.<sup>d</sup> Smaller mining companies that were not represented in negotiations continued to lobby against the tax.<sup>e</sup>

The Coalition went to the 2010 and 2013 elections promising to 'axe' the MRRT. It was repealed by the Coalition Government in September 2014.

Since the MCA's success, organised interests in the energy, banking, property, and automotive industries have publicly threatened to launch 'mining tax-style' campaigns in response to proposed policy reforms (Box 9).

– from the economic benefits of the Great Barrier Reef<sup>206</sup> to women in leadership<sup>207</sup> to universities.<sup>208</sup> The mere fact of media coverage lends credibility. Politicians often refer in the public debate to research produced by special interests and cited in the media (Box 10 on page 54).

Another tactic is to influence the way a story is told. It's not surprising that interest groups tirelessly issue media releases and have spokespeople at the ready for media soundbites. Some also helpfully serve up 'cameos' – real people who would be negatively affected by a proposed policy change – to give colour and human interest to a policy story. This makes life easier for journalists who would otherwise have to go searching for these stories. The debate about negative gearing policy threw up some memorable examples of 'real people' found by – or, perhaps, provided to – the media, including married nurses with four negatively geared properties,<sup>209</sup> and a plumber and a social worker who had just purchased a negatively-geared property for their one-year-old daughter.<sup>210</sup>

Given the low price tag – at least compared to mass advertising campaigns – targeted media content can be a cost-effective way to win hearts and minds.

## 4.2 Why should we care?

Special interests are entitled to put their policy views to the public. In many ways public campaigns are the antithesis of the behind-closed-doors influence strategies documented in Chapters 2 and 3.

206. Fyffe et al. (2017).

207. Taliento and Madgavkar (2016).

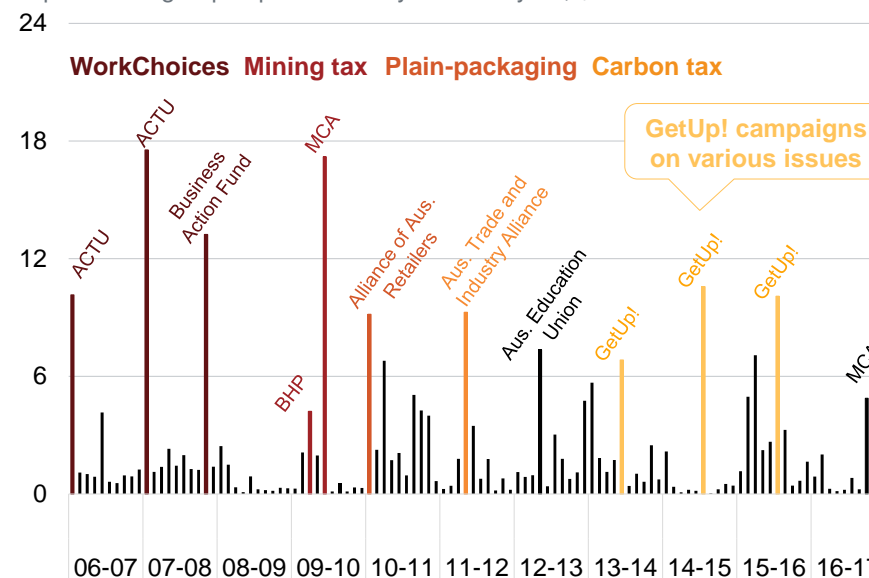
208. Conlon et al. (2018).

209. Durkin and Bleby (2016).

210. Chang (2016).

**Figure 4.1: A handful of interests and issues dominate political advertising by third parties**

Top ten total group expenditures by financial year, \$ millions



Note: Expenditure by national bodies includes expenditure by associated state and local entities. MCA = Minerals Council of Australia.

Source: Political expenditure returns, 2006-07 to 2016-17 (AEC (2018d)).

The problem isn't special interest efforts – unless they deliberately set out to muddy the debate. The problem is that their messages are often covered uncritically, and other voices are absent.

If media channels – both paid and unpaid – increasingly become a mouthpiece for the views of well-resourced interests, then an important check on special interest influence over policy-making (Section 1.1.2 on page 7) is substantially weakened.

#### 4.2.1 Media checks and balances can be weak

The business model of traditional news media is under increasing pressure. As the number of journalists – particularly specialist journalists<sup>211</sup> – in some mainstream media outlets declines, the pressure to fill column inches and news bulletins grows.

Special interests fill this void with new content, dial-a-quote and cameos, all with an eye to influencing the public debate. Ideally, journalists would analyse this unsolicited content critically and seek alternative views. In reality, a lot of 'public relations' material put out by businesses, government departments and advocacy groups runs with very little editorial input from journalists (Figure 4.2). Although blindly publishing 'PR copy' is not a new phenomenon, growing pressures on journalists mean it is likely to grow.

Even 20 years ago, most Australian journalists reported 'very frequent' contact from public relations people.<sup>212</sup> Twenty per cent of journalists reported that they 'often or sometimes' used public relations material 'in full'.<sup>213</sup> Australian Associated Press stories draw heavily on media

#### Box 9: Empty threats? Industries reported to have threatened a 'mining tax-style' campaign

- *'The NCEC [National Catholic Education Office]... was reported to be planning a mining tax-style campaign.'* 2017 campaign against changes to school funding arrangements (Gonski 2.0)
- *'Australia's five largest banks are prepared to launch a mining tax-style ad campaign.'* 2017 campaign against new bank tax
- *'Crosby Textor had been engaged... to prepare a mining tax-style campaign.'* 2017 campaign by the oil and gas industry against possible changes to the petroleum resources rent tax
- *'Property groups are threatening a mining tax-style campaign to head off changes.'* 2016 campaign against Labor's proposed changes to negative gearing and the capital gains tax discount
- *'The council had previously warned of a mining tax-style industry campaign.'* 2014 Financial Services Council campaign against a decision to delay the increase in the Superannuation Guarantee
- *'The association has threatened to launch a mining tax-style advertising campaign.'* 2014 Australian Automobile Association campaign against the increase in the fuel excise

Source: Factiva search of Australian newspapers for 'mining tax style' 2011-2018 (Dow Jones (2018)).

211. MEAA (2018); and Bilyk et al. (2018).

212. Macnamara (1993).

213. Ibid.

releases from government departments and political offices, lending legitimacy to them.<sup>214</sup>

This can favour powerful voices. International research shows groups such as trade unions and industry peak bodies gain much greater media attention than citizen groups.<sup>215</sup>

Uncritical reporting is more likely to occur in policy debates where the issues are complex and technical. Modelling of economic impacts and analysis of winners and losers can be difficult for journalists to 'sense check'. And special interest conduct can compound this problem. When a large research report – or nothing more than a 'media briefing pack' – is provided only a short time before release, journalists have little chance to test the numbers and spin.

Special interests also frustrate proper media checks when they fail to disclose who's paying for research. Some argue that 'who's paying' shouldn't be relevant and that arguments should be judged on their strengths.<sup>216</sup> But consultants' reports often depend significantly on judgement and see the light of day only when they align with the clients' interests. Given journalists (and even other experts) have limited capacity to pull apart black box models, knowing who's paying is key for the public to weigh up different results and arguments.<sup>217</sup>

Consultants sometimes refuse to reveal who commissioned their work (Box 10). And some experts and think tanks regularly weigh into policy debates without revealing who is paying.<sup>218</sup> The 'aura of independence'

214. Forde and Johnston (2013) showed that almost two-thirds of media releases from four government departments and political offices were picked up by AAP and distributed to newsrooms. Of that content, AAP used the material 'wholly or predominantly' in nearly 40 per cent of stories.

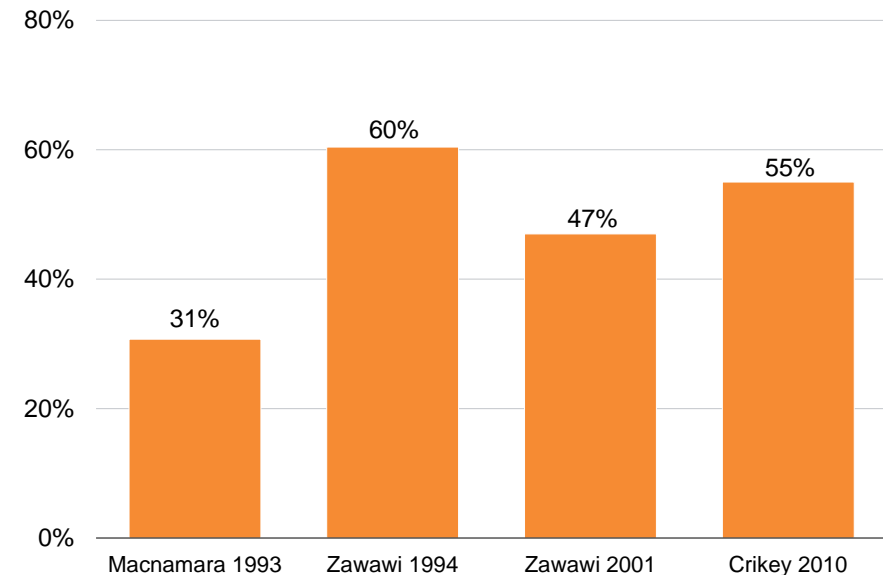
215. Binderkrantz et al. (2017).

216. Cowan (2018).

217. Besley et al. (2017).

218. Secombe (2018); and Barro (2018).

**Figure 4.2: News stories are heavily influenced by lobbying handouts**  
Per cent of news stories driven by public relations materials (various estimates)



Notes: Macnamara (1993) analysed 2,500 news articles and found 768 stories wholly or partly based on press releases from in-house public relations departments and consultancies. Zawawi (1994) analysed 192 news articles and found 116 were influenced by public relations activity. Zawawi 2001 (reported in Macnamara (2002)) expanded on this work, analysing 683 news stories, of which 339 were found to be directly the result of public relations activity. More recently Crikey (2010) analysed 2,203 news stories of which 55 per cent drew heavily on public relations material and 24 per cent had 'no significant extra perspective, source or content added by reporters' whatsoever.

Sources: Macnamara (1993), Zawawi (1994), Crikey (2010) and Zawawi 2001, reported in Macnamara (2002).

of a think tank or an academic means that their research is generally given more weight and prominence in the media than work explicitly commissioned by a lobby group (Box 11).

As a result, dodgy numbers and flawed arguments often get reported without critical review. Box 10 outlines two recent examples. Even when comprehensively debunked, misleading numbers can maintain a zombie-like presence in the national debate, cited again and again even by key decision-makers who surely know better. The public interest would be better served if dubious research findings were not given oxygen by media gate-keepers in the first place.

Open public debate might be strengthened if government backed public-interest journalism. Good-quality public-interest journalism that weighs different viewpoints can be an important check on the influence of well-resourced groups. But government-backed journalism can easily become government-controlled media.

Various studies have looked at ways government might support the public-interest function of the media.<sup>219</sup> A recent Labor-chaired parliamentary committee recommended ensuring public broadcasters are adequately funded; extending tax-deductible (deductible gift recipient) status to donations to not-for-profit news media organisations (and possibly even to all news media subscriptions); and reviewing defamation laws and whistle-blower and shield law protections.<sup>220</sup> A significant number of other countries already provide direct subsidies or tax exemptions to media outlets.<sup>221</sup>

Assessing the merits of these types of interventions is beyond the scope of this report. But it seems clear that, without some government intervention, the media's capacity to check undue influence will only get weaker.

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219. Schweizer et al. (2014); and Bilyk et al. (2018).

220. Bilyk et al. (2018).

221. JERAA (2017).

#### 4.2.2 Who speaks for the many in policy debates?

In our democratic system, representations from special interests and other interest groups inform policy and ultimately voter decisions. This process works best when there are many interest groups seeking to influence policy and the public debate (Chapter 1).

But lack of resources or poor organisation can leave many without a strong voice. Diffuse groups, such as consumers, or young people, and the advocacy groups that represent them, are generally not well-resourced and by their nature tend to be spread across many issues.

Many politicians and the public service will try to work through broader public interest considerations, aided by institutions within government such as the Productivity Commission as well as outside experts. But even with the best of intentions, the interests of these groups can be given insufficient weight by decision-makers and voters, especially if their voices are 'drowned out' by well-resourced, well-organised and self-interested groups.

If access is granted only to those that come knocking, then less organised and less well-resourced interests won't be consulted. Research suggests that when legislative committees actively seek out and invite contributions, they get a greater variety of relevant perspectives.<sup>222</sup>

There is no simple policy solution to this problem. Chapter 5 explores ways in which policy processes can become more open to a diverse range of voices, as well as ways that government can seek directly to boost voices of those from diffuse groups.

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222. Pedersen et al. (2013). See also Bishop and Davis (2002).

## Box 10: Economic modelling in the media: two case studies

### 1. Impact of negative gearing on the economy and rents

*'\$19bn hit in Labor negative gearing strike on investors: report'*<sup>a</sup>

In 2016 Labor proposed reforms to negative gearing and capital gains tax concessions. Property consulting firm BIS Shrapnel released a report later that year estimating that removing negative gearing tax concessions for existing but not new properties (similar to elements of Labor's policy) would increase rents by 10 per cent and shrink cumulative GDP by up to \$190 billion over ten years. BIS Shrapnel would not say who commissioned the modelling. Several weeks later the mystery client was revealed to be accounting firm Bongiorno and Partners.

At the time, Grattan Institute and others showed why the estimates were nonsensical and based on highly questionable assumptions.<sup>b</sup> These flaws were also highlighted in a number of media reports<sup>c</sup> and in a Media Watch story.<sup>d</sup>

Nonetheless, the BIS Shrapnel work was quoted widely and approvingly by then Treasurer Scott Morrison<sup>e</sup> even after it had been comprehensively discredited.

*Notes: (a) Maher (2018), The Australian, 3 March 2016 (page 1); (b) Daley and D. Wood (2016) and Denniss (2016); (c) Martin (2016); (d) Media Watch (2016); (e) Morrison (2016) and Morrison (2017).*

### 2. Jobs created by the Adani coal mine

*'Adani will create more than 10,000 jobs. Here's how'*<sup>f</sup>

In 2017, during an intense public debate about the future of the proposed Adani mine and what government support (if any) it should receive, an estimate by economic consultants GHD that the mine could create 10,000 jobs by 2030<sup>g</sup> gained wide publicity.

The estimates had already been described as much too high by Adani's own expert economist in the land court.<sup>h</sup> And an economist for the Australia Institute had produced a detailed critique of the assumptions, the modelling methodology<sup>i</sup> and subsequent attempts by the mine's supporters to massage the 10,000 figure.<sup>j</sup>

Nonetheless, the 10,000 jobs figure was used by Adani in an advertising campaign and quoted by the Queensland Government and the federal Minister for Resources, Matt Canavan.<sup>k</sup>

*Notes: (f) McCarthy (2017), The Courier Mail, 6 June 2017; (g) GHD (Table 9 2013, p. 30); (h) Robertson (2015); (i) Campbell (2015a); (j) Campbell (2015b); (k) Canavan (2016) and Lynham (2015).*



**Box 11: Think tanks can provide 'respectable cover' for special interest advocacy**

Think tanks are prominent in many policy debates. Think tanks, including Grattan Institute, conduct research, lobby policy makers and provide media commentary on policy.

Research from think tanks is not always independent or academic in nature. The first question voters and policy makers should ask is: 'who's paying'?<sup>a</sup> But many Australian think tanks – including the Australia Institute, the Centre for Independent Studies, the Institute of Public Affairs and the McKell Institute – do not reveal their major donors.<sup>b</sup>

When a think tank gets most of its money from a small number of donors or industries, the boundaries between 'think tank' and 'lobby group' can become fuzzy.<sup>c</sup> The risk is that such groups become merely a respectable PR arm for their major funders, or closer to the fake think tanks that proliferate in the US<sup>d</sup> and UK.<sup>e</sup>

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a. Daley (2017).

b. Media Watch (2013). The websites of these groups have no information about their major donors. Grattan Institute discloses its funding on its website (<https://grattan.edu.au/about-us/>).

c. Media Watch (ibid.). For example, it was recently revealed that a single donor – Gina Rinehart's Hancock Prospecting – accounted for between half and one-third of the Institute of Public Affairs' total revenue in 2015-16 and 2016-17. Rinehart's contributions were only revealed as part of an unrelated legal case (Secombe (2018)).

d. Dinan and Miller (2007).

e. Bruckner (2017).

## 5 Proposals for reform

Australia's democracy is robust and good policymaking often prevails, but policy making is sometimes vulnerable to capture by special interest groups.

Access matters, and it is sometimes 'for sale'. Political parties are highly reliant on a small number of donors for their funding. State-level data suggests many large donors get access to senior ministers. And groups seeking influence can explicitly buy access through fundraising events or by hiring well-connected former politicians or staffers (or engaging lobbying firms that do).

And while undue influence never comes with a 'smoking gun', this report documents numerous examples where influence campaigns – some combination of donations, lobbying and advertising – have resulted in policy decisions that benefit a narrow set of interests, often at the expense of consumers, taxpayers and future citizens. While it may not be frequent, just 'sometimes' is not good enough.

Special interests are less constrained than they might be. Contributions to political parties are often not disclosed at all, or long after the event. Most lobbyists are unregistered, and their activities are undisclosed and covered by regulations that are weak and seldom enforced. People move between government jobs and special interests with few controls that are also poorly enforced. Special interests can influence public debate by buying advertising, using their membership to campaign, or using third parties without disclosing their involvement.

Reducing the capacity of special interests to control policy is important. But policy design matters: there is a risk of undesirable consequences if reforms shift the distribution of political power and entrench the influence of insiders.

The changes we propose focus on transparency, accountability and boosting alternative voices in policy debates. They will not fix every problem. But properly implemented they are 'low regret' and very likely to help drive improvements in culture and decision making.

### 5.1 Improve transparency in policy making

Growing public cynicism about special-interest influence is partly born of secrecy. When people can't see what's going on they assume those with the most money or the best contacts are getting a 'special deal' from policy makers. This cynicism may be justified: what we *can* see suggests that well-resourced and well-connected interest groups get more access and decisions often go their way.

We recommend three key reforms to improve transparency: improving the 'visibility' of political donations; publishing ministerial diaries; and creating a more meaningful register of lobbyists. These reforms would substantially reduce the secrecy around money and access.

The OECD argues "a sound framework for transparency in lobbying is crucial to safeguard the integrity of the public decision-making process".<sup>223</sup> Greater public scrutiny might encourage policy makers to seek out alternative voices or sources of funds. Or better scrutiny may simply reassure the public that decision makers are getting on with their jobs and consulting broadly on policy.

These recommendations will not create much additional administrative burden, since most of them work with systems already in place. Nor do our proposals unduly impinge on privacy – outside of security matters, it is difficult to think of instances where an official meeting between a third-party and a politician should not be on the public record. Our

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223. OECD (2013).

proposal would make more donors visible, but only those who give substantial sums well beyond the means of average Australians.

Transparency isn't a silver bullet but it can play an important role in reducing the sway of special interests (Box 12).

### 5.1.1 Publish ministerial diaries

Access and influence are inextricably linked, so it's important the Australian public can see who meets with senior policy makers. Ministerial offices at state and federal levels should publish details of all official meetings, including meetings held in the office, those held offsite, scheduled phone calls, and events where a minister attends in an official capacity.<sup>224</sup> 'Official meetings' should include those at which a minister was present as well as those held with ministerial advisers only. Records of meetings should identify those present and key issues discussed.

To be useful, ministerial diaries must be published in a timely manner and an accessible form. For example, all meetings for one month could be published by the end of the following month, as already happens in Queensland. The publication should be searchable and exportable, to enable scrutiny.

Published diaries would enable journalists and others to see who ministers are meeting – and, perhaps even more importantly, who they're not meeting. When a ban on greyhound racing was announced in NSW, senior ministers met with the racing industry but not animal rights groups or supporters before deciding to overturn the ban (Appendix A). The NSW Planning Minister has been criticised for meeting frequently with property developers but not residents.<sup>225</sup> And

224. Queensland, NSW and the ACT already publish ministerial diaries, but could improve the content and accessibility of this information as per our recommendations in this section.

225. Jewell (2017).

### Box 12: Transparency isn't a silver bullet but it helps

Whether transparency alone can improve policy making and reduce corruption is unclear.<sup>a</sup> Evidence from the US suggests campaign finance reforms don't change the rate of public corruption cases,<sup>b</sup> but they do correlate with increased redistributive spending,<sup>c</sup> which suggests they may weaken the influence of the well-off.

Journalists, political candidates and interest groups draw heavily on lobbying disclosures in the US.<sup>d</sup> One review of lobbying regulation concluded that public disclosure of lobbying activity seems to encourage restraint and professionalism in dealings between lobbyists and politicians.<sup>e</sup> Lobbyists and legislators both agree that transparency can help alleviate actual or perceived problems of inappropriate influence peddling.<sup>f</sup>

There is much debate about whether increased transparency strengthens trust in government.<sup>g</sup> Whether transparency builds trust depends partly on what it reveals. But in the longer-term it provides an important signal to governments about what the public wants and expects of them.

Transparency is not enough on its own – strong voices are still needed to call-out problems, and voters still need to hold elected officials to account. But transparency gives them better information to do so.

*Notes: (a) Evaluation is difficult because it is virtually impossible to isolate the effect of specific reforms (C. S. Thomas (1998)); (b) Cordis and Milyo (2013); (c) Flavin (2015); (d) C. S. Thomas (1998); (e) C. S. Thomas (ibid.); (f) OECD (2013); (g) Some argue it creates a culture of openness that strengthens trust, while others argue it creates uncertainty and confusion among voters (see Grimmelikhuisen et al. (2013)).*

the Queensland Government faced pressure in the 2017 state election campaign when it was revealed the Premier had held many meetings with Adani and its lobbyists but not with environment groups or others concerned about the mine.<sup>226</sup> This type of public scrutiny creates pressure for decision makers to think more actively about who they consult.

Some may try to avoid disclosure by shifting meetings to those not covered by reporting requirements (backbenchers or party officials for example) or attempting to influence more informally. But these avenues are less likely to be influential. Reporting cannot be perfectly comprehensive without becoming excessively burdensome, so we recommend focusing disclosure requirements on the most senior policy makers – ministers and their advisers. There seems to be little downside – the NSW and Queensland governments have done this with no evident problems.

Federal ministers and assistant ministers already sign up to a code of conduct which requires that they “ensure that their conduct, representations and decisions as ministers . . . are open to public scrutiny and explanation”.<sup>227</sup> Publishing ministerial diaries would help to keep this promise.

### 5.1.2 Link the lobbyists register to orange passes

The Australian Government Lobbyists Register is ineffective in its current form. Its definition of ‘lobbyist’ is too narrow, there is little incentive to comply, and it relies on politicians to police it (Chapter 2). The register should instead be linked to the sponsored security passes that give holders unescorted access to Parliament House.

Linking the register of lobbyists to sponsored (‘orange’) passes would broaden the definition of lobbyist without making it unmanageable.

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226. Long (2017a); West (2017b); and Ludlow (2017).

227. Australian Government (2018b).

Orange passes are granted to people who require ‘significant and regular business access’ to politicians, which includes the most active commercial and in-house lobbyists. Lobbyists who do not have orange passes would not be required to register.

Former MP Jacqui Lambie (who proposed this policy in 2017) called these passes “the backstage tickets of the lobbying class”.<sup>228</sup> Taking their privileged access away would make lobbyists’ jobs harder, so lobbyists would have an incentive to comply with the code of conduct.<sup>229</sup>

The burden to register as a lobbyist should be negligible. Orange pass-holders would simply need to declare who they are lobbying for and the portfolio areas they are lobbying in, as part of the existing application process.

Some people who hold orange passes may not consider themselves lobbyists – for example, academics or other experts that politicians might regularly consult. But these people are key influencers nonetheless. There should be no opprobrium for being listed as a pass-holder, and the restrictions that would be extended to apply to them under the code of conduct – such as not engaging in corrupt or misleading behaviour – would not unduly constrain their activities.

This new definition would not capture lobbying outside of Parliament House. Nor would it capture those groups or individuals who lobby only occasionally. But anyone who meets with ministers would be identified in published ministerial diaries (Section 5.1.1), wherever they might meet and whether or not they hold an orange pass.

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228. Lambie (2017a); and Lambie (2017b).

229. An orange pass allows unescorted passage through the private areas of Parliament House. Without a pass, lobbyists can still meet with parliamentarians but need to be escorted to each meeting and then back to the public areas. This makes meetings more cumbersome and takes away the ‘chance encounters’ in common areas such as coffee shops in the private section of Parliament House.

The Department of Parliamentary Services, which manages access to Parliament House, has previously refused to publish a list of names or organisations that hold these passes on security grounds.<sup>230</sup> But these security risks are manageable: the UK, US and New Zealand, for instance, already publish lists of pass-holders.<sup>231</sup>

### 5.1.3 Improve the visibility of political donations

The federal disclosure regime for political donations leaves the public in the dark about a sizeable share of party funding (Chapter 3). But some simple changes would make large donations much more visible.

To prevent ‘donations splitting’, donations from the same donor to the same party, over say \$100,<sup>232</sup> should be aggregated and disclosed by the party once the combined total exceeds the disclosure threshold.

The disclosure threshold should be lowered. At \$13,800 the current figure is well above the amount that an ordinary Australian voter could afford to contribute to support a political cause. The high threshold also means that income from fundraising events is often not disclosed. Associated entities that are known to run these events declare remarkably little about the sources of their funding (Appendix B).

A more reasonable threshold would be \$5,000.<sup>233</sup> Donations below this level are unlikely to lead to influence. And such a threshold would

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230. In a Senate Estimates hearing, the President of the Senate said “if we start releasing names of everyone who has a pass to Parliament House, apart from the obvious ones, being senators and members, they are prone then to have their pass stolen or prone to be followed” (DPS (2017)).

231. Summers (2018).

232. It would be burdensome to include very small donations (such as the purchase of raffle tickets) in aggregation requirements.

233. Thresholds for disclosure of donations vary widely between countries, for example political parties disclose donations over about AU\$200-300 in Canada and the US, and over \$1,500 in New Zealand, meanwhile the threshold in the UK is closer to Australia’s (Filer et al. (2016)).

still protect the privacy of small donors and minimise the red tape associated with handling smaller donations.<sup>234</sup> For bigger donations, the public’s right to know about political funding should trump privacy considerations.

Private funding above the threshold should also be itemised into meaningful categories. Income from fundraising events should be categorised separately from ‘other receipts’. Loans should also be separated from ‘other receipts’, and the terms and conditions of the loan should be reported. And public funding should also be declared in its own category, rather than being mixed into the ‘other receipts’ bucket.

Party funding disclosures should be available much sooner. NSW recently legislated for reportable donations to be made public within 21 days during an election, and every six months otherwise. Queensland now requires disclosures in ‘real time’. It beggars belief that donations could not be disclosed in a similarly timely manner at the federal level.

On their own, however, stricter disclosure measures will not automatically translate into improved transparency. To be useful, the information must be readily accessible. There are thousands of lines of data in the AEC disclosures, and the information is hard to sort and categorise.<sup>235</sup> To address this, the AEC should release summary documents at the end of a disclosure period, as occurs in some states and overseas.<sup>236</sup> The online portal for lodging disclosures should validate donor names, to discourage abbreviations and spelling mistakes in the data.<sup>237</sup> Donor organisations should be required to

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234. The same threshold would apply to associated entity disclosures. It should apply to donations, event attendance fees and membership fees, to ensure the income of different associated entities is treated equally (Appendix B).

235. B. Edwards (2017).

236. The Electoral Commission (UK) (2018).

237. The online disclosure software used in Queensland and South Australia has systems in place to achieve this.

provide their ABN or ACN. The AEC should also be responsible for tidying up the disclosures before they are released, so that journalists and the public can more readily use the data.

## 5.2 Strengthen accountability of policy makers

Parliamentarians, and especially ministers, lead policy making and “occupy positions of great responsibility and public trust”.<sup>238</sup> The public is clearly concerned about the standard of ethical conduct of politicians, even if corrupt conduct is rare (Chapter 1).<sup>239</sup> Ultimately, politicians are accountable to their electorates, but this is a blunt mechanism for deterring unethical or grey conduct.<sup>240</sup>

### 5.2.1 Set clear standards to avoid conflicts of interest

Ministers are subject to a code of conduct known as the Statement of Ministerial Standards. The Standards specify rules on contact with lobbyists, restrict the acceptance of gifts<sup>241</sup> and outside employment,<sup>242</sup> and declare, among other things, that ministers must act in the public interest: *When taking decisions in or in connection with their official capacity, ministers must do so in terms of advancing the public interest – that is, based on their best judgment of what will advance the common good of the people of Australia.*<sup>243</sup>

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238. Australian Government (2018b).

239. See also Coghill et al. (2008a).

240. Ibid.

241. Ministers must declare and surrender gifts over \$300 in value from private sources (excluding hospitality) or purchase the gift themselves (Australian Government (2018c)) and they are not allowed to accept sponsored overseas travel, unless approved by the Prime Minister (Ministerial and Parliamentary Services (2017)).

242. Consulting, advising and day-to-day management of a business are not allowed, but ministers can continue to hold shares and receive royalties (see Australian Government (2018b), clauses 2.19 and 2.20).

243. Ibid.

While these standards have the right intentions, they are not independently administered, and are only enforced at the discretion of the Prime Minister.<sup>244</sup>

And unlike ministers, federal MPs outside the ministry do not have to commit to *any* code of conduct. They can accept gifts and engage in outside employment, so long as they declare them.<sup>245</sup> This falls short of the standards set for many state parliamentarians, all federal ministerial staff<sup>246</sup> and federal public servants.<sup>247</sup>

Sponsored travel, sizeable gifts<sup>248</sup> and other income<sup>249</sup> may, or may appear to, influence decision-making in current or future roles (Section 2.4). For example, Senator Sam Dastyari did not breach any rules or code when he asked an education company with links to the Chinese Government and a major property developer to pay bills for him.<sup>250</sup> Yet the outrage that followed shows the rules fall well short of public expectations.<sup>251</sup>

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244. Ministers must resign if they are convicted of a criminal offence or if the Prime Minister finds that they have breached the standards in a substantive and material way (Australian Government (ibid.) clauses 7.1 and 7.2, and Ng (2016)).

245. Parliamentarians are expected to register potential conflicts of interest, including gifts, sponsored travel, and other sources of income (Registrar of Members' Interests (2018) and Senate Standing Committee of Senators' Interests (2018)).

246. Special Minister Of State (2018).

247. The APS Code of Conduct restricts acceptance of gifts and allows outside employment only where it does not conflict with official duties: Australian Public Service Commission (2017).

248. Gifts under \$300 may be an appropriate exception to allow presentation and receipt of gifts as a gesture of “good manners, goodwill and the respect for other countries’ customs” (see Department of Finance 2017).

249. Personal farms and family businesses may be an appropriate exception if they were established before the politician entered parliament and do not conflict with official duties.

250. Hunter (2016).

251. In resigning from the Labor frontbench, Dastyari said his action was “within the rules but it was wrong” (Patel (2016)).



Ethical behaviour can never be fully defined by rules, but clear standards around conflicts of interest are needed for all parliamentarians.<sup>252</sup> A broad code of conduct for parliamentarians would help to set a standard for the public, media and parliament itself to hold elected officials to.<sup>253</sup>

### 5.2.2 Codes of conduct should be independently administered

All codes of conduct for ministers, lobbyists and ministerial staff – as well as any new code that might be developed for parliamentarians – should be independently administered. Arms-length administration of the rules is necessary to build public confidence that codes of conduct are respected and adhered to.

An independent body should have an educative role, to help parliamentarians, ministerial staff and lobbyists understand their responsibilities and disclosure obligations.<sup>254</sup> It should have the authority to investigate potential non-compliance, and the power to make findings and refer breaches when they occur. A separate ethics adviser should be appointed, to enable current and former parliamentarians to seek advice when they're in doubt.

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252. There have been several proposals for a code of conduct for parliamentarians, most recently rejected by the Senate Code of Conduct Inquiry (2012) on the grounds that regulation should be developed to address specific concerns rather than the more general aspiration of improving public confidence. The Inquiry found no evidence that codes contribute to improving public confidence (Senate Committee (2012)).

253. An example of such a code is the Queensland Parliament's Code of Ethical Standards, which is built on fundamental principles of: integrity of the Parliament; primacy of the public interest; independence of members; appropriate use of information; respect for people; and appropriate use of entitlements (Legislative Assembly Of Queensland (2018)).

254. It could even play a broader role in professional development, see Coghill et al. (2008a) and Coghill et al. (2008b).

In NSW, the Electoral Commission is the independent regulator of lobbyists, and can prosecute people for failing to register as a lobbyist and for breaching the revolving-door ban.<sup>255</sup> NSW has a separate Parliamentary Ethics Adviser. In Queensland, the Integrity Commissioner administers the lobbying and parliamentary codes of conduct and has an advisory function only (*i.e.* does not investigate breaches).

No such body exists at the federal level. The new Independent Parliamentary Expenses Authority could be extended to take on administration of the codes of conduct.<sup>256</sup>

For lobbyists, the sanction for non-compliance should be loss of privileged access to Parliament House via the orange passes (Section 5.1.2) and/or a fine.<sup>257</sup> This would provide a much stronger incentive for lobbyists to register and comply with the code of conduct. It would also create an incentive for former ministers to comply with the revolving-door ban.

For current MPs, breaches of the Ministerial Standards or any new code for parliamentarians should be first dealt with by parliament. Ideally parliament would refer all complaints for independent investigation and agree an appropriate sanction when an independent review determines a breach has occurred.<sup>258</sup> This works well in some houses of parliaments in Commonwealth countries where there is a strong culture of ethical conduct.<sup>259</sup> Serious breaches that are not dealt

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255. The maximum penalties are \$22,000 for individual lobbyists who lobby while unregistered, or for former ministers who lobby during the 18-month 'cooling-off period' (*Lobbying of Government Officials Act 2011* (NSW, section 18.1)).

256. Brown et al. (2018) propose an Independent Parliamentary Standards Authority as an extension of the IPEA.

257. Fines could be issued as infringement notices.

258. Commonwealth Parliamentary Association (2016). A code of conduct established by a resolution of the House could specify that all complaints be referred for independent investigation.

259. Coghill (2018).

with by parliament could be referred to the Commonwealth Director of Public Prosecutions for possible prosecution, or to a new investigative body for further investigation (Section 5.2.3). Penalties could be at levels that apply to contempt of parliament.<sup>260</sup>

### 5.2.3 Establish a federal integrity or anti-corruption body

An independent commission responsible for investigating potential misconduct by politicians, their advisers and other public officials would fill the gap in federal agencies' powers and capabilities to investigate conflicts of interest and corruption.

All states have dedicated integrity and/or anti-corruption agencies, but no equivalent agency exists at the Commonwealth level. It would be naïve to assume that corruption at the federal level is less prevalent or serious than at state level.<sup>261</sup>

A recent review of Australia's integrity system, led by Griffith University, proposed several options to address gaps in the integrity framework ranging from less to more comprehensive.<sup>262</sup> Transparency International Australia has advocated for the more comprehensive approach to anti-corruption reform.<sup>263</sup>

A federal parliamentary integrity or anti-corruption commission has strong public support<sup>264</sup> and could help to build public confidence by

demonstrating that the federal government is serious about managing conflicts of interest and identifying corruption risks.<sup>265</sup>

The commission would:

1. Take tips and information from the general public and public officials (including whistle-blowers) on alleged corruption or serious misconduct;
2. Investigate potential misconduct and corruption risks; and
3. Make findings of fact in relation to misconduct and refer any corrupt activity to the Commonwealth Director of Public Prosecutions.

Opponents argue such a body could be a risk to separation of powers (an executive agency playing a semi-judicial role) and that public hearings can unfairly ruin reputations.<sup>266</sup> Assessing the optimal design of a federal integrity or anti-corruption body is beyond the scope of this report. But it would be valuable if the federal government established an independent review panel to consider issues and recommend an appropriate model. The result may be an entirely new body, or an extension of powers for an existing body.<sup>267</sup>

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260. The punishments for contempt, which either house may apply, are set by the 1987 Act as fines of \$5,000 for individuals and \$25,000 for corporations, and up to six months imprisonment for individuals (Parliament of Australia (2018)).

261. Canberra Times (2018).

262. Brown et al. (2018).

263. Lillywhite (2018).

264. 67 per cent support the establishment of such a body, even when told existing bodies may adequately fulfil the role. The support is even higher among those who have worked in federal government. People do not necessarily believe corruption is rampant, but value staying ahead of the game (Transparency International Australia (2018)).

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265. Easton (2018b).

266. Merritt (2018).

267. For example, the Australian Commission for Law Enforcement Integrity has an Integrity Commissioner, but is currently limited to investigations in the law enforcement arena. The Commonwealth Ombudsman already has investigative powers, but investigates complaints made against government departments and agencies rather than the conduct of parliamentarians. The Public Service Commissioner monitors compliance with the APS Values and Code of Conduct, but again its jurisdiction does not cover parliamentarians. See Appleby (2014) and Brown et al. (2018).

### 5.3 Level the playing field

Money and resources can be powerful tools of influence in policy debates. The flip side is that diffuse and poorly resourced groups such as consumers and young people can struggle to be heard. Good policy depends on the best ideas prevailing, not simply the loudest voices.

We suggest two changes to reduce the influence of money on politics and to promote broader participation in the public debate: a cap on political advertising expenditure during election campaigns, and changes to policy processes to boost countervailing voices.

We considered two other reforms: caps on private donations, and full public funding of election campaigns. We *don't* recommend these. Both have significant drawbacks, as discussed in Box 13. And their objectives can largely be met with fewer restrictions by a cap on political advertising expenditure.

#### 5.3.1 Cap political advertising expenditure

Political advertising expenditure during election campaigns should be capped. A cap would:

- reduce the imbalance between groups with different means to broadcast political views; and
- limit the reliance of major political parties on individual donors.

The idea would be to limit political-party and third-party advertising during election campaigns, but not restrict political expression through other channels, or at other times.<sup>268</sup> NSW, South Australia and the ACT

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268. The cap would apply to all paid-for electoral advertisements, including TV, radio, newspaper, internet, social media advertising, bulk text messages and robocalls, for which authorisation is already required under the *Electoral Act 1918* (Cth) and the *Broadcasting Services Act 1992* (Cth). It would not apply to employees or volunteers.

already have caps on political expenditure during election campaigns, as does Tasmania's Legislative Council. Most OECD countries have spending limits on political parties and/or candidates.<sup>269</sup> And political TV advertisements are banned in the UK.<sup>270</sup>

Advertising accounts for most campaign spending by the major parties in Australia<sup>271</sup> and is easier to identify and regulate than other political expenditure.<sup>272</sup> The argument against a cap is that it would restrict the capacity of political parties and interest groups to communicate with the public.<sup>273</sup> But there is no reason to assume that the current level of political advertising is the right one. Current spending is not based on the amount required to communicate policy detail as much as the perceived imperative to outspend one's opponent.<sup>274</sup>

The 'arms race' between parties results in growing amounts being spent on political ads that are thin on factual content,<sup>275</sup> are often negative (*i.e.* attack opponents),<sup>276</sup> and are sometimes misleading.<sup>277</sup>

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269. OECD (2016).

270. *Communications Act 2003* (UK). Parties are given airtime via party political broadcasts instead (UK Advertising Standards Authority (2014)).

271. S. Young (2002). Print and broadcast advertising also represents most of the political expenditure by third parties – 65 per cent on average and as much as 90 per cent in some years (Grattan analysis of third-party political expenditure 2006-07 to 2016-17, AEC (2018d)).

272. Focusing only on political advertising spend makes both compliance and monitoring easier and helps to avoid unintended consequences seen elsewhere (*e.g.* Sheila McKechnie Foundation (2018)).

273. Joint Standing Committee On Electoral Matters (2011).

274. After the point that the parties have successfully communicated their policies to the electorate, party expenditure in an election is a classic prisoner's dilemma: political parties would collectively be better off if they limited further campaign expenditure, but each has an incentive to try and outspend the other – leaving the parties (and the polity) worse off.

275. Reece (2016); and S. Young (2002).

276. Miskin and Grant (2004).

277. The prohibitions on false and misleading content in advertising set out in the *Competition and Consumer Act 2010* do not apply to political advertising.

It is not obvious that Kevin O'Lemon<sup>278</sup> or Mediscare added much to Australian democracy.<sup>279</sup> A limit on paid advertising may encourage the major parties to use communication channels that are more conducive to deeper discussion and the interrogation of ideas, such as political debates and interviews.

A cap on advertising expenditure would help reduce political parties' reliance on major donors.<sup>280</sup> If parties were obliged to spend less, each donor would become individually less important (because they could be replaced by other donors). And if parties had less incentive to sell access to donors, senior parliamentarians would have more time to do their job instead of chasing dollars.

Given that other groups, such as unions and industry peak bodies, may campaign on political issues, their political advertising expenditure would also need to be capped. A higher cap should apply for political parties – the primary players in an election – than for third parties.<sup>281</sup> Entities owned by a political party should fall under the party's cap.<sup>282</sup>

Expenditure caps would reduce the 'spending gulf' between the major incumbent parties and new and smaller parties, as well as

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Concerns about misleading content in political party advertising have led to several calls for reform (K. Burgess (2017) and Gartrell (2016)).

278. Loughnane (2011).

279. Waller (2016).

280. OECD (2016).

281. At the 2015 NSW state election, expenditure of the major parties was capped at \$9.3 million (if they contested all 93 seats) and expenditure of third parties was capped at \$1.05 million (NSW Electoral Commission (2017c)). NSW recently legislated to reduce its cap on third parties to \$500,000. Third parties should not be able to overwhelm public debate or "relegate the primary players in an election campaign – political parties and candidates seeking to win seats and possibly form government – to second-tier status in terms of the volume and reach of campaigning" (AEC (2011a, pp. 6–7)).

282. There is also a case for other groups (including unions) to come under the relevant party's cap if they engage in a coordinated campaign with a political party (Tham (rec. 41 2012)).

between well and poorly resourced third parties. There will always be substantial differences in the resources and capacity of political parties and interest groups to advertise their message, but a cap set at a reasonable level would place a ceiling on the imbalance.

Some design issues would need to be addressed: establishing the time period that a cap is in effect before an election,<sup>283</sup> rules to prevent parties circumventing the limits<sup>284</sup> (including the party in government boosting taxpayer-funded advertisements), and determining appropriate penalties.<sup>285</sup>

The right cap depends on how much advertising reach money can buy<sup>286</sup> – it should be high enough to enable third parties to communicate with voters on policy issues, but not so high as to enable them to drown out all other voices, including political parties.

For example, a cap on political advertising expenditure of around \$5 million per annum for political parties,<sup>287</sup> and around \$1 million a

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283. For example, the cap could apply on a monthly pro-rata basis for the period beginning one year before the latest possible date for a half-Senate election and ending on the actual election date. If the federal election is called early then the cap may apply only for three months, whereas if the election is called on the last possible date, then the cap would apply for a full 12 months.

284. For example, third parties should not be able to pool funds for a single advertising campaign, because this would encourage proliferation of third parties to get around the cap. But third parties should still be able to run separate advertising campaigns on similar issues. Expenditure caps do not appear to have substantially increased the number of third-party campaigners operating in elections in NSW. There were 43 registered third-party campaigners when NSW first implemented expenditure caps in the 2011 state election (EFANSW (2011)), and 52 in the following election in 2015 (EFANSW (2016)).

285. Schott et al. (2014), Twomey (2014) and Joint Standing Committee On Electoral Matters (2011) canvassed some of these issues.

286. Twomey (2015).

287. A cap of \$5 million represents about a fifth of the public funding for the major parties at the 2016 federal election and three-quarters of the public funding flowing to the Australian Greens. Estimates suggest the major parties each

year for third parties, would have significantly reduced advertising expenditure at the past four federal elections but would have affected only between five and eight interest groups (Figure 5.1).<sup>288</sup> \$1 million buys just under half the 2015 'Coal – it's an amazing thing' campaign,<sup>289</sup> and \$5 million is roughly what the major parties spent on broadcast advertising alone in the 2016 election campaign.<sup>290</sup>

Political parties should continue to declare their expenditure in full and third parties should disclose significant political advertising expenditure – say, above \$100,000 – year-round, even though the cap would only apply in the lead-up to an election.<sup>291</sup> Current disclosure requirements are more burdensome than what is proposed, but offer little value because enforcement is limited.<sup>292</sup>

spent about \$5 million on TV, press and radio advertising in the 2016 election campaign; this does not include internet and social media advertising, Blumer (2016). NSW currently has a cap of \$11.4 million on political parties that contest all 93 seats and \$500,000 for third parties. But the NSW cap is broader than we propose, because it applies to almost all electoral expenditure (e.g. including employee costs) (*Electoral Funding Act 2018* (NSW)).

288. Eight groups would have been affected at the 2016 election: the Australian Education Union, the Australian Council of Trade Unions, the Minerals Council of Australia, the Business Council of Australia, the Australian Nursing Federation, *GetUp!*, Universities Australia, and the Australian Automobile Association (AEC (2018d)).

289. Long (2017b).

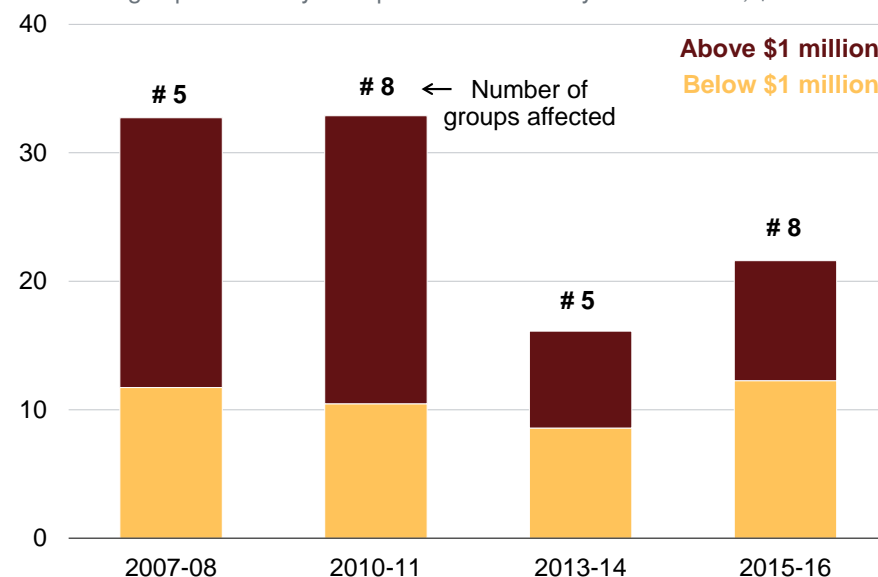
290. Blumer and Conifer (2016).

291. Year-round disclosure would enable the level of caps to be reviewed over time to ensure they are not unduly restrictive.

292. Currently third parties are expected to disclose all political expenditure over \$13,800, but substantial advertising campaigns have gone undisclosed (e.g. The Property Council of Australia's campaign to preserve negative gearing and capital gains tax discounts) because of a lack of awareness and enforcement. The current definition of 'political expenditure' also leaves room for interpretation and has the potential to capture a large number of small organisations.

**Figure 5.1: A \$1 million cap would not affect many groups but would still significantly reduce advertising expenditure**

Advertising expenditure by third parties in election years 2007-16, \$ millions



Notes: 'Advertising expenditure' refers to all publication and broadcast advertising which is required by law to be authorised. The groups affected in one or more election years are: the Alliance of Australian Retailers, the Association of Mining and Exploration Companies, the Australian Automobile Association, the ACTU, the Australian Education Union, the Australian Nursing Federation, the Business Council of Australia, the Focus on Australia Foundation, Forward Brisbane Leadership, *GetUp!*, Imperial Tobacco Australia, the Minerals Council of Australia, the National Business Action Fund, and Universities Australia.

Source: Grattan analysis of political expenditure returns, 2007-08 to 2015-16, AEC (2018d).

### Box 13: Why not a donations cap or full public funding?

We do not recommend a cap on private donations, or full public funding of election campaigns (effectively, a donations cap of zero), for these reasons:

First, full public funding is probably unconstitutional. While it might reduce potential for corruption, it would significantly burden the implied freedom of political communication (Box 4).<sup>a</sup> A cap on donations is less extreme than no private donations at all. Victoria and NSW both cap donations (currently at \$4,000 and \$6,300 respectively),<sup>b</sup> and while the NSW cap has survived constitutional challenge,<sup>c</sup> these restrictions have further drawbacks.

Restricting donations creates significant barriers to entry for new parties and could limit the ability of small parties to challenge incumbents.<sup>d</sup> Public funding levels depend on the number of votes received, so new parties are particularly reliant on private donations to get going.

Low donations caps can erode incentives for politicians to engage with members and supporters, which could weaken links between parties and their members that can themselves be a check on special interest influence.<sup>e</sup>

Donations caps would also impose a regulatory burden on donors. Donors would need to keep track of their payments to political parties, know whether they are a donation or receipt, and be aware of when they have reached the cap. In contrast, an expenditure cap puts the regulatory burden on the parties. Recent challenges associated with regulating foreign donors show how restricting the supply of donations can easily result in unintended consequences (Box 6).<sup>f</sup>

Finally, donations caps may favour some political parties over others. Caps on private donations but not on the affiliation fees paid by some unions to the ALP would advantage Labor over other parties (Appendix B).<sup>g</sup> But if affiliation fees were included, this would disadvantage the ALP.

If the intention is to reduce the influence of major donors, then a cap on political advertising expenditure would have this effect, while avoiding or reducing many of the problems listed above.

*Notes: (a) It is not clear that banning small or moderate donations would improve representative democracy or prevent corruption or undue influence (Schott et al. (2014, p. 3)). (b) Electoral Act 2002 (Vic) and Electoral Funding Act 2018 (NSW). (c) McCloy v New South Wales. (d) Schott et al. (Ibid.). (e) Gauja (2014) and Rauch (2016). (f) Twomey (2018). (g) This is why the Coalition opposed Labor's donations reforms in Victoria (Willingham (2018)).*



### 5.3.2 Boost countervailing voices

The other way to get more open policy debate is to boost the voices of under-represented groups. This is not always easy. Often groups are poorly represented because they are poorly resourced and organised. Yet citizen engagement is a core responsibility of politicians and public servants.<sup>293</sup>

One way to get better, more inclusive policy debates is to embrace policy review processes that actively seek out a range of voices. There are a range of institutions and processes that already facilitate this. Governments should use them actively, and continue to make sure they have sufficient resources:

- The Productivity Commission inquiry process is a best-practice example of broad consultation. It requests input from groups on all sides of a debate, publishes their submissions, holds public hearings to test the views of interested parties, publishes a draft that includes recommendations, and then holds another round of consultation on the draft. The government is required to table the Commission's findings and respond to recommendations within 25 sitting days.<sup>294</sup>
- The Senate and House committee hearing processes, while not as exhaustive, also draw out views from a range of parties and put them on the public record. Legislative committee hearings offer a timely opportunity to consult on and evaluate bills already under consideration by the parliament.
- The Office of Best Practice Regulation within the Department of Prime Minister and Cabinet encourages the public service to consult broadly when preparing Regulation Impact Statements,<sup>295</sup>

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293. Holmes (2011); and Information And Privacy Commission NSW (2018).

294. PC (2014).

295. PM&C (2016).

which are required for every policy proposal designed to introduce or abolish regulation.<sup>296</sup>

Some of our other recommendations – particularly publishing ministerial diaries – will also create an incentive for greater input from under-represented groups in the policy development process. Ministers and their advisers are more likely to seek out other voices if they know that their consultation processes are on the public record.

But even with good policy and review processes – and the best intentions of decision-makers – a view can't be heard if there is no one to express it. This is a significant problem for diffuse groups, such as consumers and young people.

In some cases, government agencies can provide countervailing voices. The competition and consumer regulator, the ACCC, sometimes takes up the cause for consumers beyond its immediate charter of enforcing the Competition and Consumer Act. For example, ACCC Chair Rod Sims has very publicly berated state governments for structuring sales of public assets to maximise proceeds at the expense of competition and long-term consumer welfare.<sup>297</sup> Similarly, the Essential Services Commission of Victoria, also a regulator, issued one of the earliest warnings that retail electricity competition wasn't working so well.<sup>298</sup>

The Harper Review of Competition Policy recognised a need for more consumer advocacy of this type. However, it concluded that the role of consumer advocate was an uneasy one for a regulator tasked with enforcing the law.<sup>299</sup> The Harper Review called for a new

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296. PM&C (2014).

297. Potter (2016); and Sims (2016).

298. Essential Services Commission (2013).

299. Numerous submissions to the Harper Review argued that effective regulation requires separation of policy design and implementation (Harper et al. (2015, pp. 447–449)).

government agency, the Australian Council for Competition Policy, whose responsibilities would include consumer advocacy.<sup>300</sup> In the absence of such an agency, the ACCC and other regulators should more systematically advocate for consumer interests.

There is also a clear role for the ACCC in identifying policy changes that could make markets work better for consumers. Parliament should give the ACCC formal powers to initiate reviews into markets that are not delivering for consumers, and to make recommendations to relevant governments on changes to regulation. In most comparable economies the regulator has these powers.<sup>301</sup> From time to time the ACCC does undertake what it calls 'market studies',<sup>302</sup> but without formal information-gathering powers, or any established process for the government to respond to proposed changes to regulation, these reviews are not as effective as they could be.

For other under-represented groups without an obvious publicly-funded advocate, government should continue to offer financial support – especially to not-for-profit organisations that represent diffuse interests such as young people, older Australians, and people with a disability.<sup>303</sup>

There are also more innovative ways to incorporate the views of ordinary Australians in policy making. Some state and local governments and other groups have used citizens juries,<sup>304</sup> people's

parliaments<sup>305</sup> and online consultation hubs<sup>306</sup> to seek views from the public.<sup>307</sup> A consideration of these approaches is beyond the scope of this report, but a recognition that broad consultation can boost public faith in decision-making processes<sup>308</sup> means these sorts of approaches are likely to become more common.

## 5.4 Conclusion

Australian political institutions are generally robust, but there is room for improvement. At times, special interests have used the tools at their disposal – donations, lobbying and public campaigns – to push policy towards their interests at the expense of the public interest. Our recommendations seek to reduce the risks of this type of 'policy capture' while still protecting the rights of individuals and groups to contribute to policy discussions.

Ultimately it remains up to politicians and public officials to assess and adjudicate the public interest. But better information can help them in making those assessments and will enable the public, media and parliament to hold them to account.

The solutions we propose aren't radical – they are in line with OECD recommended practice.<sup>309</sup> They could make a real difference to the quality of public policy and boost the public's confidence that the system is working for them.

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300. Ibid. (pp. 452–454).

301. Ibid. (p. 447).

302. This is a relatively new development. The ACCC has done only three of these studies to date: into the cattle and beef sector, communications, and new car retailing (ACCC (2018a)).

303. Commonwealth and state and territory governments currently give financial support to a range of advocacy groups that represent interests that would otherwise have even less voice, including the Foundation for Young Australians, the Council on the Ageing, and Disability Advocacy Network Australia.

304. For example, Melbourne City Council's People's Panel (Reece (2015b)).

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305. For example, in NSW the Daily Telegraph organised a people's parliament of ordinary citizens and experts to debate priorities and legislative changes for the NSW Government (Daily Telegraph (2011)).

306. For example, the South Australian Government's *YourSAY*.

307. Holmes (2011); Information And Privacy Commission NSW (2018); and Department of Industry (2017).

308. Information And Privacy Commission NSW (2018).

309. OECD (2013); and OECD (2016).

## Appendix A: Case studies of special interest influence

This appendix provides more details about the examples of special interest influence discussed in the report.

### A.1 'Special deals' for special interests

#### Sydney casino licence

In February 2012, James Packer proposed building a hotel-casino on the Sydney Harbour foreshore at Barangaroo. The NSW premier and opposition leader were quick to back the idea, saying it would bring jobs and tourists to Sydney.<sup>310</sup>

In August 2012, Packer personally pitched the project to Premier Barry O'Farrell. Just a week later, a requirement for independent evaluation of unsolicited proposals was removed.<sup>311</sup> The general change may have been unrelated but it was an unfortunate coincidence. Two weeks after that, Packer formally lodged his proposal. Packer hired former Labor Senator Mark Arbib and former ALP National Secretary Karl Bitar to help secure Labor's support.<sup>312</sup>

The unsolicited proposal won the backing of the NSW Cabinet in October 2012, survived a late counter-bid by Star Casino in 2013,<sup>313</sup> and won final approval from the NSW Government in 2016.<sup>314</sup> There was no competitive tender process.<sup>315</sup>

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310. Campion and A. Wood (2012).

311. Independent evaluation had previously been required before an unsolicited proposal could proceed without a tender process (Nicholls (2012)).

312. Patrick (2016); and Dowling (2013).

313. A steering committee chaired by David Murray was set up to compare the two proposals (NSW Government (2013) and Saulwick (2013)).

314. Raper and Glanville (2016).

315. Clennell and Lehmann (2013).

Other policy decisions specifically reduced the tax rate for the new casino,<sup>316</sup> exempted the development from smoke-free laws,<sup>317</sup> and carved the area out of the CBD 'lockout law' zone.<sup>318</sup>

#### Catholic schools funding

In March 2018, the Catholic schools lobby received a pledge from federal Labor that they would be \$250 million better off in the first two years of a Labor Government and billions of dollars better off over a decade. The pledge has been criticised because it appears to undermine the 'Gonski' ideal of a single, needs-based funding model for all schools.

Labor claims the pledge is part of its existing policy to increase funding for all schools.<sup>319</sup> Indeed, the initial \$250 million over two years seems to cover the funding gap between Labor's 2016 election commitment and the Coalition's 'Gonski 2.0' funding model. But the 2016 commitment was made under the old school funding model and Labor is yet to explain how it would change the current needs-based funding formula to allocate the billions promised. Eventually Labor will have to explain what parts of the formula are being changed to justify the extra dollars, and whether those changes are being consistently applied to independent and government schools.

Whether or not this is a 'special deal', the timing is questionable. One week before the March 2018 Batman by-election, Bill Shorten wrote to Melbourne Archbishop Denis Hart to offer an extra \$250 million for

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316. Saulwick (2013).

317. Patrick (2016).

318. Markham and M. Young (2015); and Bradley (2016).

319. Savage (2018).

Catholic schools in the first two years of a Labor Government.<sup>320</sup> In the following week, the Catholic schools lobby made 30,000 robocalls urging residents of Batman to vote for Labor.<sup>321</sup> And the head of Catholic Education Melbourne, Stephen Elder, wrote a letter to all Catholic school parents in Batman.<sup>322</sup> Shorten personally called Elder on the night of the by-election win to thank the sector for its support.<sup>323</sup>

The Australian Charities and Not-for-Profits Commission is now investigating Catholic Education Melbourne's political activities during the Batman by-election.<sup>324</sup>

### Transurban's unsolicited proposals

Toll road operator Transurban is building NorthConnex in NSW, the Logan Enhancement and Inner City Bypass upgrades in Brisbane, and the West Gate Tunnel and CityLink upgrades in Victoria.<sup>325</sup> All were unsolicited proposals to government. Unsolicited proposals may throw up new ideas, but they also exclude competition since governments generally negotiate with the project proponent exclusively.<sup>326</sup> These deals avoided normal tender processes.

Executives from Transurban met directly with both the NSW Premier and the Queensland Treasurer in 2017. The company is a client of a federal lobbying firm led by two former senior political advisers.<sup>327</sup>

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320. McGowan (2018).

321. Benson (2018).

322. Savage (2018).

323. Benson (2018).

324. Le Grand (2018).

325. Transurban already controls 15 of the 19 toll roads in Australia, and the ACCC has now raised concerns over its near monopoly on private highways in Australia (Schneiders and Millar (2016a), Ludlow (2018) and ACCC (2018b)).

326. Angus (2017).

327. Grattan analysis of NSW and Queensland ministerial diaries (Queensland Government (2018) and NSW Government (2018)) and the Australian Government Lobbyists Register (PM&C (2018a)).

Transurban is the only entity that has been granted a toll road concession in Australia on the basis of an unsolicited proposal to state government since 1987.<sup>328</sup>

The projects are worth billions to Transurban in increases or extensions of existing tolls and additional government funding. The West Gate Tunnel project, for example, is expected to receive \$2.6 billion in state government funding and a further \$4 billion in financing from Transurban.<sup>329</sup> As part of the deal, Transurban negotiated an extension on its CityLink tolling concession worth \$20-\$30 billion between 2035-2047.<sup>330</sup> These deals are lucrative for Transurban in the long term. They protect the budget balances of governments in the short-term, but they risk poorer outcomes for taxpayers and drivers compared to a competitive tender process.<sup>331</sup>

## A.2 Special interests with a 'seat at the table'

### Medicines Australia's involvement in pharmaceutical pricing

Consumers and taxpayers pay a lot more for medicines in Australia than in other countries.<sup>332</sup> These inflated costs can be traced, at least in part, to the influence of the pharmaceuticals industry over pricing arrangements agreed under the Pharmaceuticals Benefits Scheme (PBS).<sup>333</sup> There are big dollars at stake. The government spent \$12 billion subsidising pharmaceuticals in 2016-17, and costs have been growing at more than 10 per cent per year.<sup>334</sup> At least \$500

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328. ACCC (2018b).

329. J. Edwards (2017).

330. The extension applies for 10-12 years from 2035, when Transurban's current tolling concession expires (Schneiders and Millar (2016b)).

331. Ludlow and Wiggins (2018).

332. PC (2015); and Duckett et al. (2013).

333. Duckett et al. (2013); Duckett and Bredon (2015); Duckett and Banerjee (2017); and PC (2015).

334. PBS Information Management Section (2017).

million a year could be saved by benchmarking drug prices to those of comparable countries and having prices set by an independent authority.<sup>335</sup>

The industry is heavily involved in choosing the data and methods used to calculate price gaps on drugs (the gap between government subsidy and full price).<sup>336</sup> A joint working group of the Health Department and Medicines Australia – the peak body for the Australian pharmaceuticals industry – is described as ‘agreeing’ on and ‘determining’ how policy is designed and implemented.<sup>337</sup>

One of Medicines Australia’s main objectives is “building and maintaining relationships with government for fair reimbursement of medicines (through the PBS) to ensure the continuation of a viable medicines industry”.<sup>338</sup> Medicines Australia is active in lobbying. It has an in-house government relations team,<sup>339</sup> and is also a client of four different commercial lobbying firms, three of which employ former government representatives and advisers.<sup>340</sup> The pharmaceuticals industry has a substantial say in PBS policy. Other voices, particularly those representing consumers, have considerably less input.

### Union influence on Labor’s superannuation policy

The Australian Labor Party emerged out of the trade union movement and continues to have close ties to many unions. ALP-affiliated unions have substantial influence over party policy, accounting for half of delegates at state conferences that determine policy and at least a third of voting members at the party’s National Policy Forum.<sup>341</sup> Some

of this influence is out in the open – the union movement is part of the ALP’s DNA – but on some issues union influence is more opaque and perhaps less clearly aligned with the interests of its members.

Three separate independent inquiries have recommended more independent directors be appointed to the boards of superannuation funds.<sup>342</sup> Yet the ALP opposes this. Unions currently appoint about a third of all directors on industry fund boards,<sup>343</sup> so a requirement for more independent directors would reduce the power of unions to choose directors. It would also be a direct hit to union finances, because some directors’ fees are paid to the union that employs them,<sup>344</sup> and potentially an indirect hit to the ALP’s finances given unions are the party’s major donors.<sup>345</sup> Large industry super funds on average outperform for-profit funds, but this does not mean their governance cannot be improved.<sup>346</sup>

## A.3 Blocking reforms that have broad support

### Climate change policy

Australia’s response to climate change has been inconsistent and lacking in direction for at least three decades.<sup>347</sup> Opinion polls show

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335. Duckett and Banerjee (2017).

336. Duckett and Breadon (2015).

337. Department Of Health (2014).

338. Medicines Australia (2018a).

339. Medicines Australia (2018b).

340. PM&C (2018a).

341. ALP (2015).

342. The three major reviews span different governments: Cooper (2010), Murray (2014), and the PC (2018). See Minifie (2015).

343. AFR (2017).

344. Some commentators estimate that of the \$22 million in directors’ fees paid to industry super fund board directors in 2017 (APRA (2018)), up to \$5 million was paid directly to unions (Begg and Breheny (2017)) as compensation for the time that union officials spend representing unionised workers’ interests on super fund boards.

345. Unions contributed more than 40 per cent of all donations to the ALP in 2015-16 and 2016-17. AEC (2018a).

346. Minifie (2015).

347. Talberg et al. (2016).



support for action on climate change peaked in 2006, when 68 per cent of Australians backed action 'even if this involves significant costs'.<sup>348</sup>

In 2007, both major parties went to the federal election with plans to introduce an emissions trading scheme to combat climate change. But after the election, the policy consensus was quickly derailed – partly by political manoeuvring and partly by special interests.

*Small groups of carbon-intensive firms, who would inevitably suffer most under a sound, national-interest policy proposal, were able to lobby much more powerfully than large groups like taxpayers or consumers, and arguably changed the proposal into something which better protects their special interests.*<sup>349</sup>

Kevin Rudd's Carbon Pollution Reduction Scheme failed to gain political support and was replaced by Julia Gillard's Clean Energy Futures package, which included a carbon price. The package passed Parliament, but only with the inclusion of overly-generous subsidies for emissions-intensive gas and coal industries added in response to intense lobbying.<sup>350</sup>

The carbon price was repealed in 2014, to the delight of special interests.<sup>351</sup> Major lobby groups spent more than \$300 million on advocacy between 2010 and 2014,<sup>352</sup> including on an anti-carbon-tax advertising campaign (Chapter 4).<sup>353</sup> Companies in the energy and

mining sectors donated more than \$1 million to the Liberal Party in 2011-12 and 2012-13.<sup>354</sup>

Since then, the policy paralysis appears to have been the result of political and ideological divides rather than special-interest activism.<sup>355</sup> But the result is that in 2018 Australia still lacks a credible mechanism to achieve its Paris Agreement commitments.<sup>356</sup>

### A sugar tax

Australia's food and beverages industry has so far managed to keep proposals for a sugary drinks tax off the table, despite public health benefits and popular support.<sup>357</sup> The World Health Organisation supports taxing sugary drinks to help reduce consumption of sugar.<sup>358</sup> In 2016, Grattan Institute recommended introducing a tax on sugar-sweetened beverages to fund the additional health and welfare expenses sugary drinks create.<sup>359</sup> The Australian Medical Association also backs such a tax "as a matter of priority" and argues "progress should not be slowed by [the food industry's] unwillingness".<sup>360</sup>

In its 2016 annual report, the lobby group representing the non-alcoholic beverages industry stated that: *The Beverages Council devoted significant resources to keeping a tax off the policy table of either the Government or Opposition, through direct engagement with key politicians. Whilst the Greens have stated their support for a tax, which is very much a risk going forward, as an industry we should be very pleased with the outcomes to date in this space.*<sup>361</sup>

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348. Lowy Institute (2018).

349. Pezzey et al. (2010).

350. T. Wood and Edis (2011). APPEA's 2011-12 annual report identifies some concessions it achieved: "APPEA continues to work to ensure that... government climate change policy does not hinder the oil and gas sector's growth" (APPEA (2012)).

351. Pearson (2014); and Latimer (2014).

352. This is the total revenue of five minerals lobby groups: the Minerals Council of Australia, the Australian Coal Association (now part of the MCA), the NSW Minerals Council, the Queensland Resources Council, and the Australian Petroleum Production and Exploration Association (Aulby (2017b)).

353. Lane (2011).

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354. AEC (2013); and AEC (2012).

355. Butler (2017).

356. T. Wood (2017); and Griffiths (2017).

357. Essential (2018).

358. WHO (2015).

359. Duckett et al. (2016).

360. AMA (2018).

361. Australian Beverages Council (2016).



The food and beverages industry employs a range of lobbying strategies in Australia. It hires commercial lobbyists, donates to political parties, develops relationships with policy makers and funds research to influence debate on public health policies.<sup>362</sup> The major players – Coca-Cola, Nestle, McDonalds, Mars, Mondelez, and the Australian Food and Grocery Council – all have in-house and commercial lobbyists.<sup>363</sup> Research into the lobbying practices of some of these firms found that Coca-Cola and McDonalds target constituency building and being ‘part of the solution’, while Nestle and the Australian Food and Grocery Council focus on framing the public debate, shaping the evidence base, and building relationships with policy makers.<sup>364</sup>

Sugar producers have also been vocal in opposing a sugary drinks tax, and politicians have been unwilling to take them on.<sup>365</sup> The producers are a powerful group politically, because they are concentrated in marginal seats in North Queensland.<sup>366</sup>

### Pokies reforms

Australians lose more money on gambling than anyone else in the world:<sup>367</sup> the average Australian adult lost more than \$1,000 gambling in 2016<sup>368</sup> – 49 per cent higher than the next largest losers.<sup>369</sup> Most gambling losses are due to poker machines,<sup>370</sup> which are much more common in Australian pubs and clubs than in other countries.<sup>371</sup>

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362. Mialon et al. (2016).

363. PM&C (2018a).

364. Mialon et al. (2016).

365. Webster and Zonca (2016).

366. Brissenden (2018).

367. The Economist (2017).

368. The Economist (ibid.). See also QGSO (2017, p. 5).

369. Singaporeans. The Economist (2017).

370. About \$600 per person annually (The Economist (ibid.) and QGSO (2017, p. 5)).

371. Excluding the holiday spots of Macau and Monaco, Australia has more poker machines per person than any other country (one for every 114 people according to Morton (2018)).

The social costs loom large.<sup>372</sup> In 2010, the Productivity Commission found that features of poker machines, such as the ability to play alone, the fast pace, and the tendency for players to ‘zone-out’ while playing, increase the risk of gambling-related harm.<sup>373</sup> It recommended a national pre-commitment system to address these problems.<sup>374</sup> In response, Independent MP Andrew Wilkie struck a deal with Julia Gillard in 2010 to support her minority government in exchange for the roll-out of a mandatory pre-commitment scheme.<sup>375</sup>

The idea was popular with voters at the time,<sup>376</sup> but the policy soon became a thorn in the side of the Gillard government.<sup>377</sup> In 2011 and 2012, there was an organised effort to overturn the proposed reforms. Clubs, hotels and other businesses that financially benefit from pokies fought the reforms,<sup>378</sup> exaggerated the impacts, and ramped up their political donations over the period (Figure 3.8 in Chapter 3).<sup>379</sup> They also ran a very effective advertising campaign.<sup>380</sup>

Livingstone and Johnson (2018) say the industry’s strategic use of donations may have convinced Labor that “the [poker machine] reforms

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372. \$4.7 billion a year in 2010 (PC (2010, p. 48)). The net benefits of gambling (including tax revenue and consumer benefits) are positive, but the Productivity Commission found they could be much higher with more effective harm minimisation policies (PC (ibid., p. 6.1)).

373. Ibid. (pp. 25–26).

374. PC (ibid., pp. 10.1–10.44). Pre-commitment lets players set spending limits before they play, which gives people the “capacity to control their future selves”. Spending limits should be binding for pre-commitment to be most effective (PC (ibid., p. 27)).

375. M. Thomas (2016).

376. ABC News (2018).

377. Livingstone and Johnson (2017).

378. Poker machine operators made \$11 billion in profit in 2010–11, QGSO (2017, p. 145). Problem gamblers account for about 40 per cent of poker machine profits (PC (2010, p. 5.1)).

379. Particularly in 2010–11.

380. Panichi (2013); see also Ad News (2011) and YouTube (2011).

were not in the party's interests".<sup>381</sup> Coupled with a "highly effective" campaign in marginal seats, the industry's pattern of donations created a "very nervous Labor backbench, particularly in NSW" and put pressure on the party to back down.<sup>382</sup>

The Gillard government walked away from its agreement with Wilkie in early 2012, instead introducing watered-down legislation to tackle problem gambling.<sup>383</sup> These modest reforms were repealed when the Abbott government won office in 2013.<sup>384</sup> Political donations by the industry soon dropped back to the level they were at before any policy change was proposed (Figure 3.8). The advertising pressure from industry also subsided.

The industry also appears to have donated to state political parties with policies more aligned to their interests. The gambling industry donated significant amounts to both major parties in the lead-up to South Australian election earlier this year,<sup>385</sup> but not the SA Best Party which focused on pokies reforms. The industry also actively campaigned against the ALP's proposal to remove poker machines from pubs and clubs in Tasmania.<sup>386</sup> Tasmanians won't know for certain until next year whether the industry donated throughout the campaign.<sup>387</sup> But there are suggestions that the industry heavily supported pro-pokies candidates and parties.<sup>388</sup>

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381. Livingstone and Johnson (Attachment 1 2017, p. 8).

382. Livingstone and Johnson (2016).

383. M. Thomas (2016).

384. Livingstone and Johnson (2016).

385. Over the 2017 calendar year the Australian Hotels Associated contributed nearly \$50,000 to the Liberal Party, \$43,000 to the ALP, and \$20,000 to Cory Bernardi's Australian Conservatives (Opray (2018)). The Liberal Party and the ALP had similar policies on gambling reform at the election (Alliance for Gambling Reform (2018)).

386. Morton (2018).

387. Tasmania has the same donations disclosure regime as the Commonwealth, and so there are long lags before donations are published.

388. G. Burgess (2018).

## A.4 Meeting with some but not others

### The greyhound racing industry

Three months after announcing a ban on the greyhound racing industry in NSW Premier Mike Baird, reversed his decision. The ban, which was passed by the NSW Parliament in August 2016, was introduced in response to a year-long independent inquiry that found systemic animal cruelty across the industry. The Premier, in announcing the ban, urged the public to read the report: "It is horrific. It is damning. And it leaves the Government with no real choice but to take the action we have."<sup>389</sup>

But on 11 October that year, the Premier reversed the ban. And in the interim, his diary, and that of the Nationals Deputy Premier, show regular meetings with industry representatives<sup>390</sup> – but no meetings with stakeholders that supported the ban, such as the RSPCA.<sup>391</sup>

There were political factors at play too. The Nationals were not happy – 60 per cent of greyhound racing tracks in NSW are in regional areas – and several Nationals MPs broke ranks to vote against the ban.<sup>392</sup> We will never know what tipped the balance, but we do know that during the key months, the Premier and Deputy Premier consulted with one side of the debate but not the other.

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389. Baird (2016).

390. The Premier and Deputy Premier met with 'greyhound industry representatives' on 14 July 2016, a week after the ban was announced, and again the following month. The Deputy Premier held a further four meetings with industry representatives in July and August 2016 (Grattan analysis of NSW ministerial diaries).

391. The first meeting with the RSPCA occurred on 11 October, the day the ban was reversed. After the ban was reversed, the government set up a panel to make recommendations on reforming the industry which included the heads of RSPCA NSW, the NSW Greyhound Racing Industry Alliance and the NSW Chief Veterinary Officer (NSW Department of Industry (2018)).

392. Glanville and Gerathy (2016).

## Appendix B: Associated entities

Political parties can establish organisations to act as fundraising bodies or investment vehicles in support of the party. Other organisations may choose to align with a political party to give their cause a political voice – as some trade unions do. These organisations that act for or are run by a political party are known as ‘associated entities’. Political donations regulation includes explicit provisions for associated entities, to prevent parties from using these organisations to circumvent their disclosure requirements.

But current regulation of associated entities isn’t working. The definition of an associated entity in the Commonwealth Electoral Act is too loose, making it difficult to identify organisations that should be subject to disclosure requirements. The activities of associated entities have frustrated proper disclosure of donations in the past. And the disclosure threshold for political donations is too porous, which means a lot of money flows to associated entities from unknown sources.

The Commonwealth political donations regime is already weak; loose provisions on associated entities only make it weaker.

### B.1 What is an associated entity?

The *Commonwealth Electoral Act 1918* (Cth) s 287 defines an associated entity as an entity:<sup>393</sup>

- (a) that is controlled by one or more registered political parties; or
- (b) that operates wholly or to a significant extent for the benefit of one or more registered political parties; or
- (c) that is a financial member of a registered political party; or

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393. AEC (2018e) (as at May 2018).

- (d) on whose behalf another person is a financial member of a registered political party; or
- (e) that has voting rights in a registered political party; or
- (f) on whose behalf another person has voting rights in a registered political party.

Examples of associated entities include: unions, investment bodies, fundraising bodies, clubs, think tanks and service companies (Box 14).<sup>394</sup> Some associated entities are also third-party campaigners, meaning they act for a political party but also represent other interests.

Most states follow the Commonwealth definition of associated entities. NSW is a notable exception; its definition is much narrower. In NSW, “an associated entity is a corporation or other entity that operates *solely* for the benefit of one or more State registered parties or elected members”.<sup>395</sup>

### B.2 Investment vehicles and unions are the largest associated entity donors

Associated entities donated \$15 million to political parties in 2015-16 and 2016-17 (35 per cent of parties’ declared donations).<sup>396</sup> They also contributed at least \$14.5 million to the parties via ‘other receipts’.<sup>397</sup>

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394. Ibid.

395. NSWEC (2018) (emphasis added). On the other hand, the NSW definition of a third-party campaigner is broad compared to other states and the Commonwealth. NSWEC (ibid.).

396. \$9.8m in 2015-16 and \$5.2m in 2016-17. Party declarations to the AEC, 2015-16 and 2016-17 (AEC (2018a)); Grattan analysis.

397. At least \$8.7 in 2015-16 and at least \$5.8m in 2016-17. Party declarations to the AEC, 2015-16 and 2016-17 (AEC (ibid.)); Grattan analysis.

Investment vehicles were the largest donors. They gave \$6.3 million at the last election<sup>398</sup> (most of which came from the Cormack Foundation). Associated unions were also large donors – they collectively donated \$5.2 million to the ALP.<sup>399</sup> Eight of the top ten associated entity donors are unions (Figure B.1).

Some individual associated entities are major donors. In the 2016 election campaign, the Cormack Foundation contributed \$4.5 million, equivalent to more than a sixth of declared donations to the Coalition. The Shop, Distributive and Allied Employees Association (SDA) was Labor's largest associated entity contributor and gave \$1.35 million – about 10 per cent of ALP declared donations.<sup>400</sup>

### B.3 Where the money comes from

The funding of associated entities is largely opaque. More than 75 per cent of the income flowing to the top ten associated entity donors came from undisclosed sources.<sup>401</sup>

The income that is disclosed is not always illuminating. According to associated entity disclosures, the vast majority of their declared receipts were not donations but 'other receipts'.<sup>402</sup> Because the 'other receipts' category is murky (Section 3.6.1 on page 44), it's not possible to know whether associated entities' declared receipts came from

investment returns, rent paid for commercial property, or payments for a service such as income from fundraising dinners.

#### Box 14: Three types of associated entity

We identify three main associated entity 'types' that donate to the major parties:

**Investment vehicles**, such as the Cormack Foundation for the Liberal Party and the 1973 Foundation for the ALP. They declare most of their income (Figure B.2), which is mainly from banks and other investment bodies.

**Union associated entities**, such as the Shop, Distributive and Allied Employees Association (SDA) and United Voice, which support the ALP. Affiliated unions to the ALP pay subscription or membership fees and have voting rights in ALP state or territory party conferences. These unions are, *prima facie*, associated entities.<sup>a</sup> Not all unions that donate are associated entities (and some state branches might not be, even if other branches from the same union are). For the purposes of this chapter, we combine donations from state branches of the same union for all branches that are an associated entity of the ALP.

**Fundraising bodies** are organisations that host fundraising events on behalf of the parties, for example, Progressive Business for the ALP, and The 500 Club for the Liberal Party. Most of their income comes from undeclared sources.

a. AEC (2011b).

398. \$3.8m in 2015-16 and \$2.5m in 2016-17. Grattan analysis of party declarations to the AEC, 2015-16 and 2016-17 (AEC (2018a)).

399. \$4.2m in 2015-16 and \$1.1m in 2016-17. Unions donated more than this overall – not all unions are associated entities, and unions do not exclusively donate to the ALP. Party declarations to the AEC, 2015-16 and 2016-17 (AEC (ibid.)); Grattan analysis.

400. Party declarations to the AEC, 2015-16 and 2016-17 (AEC (ibid.)); Grattan analysis.

401. For 2016-17 only. Some undeclared receipts are likely to be union membership fees. (AEC (2018f); Grattan analysis).

402. 'Other receipts' are any funds received that don't qualify as a gift (*i.e.* any receipt that is not a donation. Section 3.3 on page 33).

### B.3.1 What we know

Most of the funding we know about comes from unions being paid by other unions (e.g. the SDA paying United Voice), and from retailers, financial institutions, and property developers (Figure B.2).

### B.3.2 What we don't know

More than three quarters of the funding to the top ten associated entities is undeclared.<sup>403</sup> Like political parties, associated entities are only required to disclose single donations or other receipts over \$13,800.

Some associated entities declare more funding than others (Figure B.3). Almost all receipts to the Cormack Foundation were declared, as were nearly all receipts to the 1973 Foundation.<sup>404</sup> But almost none of the funding to The 500 Club or the Kooyong 200 Club was made public. Some unions declared 60 per cent of their receipts; others declared more than 90 per cent.<sup>405</sup>

## B.4 How associated entities are regulated

Associated entities can be important sources of funding for political parties, so any political donations regime must take them into account. A system that regulates donations to the parties but not their associated entities would create incentives to channel political funding through non-party political organisations.

The states and the Commonwealth have different approaches to closing this loophole. At the federal level, associated entities have the

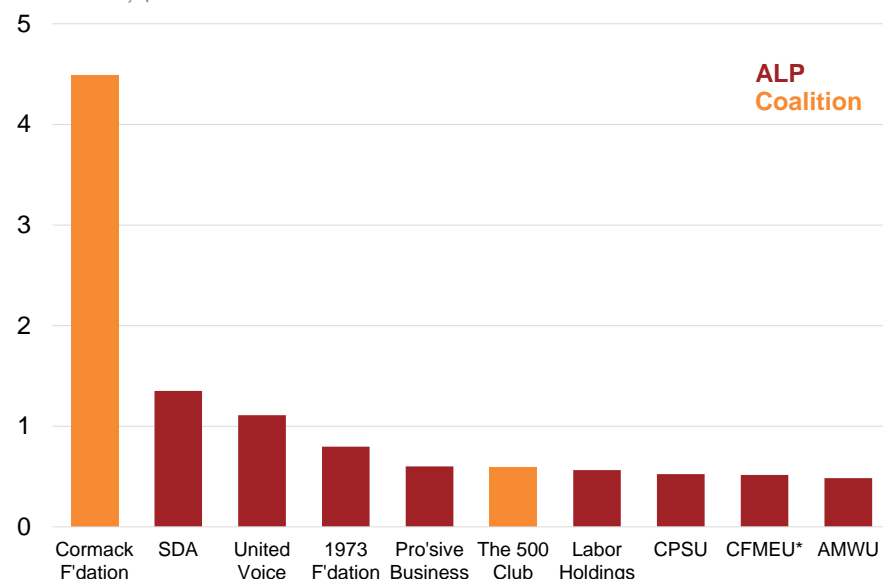
403. Grattan analysis of AEC annual returns.

404. Associated entity declarations to the AEC, 2015-16 and 2016-17 (AEC (2018g)); Grattan analysis.

405. Associated entity declarations to the AEC, 2015-16 and 2016-17 (AEC (ibid.)); Grattan analysis.

**Figure B.1: Eight of the top ten associated entities are linked to the ALP, but the Cormack Foundation gave the most**

Total declared donations to ALP and the Coalition, 2015-16 and 2016-17 combined, \$ millions



Notes: Chart shows the top ten largest associated entity donors by donations to the party they are associated with. \* The CFMEU national office, which is not an associated entity of the ALP, gave \$90,000 in addition to the amount shown. Some associated entities donate to parties they are not associated with – these figures are not shown.

Sources: Party declarations to the AEC, 2015-16 and 2016-17 (AEC (2018a)); Grattan analysis.

same disclosure requirements as political parties. They must itemise private receipts above the disclosure threshold (currently \$13,800) and list them in an annual return to the AEC.<sup>406</sup> They must also disclose the details of capital contributions (deposits) to funds that have been used to benefit a political party.<sup>407</sup> State-level approaches differ, but states that have implemented donations or expenditure caps tend to include associated entities (and third parties) in the legislation.

#### B.4.1 Identifying associated entities can be tricky

Figuring out whether an organisation fits the definition of an associated entity is tricky. The Joint Standing Committee on Electoral Matters has identified three main weaknesses in the Commonwealth Electoral Act definition:<sup>408</sup>

1. it does not capture all entities that it should;
2. it captures some groups that do not have influence over political party affairs; and
3. some groups are captured while other, similar groups, are not.

The federal Electoral Commissioner, Tom Rogers, acknowledges the definition of associated entities “causes grief occasionally”.<sup>409</sup> The AEC has suggested the definition be tightened,<sup>410</sup> to “make it easier

406. AEC (2018e).

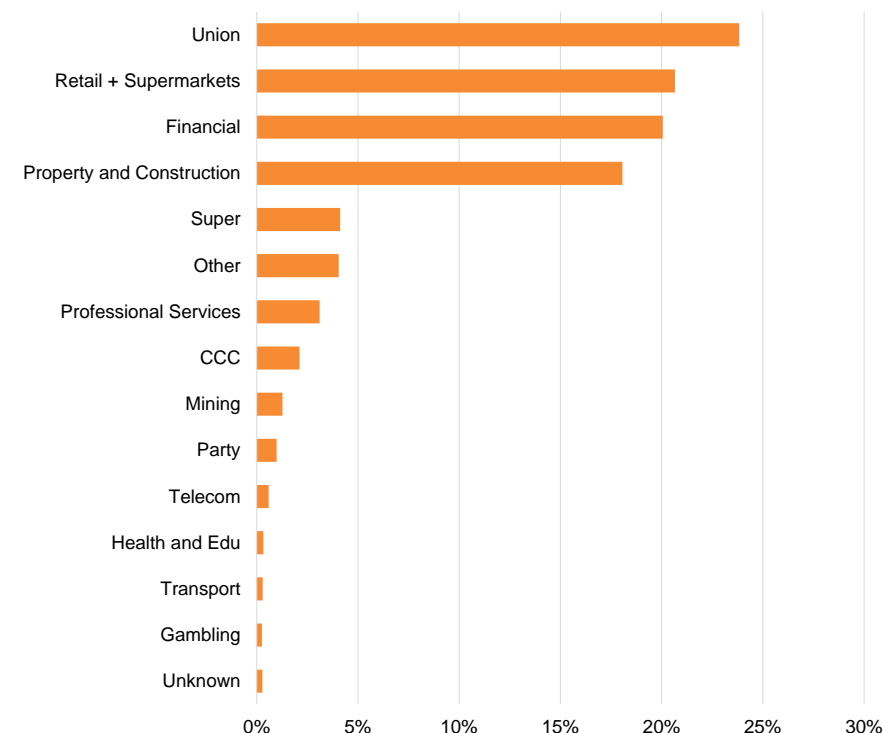
407. Ibid.

408. Joint Standing Committee On Electoral Matters (s.7.121 2011, p. 173).

409. Senate Finance and Public Administration Committees (1.15 2016, p. 3).

410. The AEC suggested the following changes (Joint Standing Committee On Electoral Matters (2011)): (1) defining ‘controlled’ in s287(1)(a) of the Act to include “the right of a party to appoint a majority of directors, trustees or office bearers”; (2) defining ‘to a significant extent’ in s287(1)(b) to include associated entities that distribute more than 50 per cent of their funds, entitlements, benefits and/or services to a political party in a financial year; (3) defining ‘benefit’ as used in s287(1)(b) to include the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.

**Figure B.2: Associated entities’ receipts come from unions and business**  
Top 5 associated entities’ declared receipts, 2015-16 and 2016-17, per cent



Notes: The ‘top five’ refers to the five largest associated entities at the 2016 election, which were the Cormack Foundation, SDA, United Voice, the 1973 Foundation and Progressive Business. Payments between branches of the same union were excluded.

Sources: Associated entity declarations to the AEC, 2015-16 and 2016-17 (AEC (2018g)); Grattan analysis.



for everyone involved in the process to understand what an associated entity is".<sup>411</sup>

There is also no formal process for detecting associated entities. Political parties are not required to identify their associated entities with the AEC.<sup>412</sup> The AEC identifies associated entities based on information in the public domain or contained in political party disclosure returns, or it relies on groups self-identifying as associated entities of their own accord.<sup>413</sup> Although there are penalties for non-disclosure, they might be waived if the associated entity submits a late disclosure return.<sup>414</sup>

#### B.4.2 Regulating associated entities can be political

A challenge with associated entity regulation is to find a way to ensure regulations don't benefit the associated entities of one party over another.

Part of the problem is that different associated entity 'types' tend to support different parties – most notably unions overwhelmingly support the ALP.<sup>415</sup> The diversity of goals and activities of associated entities

411. Senate Finance and Public Administration Committees (1.15 2016, p. 3).

412. AEC (Attachment 11 2017a, p. 9).

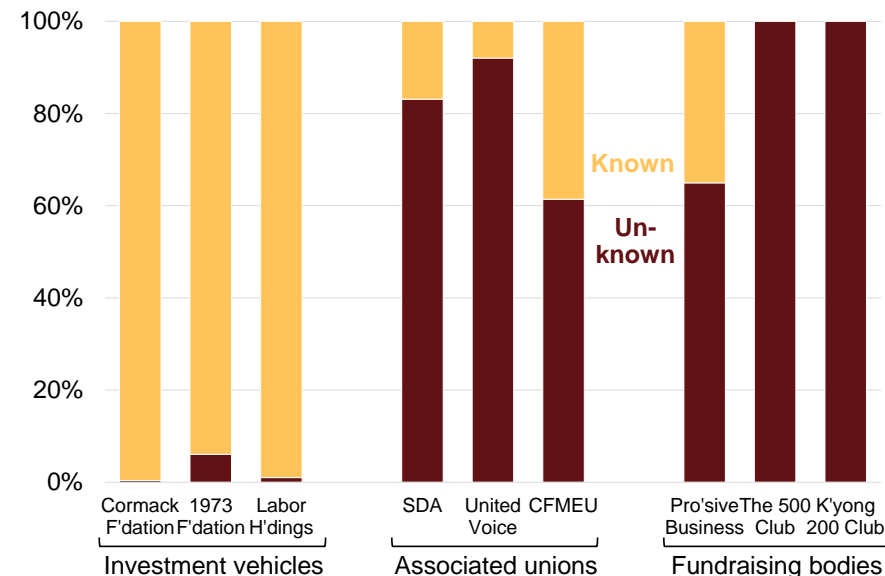
413. Ibid. (p. 9).

414. For instance, in one case an associated entity did not submit returns with the AEC for some years (partially because of the challenges in identifying associated entities). Although this was a breach of the Act, the matter was not pursued further once the returns were finally submitted (Senate Finance and Public Administration Committees (2016)).

415. Affiliated unions have a vote in party conferences and have a lot of sway over party policy. They might actively campaign for the ALP or policy outcomes at an election. But in advocating for their members they will also engage in activities that are unrelated or only somewhat related to the interests of the ALP. Investment vehicles or fundraising bodies, by contrast, tend to have a much lower public profile and may exclusively support their associated party through financial contributions.

**Figure B.3: We don't know much about how associated entities are funded**

Associated entity receipts, top 3 for each type, 2016-17 only



*Note: These figures include declared tax returns, the internal movement of money, and returns on investments.*

*Sources: Associated entity declarations to the AEC 2016-17 (AEC (2018g)); Grattan analysis.*

contributes to the complexity of regulating political donations and has caused Constitutional headaches for many would-be reformers.<sup>416</sup>

Donations caps – a favourite of state regulators – especially tend to cause distortions. For instance in NSW, donations from associated entities to parties are subject to the same cap as all other donations, but party subscription fees paid by affiliated unions to the ALP are not.<sup>417</sup> The Coalition in Victoria withdrew support for a similar donations regime earlier this year, saying the caps “limit some donations to [Labor’s] political opponents but allow the unions to continue to financially support the Labor Party [through affiliation fees]”.<sup>418</sup>

## B.5 The need for reform

A 2016 Senate inquiry report on the regulation of associated entities concluded that challenges in identifying associated entities and the high thresholds for disclosure of their funding together “give donors a safe harbour from regulatory scrutiny”,<sup>419</sup> and it’s difficult to ‘follow the money’ between donors, associated entities and political parties.

Tightening the definition of an ‘associated entity’, as the AEC has suggested, is important in helping ensure existing legislation – and new provisions recommended in this report – are not circumvented.

Lowering the disclosure threshold and aggregating donations under the threshold (as we recommend in Section 5.1.3) would reduce the amount of non-itemised funding flowing through associated entities and would affect different associated entity types evenly, so long as membership fees over the threshold are also declared.

The cap on political advertising expenditure that we propose would also affect different kinds of associated entities more fairly than a cap on donations.

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416. *e.g.* Bibby and Hasham (2013).

417. Up to a certain amount, depending on the membership numbers of the entity. NSWEC (2015).

418. Willingham (2018).

419. Senate Finance and Public Administration Committees (2016, p. 25).

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