

**Less Money, Fewer Donations: The Impact of New South Wales Political Finance Laws on Private Funding of Political Parties**

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**Abstract**

*The role of money in politics has been a concern internationally with strong calls for stricter regulation of such funds. In Australia, this has resulted in a shift from laissez-faire to increased regulation. Yet, there has been little research into the impact of this shift. To address this gap, this article examines the impact of four New South Wales political finance laws enacted from 2008 to 2012, which reflect the emergent regulatory approach. Focusing on the total number and value of political donations made to New South Wales political parties, it assesses the effects of the four Acts individually, as well as their overall impact, in order to test the assumption of legal effectiveness. It finds strong support for two key expectations resulting from the assumption: firstly, the raft of legislation will reduce the total number and value of political donations to the parties and secondly, that the 2010 legislation which imposed caps on political donations and election spending, and substantially increased public funding, would be the most significant of the four Acts in terms of impact due to its scope and depth.*

## Introduction

Across the globe, there is concern about the role of money in politics. A recent survey of perceptions of electoral integrity found that fears about political funding ranked as the gravest concern (The Electoral Integrity Project 2016: 5). Developed democracies are not insulated from the ills of money politics. An OECD study, for instance, has linked the risk of policy capture to the funding of political parties and election campaigns (OECD 2016); in Australia, there have been regular controversies concerning political funding with foreign political donations attracting particular attention in 2016 (Tham and Anderson 2016).

The discontent with the role of money in Australian politics is connected with its ‘lackadaisical’ regulation of political funding (Orr 2007). Until the 21<sup>st</sup> century, a laissez-faire approach prevailed with regulation resting upon (weak) disclosure schemes and limited public funding (Tham 2010). The past decade, however, has witnessed a rival approach that emphasizes stricter regulation. While the Australian Capital Territory, Queensland, and South Australia have each abandoned a laissez-faire approach, New South Wales has advanced a more thorough renovation through a slew of far-reaching regulatory legislation.

An underlying assumption of this regulatory push is that political finance legislation will be *legally effective* – that the obligations imposed by the legislation together with its compliance regime will change the behaviour of those regulated, particularly political parties, candidates and donors. Whether the assumption is tenable is open to question, in many countries, and largely depends on the extent of compliance (International IDEA 2014: 4). These are live concerns in the Australian context too. For instance, both the New South Wales Independent Commission Against Corruption (ICAC December 2014) and the New South Wales’ Panel of Experts on Political Donations (New South Wales Panel of Experts on Political Donations 2014: 137) have identified a ‘culture of non-compliance’ in the state’s political parties.

This article seeks to assess the validity of the assumption of legal effectiveness through a study of the impact of the New South Wales political finance laws on the total number and value of political donations made to New South Wales political parties. New South Wales is a ‘natural’ laboratory for this purpose. Not only is it the most populous jurisdiction that has adopted the regulatory approach, it also most powerfully exemplifies this approach.

Moreover, there have only been two systematic studies into the impact of these paradigm-shifting expression laws: one on their impact on election spending (Anderson and Tham 2014) and another on the impact of caps on political donations and election spending (Rayner 2016). Such limited research is in contrast with the international, and especially American, scholarship (see for example La Raja and Schaffner 2015; Mayer and Wood 1995; Stratmann 2006).

The article begins by explaining the four separate pieces of legislation passed between 2008 and 2012, the impacts of which are the subject of our analysis. We then suggest two key expectations. Firstly, given the overall breadth and strength of its provisions, we would expect that the *raft of legislation* will reduce the total number and value of political donations made to New South Wales parties. Secondly, that the 2010 Act in particular – legislation which imposed caps on political donations and election spending, and substantially increased public funding while banning donations from the tobacco, liquor and gambling industries – would be the most significant of the four Acts in terms of impact due to its scope and depth.

The impact of these laws is assessed over 17 financial-year collection periods (1998/99 to 2014/15), drawing upon data disclosed to the Australian Electoral Commission (AEC) and the New South Wales Electoral Commission (NSWEC). The analysis is conducted, firstly, in terms of the overall impact of the regulatory scheme and its laws, and secondly, in terms of the impact of the four specific Acts. Integral to the analysis of the overall impact of these laws is an assessment of the extent to which there has been, across the nation, a growing reluctance of donors to contribute – that is, a general giving malaise.

This analysis finds strong support for the two expectations. The new laws have produced a dramatic decline in the total number and value of political donations, and the 2010 legislation is the most significant legislation underlying this decline by far. In this analysis, the article further argues that the evidence for a general giving malaise is weak as there are varied donation trajectories across the jurisdictions: in some states and territories, there was an increase in the number of donations and in some a decrease – while at the same time some jurisdictions experienced an increase in the value of their donations and others, a decrease.

## **The legislation in question**

The modern history of electoral funding legislation in New South Wales begins with the *Election Funding Act 1981* (NSW), which was hailed as ‘a pioneering measure for Australia’

(Wran 1981: 5939) by ALP Premier Neville Wran. This Act introduced public funding of election campaigns with payments through the Central Fund and the Constituency Fund, and imposed post-election disclosure obligations on political parties, groups of candidates and candidates. For more than two decades, the NSW political finance regime rested upon the two key planks of the *Election Funding Act 1981* (NSW), public funding and post-election disclosure. However, the regulatory landscape began to profoundly change from 2008 onwards, through four major pieces of legislation.

The first enacted under the ALP Iemma government was the *Election Funding Amendment (Political Donations and Expenditure) Act 2008* (NSW) (2008 Act), which required disclosure of donations and campaign expenditure of \$1,000 or more every six months and banned anonymous donations and loans of \$1,000 or more that were made during the same periods). These measures were said to ‘give New South Wales the most robust funding and disclosure regime in Australia’ (Hatzistergos 2008: 8577). Under the ALP Rees government, the second piece of legislation that was enacted, the *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009* (NSW) (2009 Act), banned political donations from ‘property developers’.

The third – and most significant – legislation enacted was the *Election Funding and Disclosures Amendment Act 2010* (NSW) (2010 Act), which was passed under the ALP Kenneally government. This Act provided a broad scheme for regulating political funding in New South Wales through caps on political donations and electoral communication expenditure, and substantially increased public funding; it also extended the ban on political donations from ‘property developers’ to tobacco, liquor and gambling industry entities. Speaking of these measures, then ALP Premier Kristina Kenneally said:

Importantly, these reforms are also directed at reducing the advantages of money in dominating political debate. They provide for a more level playing field for candidates seeking election, as well as for third parties who wish to participate in political debate. These reforms are about putting a limit on the political "arms race", under which those with the most money have the loudest voice and can simply drown out the voices of all others. (Keneally 2010: 27458)

The fourth major piece of legislation was enacted under the Coalition O’Farrell government. The *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW) (2012 Act) restricted the ability to make political donations to those on the electoral rolls, and hence

banned political donations from: individuals not on the electoral rolls, corporate entities and trade unions (including membership fees paid by trade unions affiliated to the NSW ALP). This legislation also aggregated the spending of affiliated organisations to caps of their respective political parties (e.g. spending of trade unions affiliated to NSW ALP aggregated to the caps applying to NSW ALP). As Premier O’Farrell explained, the first measure aimed to ‘invest power to donate solely in those who have the power to vote, those with the greatest stake in the system’ (2010: 27458). And the second measure was directed at the ‘unfair loophole’ where ‘organisations intimately involved in the governance of a political party, even with office bearers in common, [are] campaigning on behalf of a party with no corresponding offset to the party’s own ability to spend’ (O’Farrell 2011: 5432).

The *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW) was, however, struck down by the High Court in *Unions NSW v NSW* ((2013) 252 CLR 530) on the basis that it breached the freedom of political communication implied under the Commonwealth Constitution. As a result, the *Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014* (NSW) was passed under the Baird Coalition government with the invalid provisions removed. This Act, however, forms no part of our analysis because the limited time since its enactment is not sufficient to adequately test its effects.

A final matter to note concerns the compliance regime provided under these Acts. Under this regime, an independent statutory agency was responsible for enforcing this legislation: this was, first, the New South Wales Election Funding Authority and then the New South Wales Electoral Commission from December 2014. Both agencies had a wide range of powers to enforce compliance, including the power to conduct audits, impose penalty notices and withhold public funding in the event of non-compliance (*Election Funding, Expenditure and Disclosures Act 1981* (NSW) Part 8). In addition, the New South Wales Independent Commission Against Corruption also has jurisdiction over any breaches of political funding legislation that might be considered ‘corrupt conduct’ under its Act, the *Independent Commission Against Corruption Act 1988* (NSW).

## **Two Key Expectations**

What impact can be expected from the changes to New South Wales political finance laws? Specifically, what impact can be expected on the total number and value of political donations? Bans on political donations can be expected to reduce both the total number and value of such money. Hence, we anticipate that the 2009 ban on donations from ‘property developers’ and the 2012 extension to gambling, liquor and tobacco companies, as well as the

2012 restriction on the ability to donate to those on the electoral rolls (and its concomitant ban on those not on the electoral rolls) would have this effect.

Measures providing increased transparency such as the 2008 legislation are likely to have such an effect on some donors. Those who previously donated in secrecy might not donate for fear of the ensuing publicity. Conversely, measures lessening transparency such as the 2010 move from a biannual to an annual system of disclosure could mitigate this fear a little. More generally, the 2010 legislation is not expected to have any impact on the total number of political donations. Aside from the lessened transparency, the formal terms of the other measures (the caps on political donations; the caps on election spending and substantially increased public funding) do not suggest any positive or negative impact on this score.

The 2010 legislation can, however, be expected to reduce the total value of political donations. This is because of the interaction between the caps on political donations, the caps on election spending and substantially increased public funding. Whilst there is a possibility that those regulated – especially political parties – might respond to this regime by increasing the number of their donors, and hence maintaining or even increasing the total value of donations, this is not a likely scenario because of the reduction in the demand for such private funding through the caps on election spending and, more importantly, substantially increased public funding.

The general direction of the various pieces of legislation is thus to reduce the total number and value of political donations. Hence, our first key expectation: *The raft of political finance legislation will reduce the total number and value of political donations made to New South Wales political parties.* In assessing whether this expectation has been realised, two alternative explanations for any reduction in the total number and value of political donations must be considered. The first is the publicity attending the investigations by the New South Wales Independent Commission Against Corruption (ICAC) into political fundraising and the attendant opprobrium associated with political donation accounts. Such publicity, however, became significant only when ICAC held public inquiries from March 2014 onwards. Hence, the publicity surrounding these inquiries could only affect the last financial year of the time period examined (2014/2015). The second explanation is possibly more consequential – a general giving malaise. It traces any reduction to broader donor disengagement in Australia (especially in terms of corporate political donors) (Martin 2016; Middleton 2016: 4). As will be seen below, we analyse the data to determine whether there is such disengagement and to assess its impact on donations.

The reasons for the second key expectation – that *the 2010 legislation is most significant in terms of the impact of the raft of legislation* – are more obvious than those for the first. It is clear that both the scope and depth of the 2010 legislation exceeds the measures in other legislation: it deals with donations, spending and public funding rather than just donations or spending (as with the other legislation). The caps on donations apply across the board rather than selectively to particular groups of donors (as with bans introduced by the 2009 and 2012 legislation).

It is convenient to emphasise here that our findings in relation to these expectations do not depend on assuming that political financing does not exhibit strong ‘hydraulic’ effects (Issacharoff and Karlan 1999), which would mean that the money squeezed out by reform finds its way into politics through another channel—after all, donors are strategic actors (McMenamin 2013), so new regulations may cause them to donate to parties in a different way, give more to associated entities, or give to parties in another jurisdiction. Our conclusions do not depend on the absence of hydraulics effects because such effects actually depend on the efficacy of regulation; they show that political actors are responsive to laws but in a way that produces consequences that undermine the legislation’s objectives. Such consequences flowing from the NSW political finance laws has yet to be systematically studied (and we have not attempted to do so in this article). But should they arise, an overall assessment must balance any hydraulic effects against the efficacy that we have uncovered below.

## **Methodology**

The effects of the four separate pieces of legislation will be tested to assess whether there are impacts on the total number and value of political donations in the ‘normal’ inter-election periods, as detailed in Table 2 (in bold). In order to test the ‘before’ and ‘after’ effects in one database, we partitioned the time since 2001 into chronologically distinct periods.

[Table 1 here]

Donors, of course, do not give uniformly over the election cycle: giving tends to spike in the period just before elections and tails off rapidly afterwards. We proposed that the period 6 weeks prior to an election would suffice as a good proxy for donor behaviour for that

particular election.<sup>i</sup> Since donations often trickle in afterwards, we also included the *two weeks post-election day*. So altogether, the six weeks before an election, plus the two weeks post-election, plus election day itself, totaled to a 57-day period. Since NSW parties are fielding candidates for both (their own) state and federal elections, our analysis controlled for both kinds of events.

This left substantial amounts of time between campaigns, which were further divided into 'between election' control periods and the actual testing periods, which pertained to the four pieces of legislation (dated from when they received royal assent). We also included a fifth event, namely, the date the High Court of Australia struck down one of these pieces of legislation. What is being tested, therefore, is the effect of legislation on what we believe is 'normal' giving – donation flows in those periods when no election is in view.

We also sought to discern if there was any effect on both total donation values and the number of donations for the period when the *raft of recent legislation* was in place (i.e. from July 2008 onwards). We calculated the average annual donation levels in the years before the legislation was introduced (financial years 1998/99 to 2007/08) and compared it with average annual levels in the years since the legislation came into effect. We also extended this method by employing regression analysis using dummy variables for election years (in some cases, for both the relevant state, and Federal, elections) - since donations naturally spike markedly in these years. In the period under consideration, there were four NSW state elections, and five Federal elections. We also ran similar regressions for other jurisdictions (Federal and other states) to see if the downward trend for NSW was unique.

### Data Sources

There are three main databases where donations are recorded: AEC donations reported by parties; AEC donations reported by donors; NSWEC donations reported by donors. While each has its own strengths and weaknesses, they also complement each other in key respects. In the case of returns made under the *Commonwealth Electoral Act 1918* (Cth) (ie. the obligation of all donors to report to the Australian Electoral Commission certain payments to political entities) the reportable minimum varies (incrementally) from year to year (See Table 2 below): for the 2014/15 financial year, for example, all donations that sum to \$12,800 or more had to be disclosed. However, the threshold for reporting donations has shifted over time in the AEC data (generally in line with inflation). Further, in the years up to 2005/06, a much lower threshold was in place (\$1,500). We have made some adjustments to ensure

reasonable comparisons between financial years – so we are essentially analysing donations at or above the modern threshold (Table 2). Since this changes, we have deflated all donation amounts (and totals) according to the Consumer Price Index (CPI). Thus, we deal with *constant dollar amounts* for all our analyses. In New South Wales the threshold reporting figure (which has also varied since 1981) is much more stringent – just \$1,000 or above.

[Table 2 here]

### **Data Source 1: AEC Donations Reported by Parties**

Registered political parties are required to report the names of donors and amounts of donations for the preceding financial year. While this database is quite comprehensive and begins from the 1998/99 financial year, there are *no precise dates* for the actual donations (other than within the specific financial year).

### **Data Source 2: AEC Donations Reported by Donors**

Donors, themselves, are also required to report donations to the AEC for each financial year they make political donations. The AEC database for donors largely reflects the same advantages as for the party reported database (above). A disadvantage however, is that far fewer donations are reported by donors than by the parties – in fact the total number of reportable (or above threshold) donations is 41.7 percent of those reported by the parties, while the total *value* of these donations reported by the donors is just under 30 percent of that reported by the parties.

This shortcoming is offset somewhat because this data reports an *actual date of donation* (day, month and year), though whether this date reflects the true date of donation, or simply when it is reported to the AEC, is uncertain. Secondly, although donors are not required to report donations below the threshold, the tendency has been to report the smaller donations as well. Therefore, we can use the entire donor-reported database—using both the above and below threshold amounts—to test hypotheses, while this is not possible for the party-reported data.

### **Data Source 3: NSWEC Donations Reported by Donors**

The NSWEC database is, in theory at least, a more comprehensive record of donations since all amounts \$1,000 and above (or yearly totals of \$1,000 or above) are required to be reported. Further, the donations are also dated precisely (day, month and year). The database, however, begins only in the 2004/05 financial year – a shorter time period to work with, but still sufficient to test the effect of recent NSW legislation.

Technical limitations concerning how donors and recipients are connected in this database mean that the data provided to us from the NSWEC identifies the party recipients but not the actual donor names. Also, a number of the recipient parties on the database are not domiciled in NSW (such as Federal parties), so we largely restricted the analysis to those donations where it was clear that NSW domiciled parties were the recipients. Two cautions should be borne in mind with respect to the use of these databases. Firstly, there is an unavoidable data collection lag. For example, the AEC data is not released until some time after each financial year (usually February for the financial year finishing in the middle of the preceding calendar year).

Second, since many donors fail to declare their donations, the AEC checks donations from individuals with the records that political parties provide (which, as mentioned above, are normally more complete than the donor-supplied data). Accordingly, we would expect there to be some lag in more recent years, as donors who failed to report get prompted to do so. An implication is that analyses of the effect of older legislation are likely to be more reliable than those pertaining to more recent regulation.

### **Analysis: Effect of the Raft of Legislation**

The most comprehensive database we used to test the effects of legislation on donors (and parties) is the AEC donations *reported by parties*: it has seventeen financial-years of observations, and we can be confident that it includes the vast majority of threshold-and-above donations. The left-hand register in Table 3 reports the change in the *volume* (that is number) of donations between the pre- and post-legislative periods; the rows are sorted according to the jurisdictions with the highest percentage increase (at the top) to the lowest (at the bottom) for the first nine jurisdictions.

As can be seen, the number of (reportable, or ‘threshold and above’) donations has dropped over this period for the whole of Australia (by some 27.5 percent). This general decline may support reported claims that there is donor disengagement in Australia (especially in terms of corporate political donors) (Martin 2016; Middleton 2016: 4). However it should also be noted that the overall decline in Australian donations is far less striking once the NSW figures are excluded (last row of Table 3) – a decline of just 8.5 percent.

Of some interest is evidence of varied donation trajectories amongst the Australian jurisdictions. Some jurisdictions have seen an increase in the number of (reportable) donations over this period, especially Queensland and Western Australia. The three most populous jurisdictions (Federal, New South Wales and Victoria) have, however, experienced appreciable declines in (reportable) donations with the drop in the number of donations being greatest for New South Wales in terms of relative and absolute decline. Regression analysis indicated that while the decline in reportable (that is, moderately large; see Table 1) donations was tracking at a decline of around 17.4 donations per annum over seventeen years of records for all Australia-wide donations, the decline was far less when *all jurisdictions exclusive of NSW* was examined - the decline was just 3.8 donations per annum. By contrast, the long-term trend for NSW donations was a 13.6 decline in (large) reportable donations per annum.

The right-hand register of Table 3 reports the change in the average annual (constant dollar) *value of donations* between the two test periods. By contrast, it shows that Australia-wide (that is, all jurisdictions) average annual donation levels have decreased marginally between the two test periods – by just 2.6 percent. Again, by excluding the NSW jurisdiction, the average annual levels have actually increased by 11.9 percent. The NSW donation level, by contrast, has virtually collapsed: average annual levels of donations in the period the legislation was in effect are 42.3 percent less than the pre-legislation period. This collapse is greatest among all jurisdictions in both relative and absolute terms. Again, regression analysis shows that this equates to an annual decrease of some \$660,000 per annum just for NSW.

[Table 3 here]

In other words, in constant dollar amounts, donations have been falling off at a faster rate in NSW than in any other jurisdiction. We also ran regressions aggregating donations for the two major party blocks (ALP and Coalition). Again, NSW reported the greatest relative decrease in the value of annual donations over the seventeen-year period.

There is, however, no *necessary* association between changes in the number of (reportable) donations and the total value of donations. Table 4 brings together the key findings of both registers from Table 3 by classifying the various jurisdictions according to their trajectories in terms of these two dimensions. The striking feature here is one of diversity not just amongst jurisdictions but also amongst the more populous jurisdictions with the Commonwealth taking a different path from the historically high-growth areas of Queensland, Western

Australia and the Northern Territory, on one hand, while, yet a different trajectory is pursued by New South Wales, Victoria and South Australia.

[Table 4 here]

Next, we report a refinement in the model in an attempt to control for other factors that affect donation levels in any given year. Thus we refine our analysis by introducing regression analysis, employing a dummy variable to control for election years, and another dummy which covered the period in which the *raft of legislation* (the Acts of 2008, 2009, 2010 and 2012) was in operation. Thus, the equation regressed total donations (financial year; constant dollar) on three explanatory variables: year, election year, and the 'raft of legislation' years (introduced mid-2008). Given that the number of observations ( $n=17$ , being the number of years in the analysis) is small, the results from this (and the other) regression models should be interpreted with caution. In the first analysis of the *number of donations* (table not shown), we found that NSW ranked at the bottom: in both relative and absolute terms, NSW reported the greatest drop-off in donations according to the dummy variable for the *raft of legislation* years (post 2008/09). The summary statistics for eleven individual regressions on the *value of donations* (one for each jurisdiction) however, reported a more nuanced result: these are shown in Table 5.

The coefficients in Table 5 would be interpreted as follows: firstly, for NSW donations (first column, row 6), there is an overall decrease in the value of (constant dollar) donations of around \$430,182 per annum. Secondly, election donations jump, roughly, by about \$10.2 million in the year of (both federal and NSW) elections (Column 2). And finally, the impact of legislative controls accounts for a *decrease* of \$2.69 million each year since the controls were in effect (Column 3). To put it another way, the legislation appears to account for about 86 percent of the overall decline of donations to NSW parties since mid-2008.

The final column reports the *standardized beta* for the 'raft years' dummy, and this allows us to roughly rank the nine state and territory jurisdictions from greatest increase to least. Although the relative decline in NSW donation levels in the period from 2008/09 is not the worst, the important result here is that, again, NSW ranks as the having the greatest absolute decrease – next to the federal jurisdiction. And in fact the decrease in federal donation levels during the period of the NSW political finance legislation is to a large extent accounted for by the drop of NSW domiciled donations to the federal jurisdiction.

[Table 5 here]

However, another explanation for the discernible long-range downward trend in the value of NSW donations deserves some comment.<sup>ii</sup> Part of the reason may be the excessively high spending on elections (especially by the ALP) in the 2003 and 2007 elections – implying high donation levels in these years also. Thus, 'normal' donation levels in succeeding elections may appear as decreases in subsequent years. However, donations are actually more evenly diffused through the whole period, and do not precisely track expenditure.

Finally, we to briefly entertain an alternative hypothesis for the decline experienced in New South Wales, namely, that the decline is a result of a *general giving* malaise (that is, a donor disengagement) across the national electoral landscape from 2008/09 onward.

If a general donor disengagement (in terms of the value of donations) was responsible for the decline in New South Wales, one might expect that the rate of decline (Table 3) would be more or less constant across all jurisdictions, but it is clear that for both volume and value of donations, the NSW returns indicate a much more dramatic decline than other jurisdictions. And if we account for elections using dummy variables in regressions, we find that the decline in the volume of donations for NSW in the raft of legislation period is still far in excess of other jurisdictions. The decline in the value of donations, however, while not worst in NSW, is still considerable (Table 5).

Our view is that the empirical evidence points squarely to the raft of political finance legislation as responsible for the lion's share of the declines observed in New South Wales. In other words, strong support for the first expectation being met: *The raft of political finance legislation has reduced the total number and value of political donations made to New South Wales political parties.* The change in the NSW donation levels can be seen most dramatically in Chart A which plots donation totals over the past *four* (four-year length) election cycles (labeled at the *bottom* of the chart). For comparison, another series (at the top of the chart) shows the total for all seven other jurisdictions (all states and territories except NSW). Also shown (the line in the middle) are donation totals to federal parties over the past *five* (three-year) election cycles (these cycles are labeled at the *top* of the chart).

Overall, we calculate that the donations over the entire 2004-2007 electoral cycle for NSW peaked at \$58.0 million; sunk to \$46.4 million in 2008-2011 (a drop of \$11.6 million), and plummeted to \$29.4 million in the most recent cycle, 2012-2015 – giving a total financial

impact of around \$40 million over the life of the regulatory legislation (to date). There is little support then for the claim that any general donor disengagement is responsible for the dramatic declines in the number and value of political donations in New South Wales over the time period examined.

[Chart A here]

## Results: Effect of Individual Legislation

To test the impact of individual pieces of legislation, a finer chronology was necessary, so the two donation databases (ie. those reported by donors, and dated more precisely) were used: the longer duration (yet less complete) AEC series; and the shorter though fuller NSWEC series. We begin by looking at donations within specific time periods. As mentioned above, the entire collection period duration (1998/99 – 2014/15) is divided into election periods (six weeks before an election and two weeks after), as well as 'between campaigns' periods. Within these 'between campaign' periods we further isolate periods of time (uncluttered by election activity) that we can then classify as pre and post legislation events (according to Table 2 above). The bars in the charts that follow below represent the suite of major periods as scheduled in Table 2. Since they represent average weekly total figures (in some cases averages of the number of donations, and average weekly dollar donation totals) the lengths of the bars in the charts below represent a comparable measure of donation activity.

### a) Measuring the Effects of Legislation

Chart B shows the average number of (all) weekly donations reported to the AEC (by donors) across the various election, non-election, and legislative change periods. Clearly visible in this Chart (in the relative bar lengths), are the differences in these averages between various pre- and post- legislative regimes. The length of the bars indicate the dampening of the average number of donations from the non-election control period (labeled 'Pre 2008 Act') to that showing the effect of the 2008 Act – and furthermore, a continuing slide in averages into the effect of the 2009 Act. So too, if more dramatic, is the steeper decline between the control 'Pre 2010 Act' and the effect of that Act in the next period. The effect of the 2012 Act, however, shows an increase, not the expected decrease, although there is an (expected) increase after the legislation was struck out by the High Court (the difference between the 'Pre 2013 High Court' bar, and the one immediately succeeding it, the 'Effect of the 2013 High Court' bar). We would expect, of course, that there would be a decrease for all four

legislative pieces (and an increase for the High Court reversal). Similarly, Chart C presents the average value of (all) donations each week across the respective ‘control’ and legislative regime periods.

[Chart B here]

[Chart C here]

The actual figures (for the change in donation *numbers*) are reported in Table 6 for the four legislation changes (and the High Court reversal of 2013) in the first column (for all donations) and second column which could be interpreted as showing 'larger' donations (those at the disclosure threshold level and above). The next two columns show changes in the average *value* of weekly total donations across the regimes. The pattern observed from this Table is a progressively increasing impact across the first three pieces of legislation (the 2008, 2009 and 2010 Acts) as measured by the decline in both donation numbers and value. According to this analysis, the impact ceases (or perhaps is exhausted) – if not reversed – with the 2012 Act. Clearly the legislation with the greatest impact was the 2010 Act (responsible for a decrease of nearly 80 percent of all donations by volume and 94 percent of all donations by value). Its impact is closely followed by the 2009 Act – the Act which outlawed donations from property developers - (responsible for a decrease of nearly 12 percent of all donations by volume and 28 percent of all donations by value).

[Table 6 here]

To check whether there is consistency with the AEC data, we now turn to a similar analysis of the NSWEC data. As explained earlier, while the NSWEC database is chronologically shorter, the depth is greater in that the lower end of the range of donation size is included (down to \$1,000). But also, as explained, there is no necessary reason why the overall numbers should precisely track the overall dollar value – and in fact the legislation does not impact the total donation numbers as we might have hypothesized. In some sense, any significant changes in larger donation *numbers* is washed out by the sheer magnitude of the smaller donations composing the database. To compensate we calculated a ‘larger donations’ series using the same threshold limits as per the AEC database (as in Table 1) and artificially imposed these on the NSWEC data.

Table 7 summarizes the percentage changes between pre and post regime donation levels. The hypothesis of legislative dampening is evident for both the number of larger ('threshold') donations (Column 2) and for changes in both the average weekly value of all donations and 'large' donations (Columns 3 and 4 respectively). Again, it is clear that the 2010 Act had the greatest impact (for example reducing the number of all donations by 25.4 percent and the value of all donations by 75.2 percent. In this analysis, it is of interest that the 2009 legislation did not have the impact that the 2008 and 2012 Acts obtained, especially in respect of the value of donations.

[Table 7 here]

Whilst the primary focus of this paper is on the impact of the NSW legislation upon donations originating in this state, residents of the state are, of course, donating both to NSW domiciled parties and *also to parties in other jurisdictions*. The NSWEC database collects information from NSW residents and (for the first few years of data collection) included donations to parties outside the state of NSW (predominantly to federal parties). As a result, we did extend the analysis to excise those donations flowing out of the state: that is to include only those donations - although declared to NSWEC - *payable only to NSW-domiciled parties*.<sup>iii</sup>

While this table is not shown, we found a similar pattern obtained: both the volume and value of donations with the greatest impact was due to the 2010 legislation (a decline of 24.3 percent and 77.6 percent respectively for all donations). While the volume of donations actually increased with the 2008, 2009 and 2012 Acts for all donations, the volumes actually decreased in number for the threshold and above category: again, the 2010 Act was responsible for the greatest decrease. The 2010 Act was also responsible for the greatest decline in the value of threshold and above donations (96.4 percent). Again, the value of donations - according to the NSWEC data - indicated a larger negative impact upon the value of donations by the 2012 and 2008 Acts. Anomalously, the change in the value of all donations due to the 2009 Act actually increased (by 10.3 percent) - although the 2009 Act did negatively impact the larger (threshold and above) donations - by some 6.4 percent.

To summarize, the analyses is clear in showing that the decline in terms of number and value has been greatest with the 2010 legislation, providing strong validation of the second key expectation of the article, that *the 2010 legislation is most significant in terms of the impact of the raft of legislation*.

## **Concluding Thoughts**

The strong validation of the two expectations of this article as to the overall impact of the raft of legislation and the relative significance of the 2010 legislation support for the assumption of legal effectiveness, even if in uneven ways.

The findings of this research – which do not depend on the absence of ‘hydraulics’ effects - are also an answer to views criticisms of increased regulation of political finance – that the ‘real’ world does not operate according to the rose-tinted glasses of reformers. While this charge might be justified in relation to those who believe that laws are self-executing, there are not many who hold those beliefs. Indeed, many of those who assume that political finance laws are futile could be charged with a different kind of naiveté – by focusing excessively on the shortcomings of legal processes and culture, they ignore their potency. What this position fails to recognize, sufficiently, is that political finance laws can be effective in the sense of operating according to their terms if there is a robust compliance framework including a vigorous, adequately resourced and independent enforcement agency; proper governance structures amongst regulated actors, especially in relation to finance; and general adherence to the rule of law. This points to key – and neglected – questions in relation to political finance laws: what are the pre-conditions for the effectiveness of these laws and how can they best be achieved?

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## Endnotes

**Table 1. Events and Periods in Respect of Donations to NSW Parties**

<b>Time</b>	<b>Event</b>	<b>Start Date</b>	<b>End Date</b>	<b>Days</b>
T1	Up to 2001 Federal	01-Jan-00	28-Sep-01	637
T2	2001 Federal Election	29-Sep-01	24-Nov-01	57
T3	Between Campaigns	25-Nov-01	07-Feb-03	440
T4	2003 State Election	08-Feb-03	05-Apr-03	57
T5	Between Campaigns	06-Apr-03	27-Aug-04	510
T6	2004 Federal Election	28-Aug-04	23-Oct-04	57
T7	Between Campaigns	24-Oct-04	09-Feb-07	839
T8	2007 State Election	10-Feb-07	07-Apr-07	57
T9	Between Campaigns	08-Apr-07	12-Oct-07	188
T10	2007 Federal Election	13-Oct-07	08-Dec-07	57
T11	Pre 2008 Act	09-Dec-07	29-Jun-08	204
<b>T12</b>	<b><i>Effect of Election Funding Amendment (Political Donations and Expenditure) Act 2008 (NSW)</i></b>	<b>30-Jun-08</b>	<b>31-Aug-09</b>	<b>428</b>
<b>T13</b>	<b><i>Effect of Election Funding and Disclosures Amendment (Property</i></b>	<b>01-Sep-09</b>	<b>09-Jul-10</b>	<b>312</b>

	<b><i>Developers Prohibition) Act 2009 (NSW)</i></b>			
T14	2010 Federal Election	10-Jul-10	04-Sep-10	57
T15	Pre 2010 Act	05-Sep-10	31-Dec-10	118
<b>T16</b>	<b><i>Effect of Election Funding and Disclosures Amendment Act 2010 (NSW)</i></b>	<b>01-Jan-11</b>	<b>11-Feb-11</b>	<b>42</b>
T17	2011 State Election	12-Feb-11	09-Apr-11	57
T18	Pre 2012 Act	10-Apr-11	20-Feb-12	317
<b>T19</b>	<b><i>Effect of Election Funding, Expenditure and Disclosures Amendment Act 2012 (NSW)</i></b>	<b>21-Feb-12</b>	<b>26-Jul-13</b>	<b>522</b>
T20	2013 Federal Election	27-Jul-13	21-Sep-13	57
T21	Pre 2013 High Court	22-Sep-13	17-Dec-13	87
<b>T22</b>	<b><i>Effect of 2013 High Court Unions NSW Decision</i></b>	<b>18-Dec-13</b>	<b>23-Jun-14</b>	<b>188</b>

Note: Legislation events tested in the analysis shown in bold.

Table 2. Threshold Donation Amounts Reportable to the Australian Electoral Commission

<b>Financial Year</b>	<b>Amount</b>	<b>Source</b>
1998-1999	8010	Calculated
1999-2000	8200	Calculated
2000-2001	8690	Calculated
2001-2002	8940	Calculated
2002-2003	9220	Calculated
2003-2004	9430	Calculated
2004-2005	9660	Calculated
2005-2006	9970	Calculated
2006-2007	10300	AEC
2007-2008	10500	AEC
2008-2009	10900	AEC
2009-2010	11200	AEC
2010-2011	11500	AEC
2011-2012	11900	AEC
2012-2013	12100	AEC
2013-2014	12400	AEC
2014-2015	12800	AEC

Note: AEC figures set from 2006/07 to the present. Periods before 2006/07 have been estimated using an approximation of CPI increases.

**Table 3. Change in Average Annual Numbers and Value of Donations From Pre-Legislation Years to Legislation Effect Years (Nine Jurisdiction and Totals)**

<b>Jurisdiction</b>	<b>Change in Donation Volume (%)</b>	<b>Jurisdiction</b>	<b>Change in Donation Value (%)</b>
<b>WA</b>	23.8	<b>NT</b>	30.3
<b>Queensland</b>	18.8	<b>Queensland</b>	19.1
<b>NT</b>	10.7	<b>Federal</b>	18.5
<b>Tasmania</b>	8.8	<b>WA</b>	17.0
<b>ACT</b>	-3.2	<b>ACT</b>	10.8
<b>Federal</b>	-3.5	<b>Victoria</b>	-0.3
<b>SA</b>	-38.6	<b>Tasmania</b>	-12.1
<b>Victoria</b>	-45.1	<b>SA</b>	-19.6
<b>NSW</b>	-56.3	<b>NSW</b>	-42.3
<b><i>Total Australia</i></b>	<b>-27.5</b>	<b><i>Total Australia</i></b>	<b>-2.6</b>
<b><i>Total Australia less NSW</i></b>	<b>-8.5</b>	<b><i>Total Australia less NSW</i></b>	<b>11.9</b>

Notes: Change is expressed as the average of annual figures from financial year 2009/10 to 2014/15 (the period of the effect of the legislation) to the pre-legislative financial years 1998/99 to 2007/08. Values expressed are the change of the average of annual numbers of above-threshold donations (left hand register) and the average of annual values (measured in constant 2014/15 dollars) of total donations (right hand register). State and territory jurisdictions (the first nine rows) are sorted from the greatest percentage increase (at the top) to the greatest percentage decrease (bottom) for *both registers*.

**Table 4. Summary of Jurisdiction Changes in Total Donation Number and Value**

<b>More donations, more money</b>	<b>More donations, less money</b>	<b>Fewer donations, more money</b>	<b>Fewer donations, less money</b>
Queensland, WA and NT	Tasmania	Federal, ACT and Australia wide (less NSW)	NSW, Victoria, SA and Australia wide

Table 5. Summary of Regressions for Value of Donations (Constant Dollar Amounts) Regressed on Year (NSW as well as Other Jurisdictions)

Jurisdiction	Year (Coefficient)	Election Year (Coefficient)	Raft Years (Coefficient)	Raft Year (Std Beta)
Queensland	-62,456	5,655,431	1,465,898	0.180
ACT	-4,429	22,415	130,163	0.178
Northern Territory	-7,518	1,006,645	112,887	0.112
Western Australia	9,646	2,025,988	183,116	0.071
Victoria	54,158	3,089,663	-450,895	-0.098
NSW	-430,182	10,230,516	-2,693,101	-0.192
South Australia	-11,886	2,652,682	-516,027	-0.205
Tasmania	16,979	535,816	-180,142	-0.257
Federal	1,800,098	18,340,440	-10,055,249	-0.427
<i>Total Australia</i>	<i>1,375,919</i>	<i>28,478,606</i>	<i>-9,924,141</i>	<i>-0.312</i>
<i>Total Australia Less NSW</i>	<i>1,824,700</i>	<i>21,308,172</i>	<i>-8,062,431</i>	<i>-0.304</i>

Notes: Table reports results from 11 separate regressions to contrast the change in the *value* of donations across jurisdictions with explanatory variables for election years and years impacted by NSW political finance laws. Only donations at or beyond threshold amounts included. 'Coefficient' in column 1 here is to be interpreted as the increase/decrease in the value of donations per year between 1998/99 and 2014/15. The 'election year' used for the final two regressions is the year of *federal* elections. The final column standardizes the change: jurisdictions are ranked from greatest increase to greatest decrease. **Sample sizes for each regression is n=17 (number of years).** Other **regression statistics** are not reported as the number of donations included in the analysis is effectively a 'population'. The value of donations (and hence coefficients) is expressed in constant 2014/15 dollars. **The r-square statistic for regressions vary from a low of 0.26 for Victoria up to 0.80 for South Australia; the exception is the regression for the ACT which was unacceptably low.**

Source: Australian Electoral Commission and Melbourne Law School Dollars and Democracy Database



**Table 6. Change in Donations Declared to the Australian Electoral Commission (By Donors) Between Pre and Post Legislative Impacts by Number and Value (for both All Donations and Threshold and Above Donations); NSW-Based Parties**

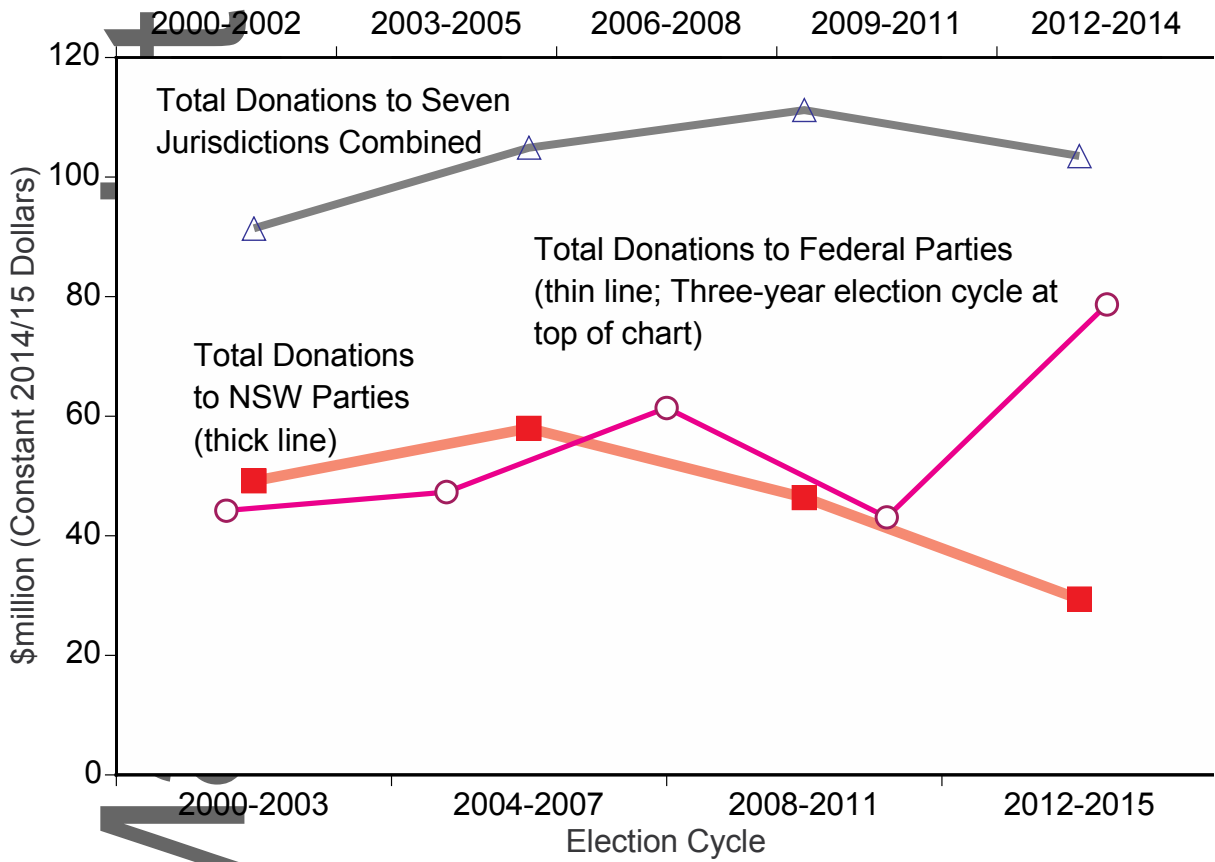
	Number of Donations		Value of Donations	
	All	Thresh	All	Thresh
	% change	% change	% change	% change
Effect of 2008 Act	-6.4	-20.1	-12.4	-11.7
Effect of 2009 Act	-11.8	-37.3	-28.2	-41.7
Effect of 2010 Act	-79.9	-95.5#	-94.0	-97.9#
Effect of 2012 Act	13.9	138.9	136.4	346.5
Effect of 2013 High Court Decision	36.1	-84.6#	8.8	-34.5#

Note: # indicates small sample sizes

**Table 7. Change in Donations Declared to the NSW Electoral Commission Between Pre and Post Legislative Impacts by Number and Value (for both All Donations and Threshold and Above Donations); NSW-Based Parties**

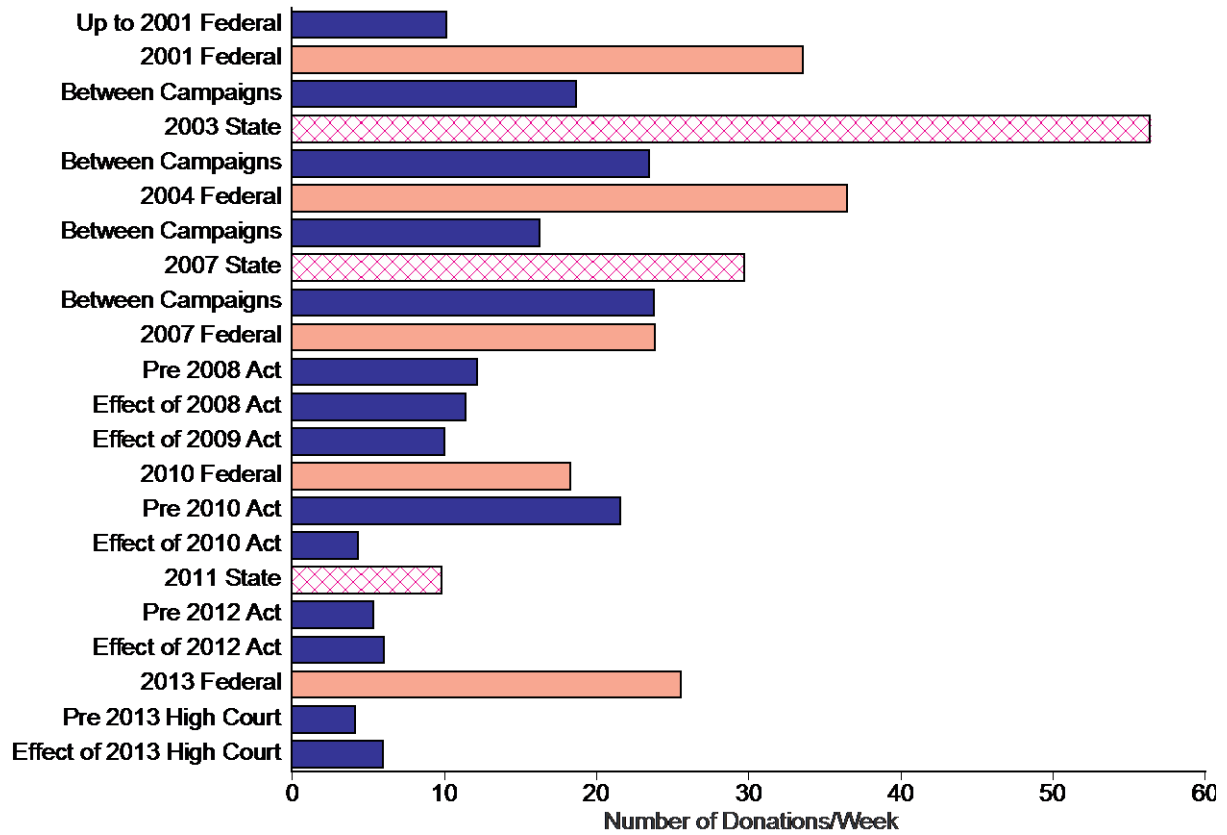
	Number of Donations		Value of Donations	
	All	Thresh	All	Thresh
	% change	% change	% change	% change
<b>Effect of 2008 Act</b>	33.4	-18.1	-12.9	-35.0
<b>Effect of 2009 Act</b>	14.0	-24.8	-7.5	-10.3
<b>Effect of 2010 Act</b>	-25.4	-89.4	-75.2	-95.5
<b>Effect of 2012 Act</b>	49.1	-39.3	-18.9	-40.0
<b>Effect of 2013 High Court Decision</b>	66.7	38.8	191.7	151.5

Chart A Total Value of Donations Over Election Cycles: NSW, Federal Parties, and Seven Jurisdictions Combine (Financial Years 2000 to 2015)

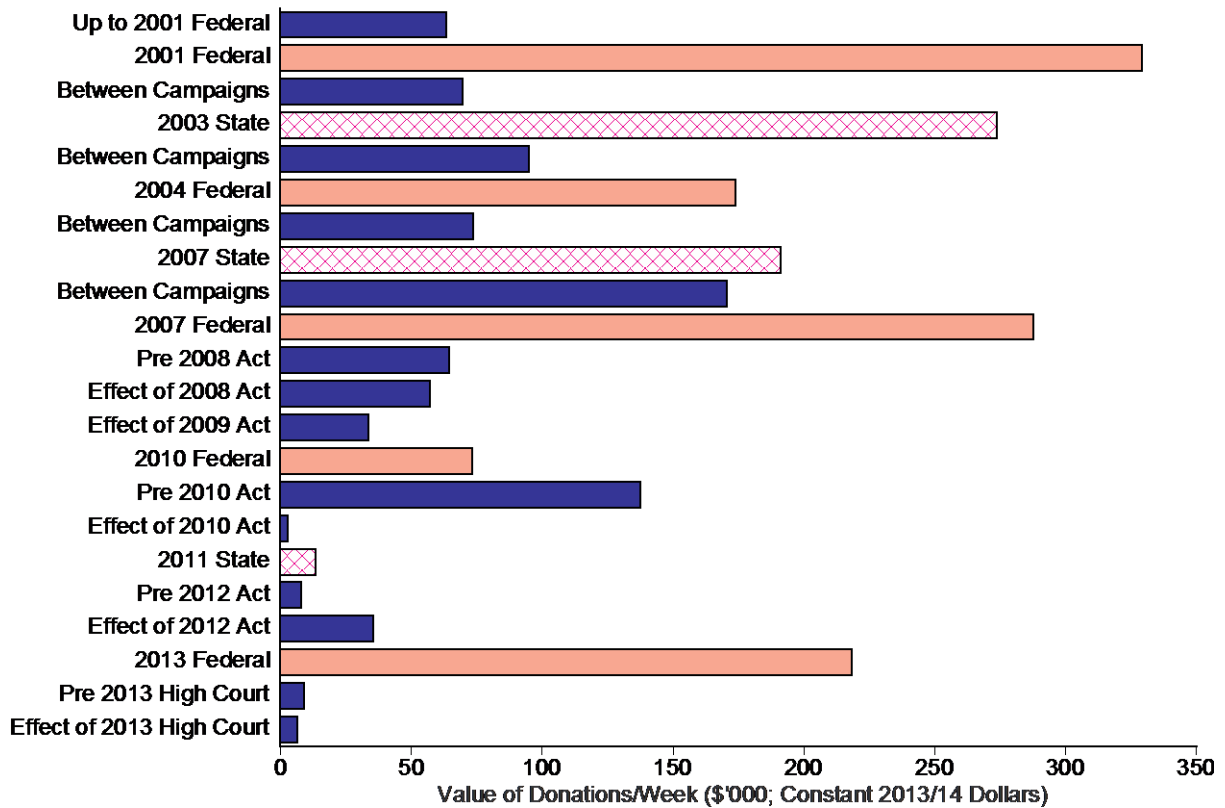


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Chart B Average Number of Donations per Week to NSW Parties (As Reported by Donors to the Australian Electoral Commission) Across Regime Time Periods



**Chart C Average Value of Donations per Week to NSW Parties (As Reported by Donors to the Australian Electoral Commission) Across Regime Time Periods**



**M**

Time	Event	Start Date	End Date	Days
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<b>T12</b>	<b>Effect of <i>Election Funding Amendment (Political Donations and Expenditure) Act 2008</i> (NSW)</b>	<b>30-Jun-08</b>	<b>31-Aug-09</b>	<b>428</b>
<b>T13</b>	<b>Effect of <i>Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009</i> (NSW)</b>	<b>01-Sep-09</b>	<b>09-Jul-10</b>	<b>312</b>
T14	2010 Federal Election	10-Jul-10	04-Sep-10	57
T15	Pre 2010 Act	05-Sep-10	31-Dec-10	118
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<b>Financial Year</b>	<b>Amount</b>	<b>Source</b>
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<b>More donations, more money</b>	<b>More donations, less money</b>	<b>Fewer donations, more money</b>	<b>Fewer donations, less money</b>
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	<b>Number of Donations</b>		<b>Value of Donations</b>	
	<b>All</b>	<b>Thresh</b>	<b>All</b>	<b>Thresh</b>
	<b>% change</b>	<b>% change</b>	<b>% change</b>	<b>% change</b>

<b>Effect of 2008 Act</b>	-6.4	-20.1	-12.4	-11.7
<b>Effect of 2009 Act</b>	-11.8	-37.3	-28.2	-41.7
<b>Effect of 2010 Act</b>	-79.9	-95.5#	-94.0	-97.9#
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<sup>i</sup> The rationale for using six weeks before an election resulted from an inspection of the pattern of dated donations (as reported by donors) for NSW. We also needed to compare with patterns of donations in other jurisdictions and of course, in some cases, the exact date of the election is only known less than six weeks out from an election.

<sup>ii</sup> While there is some discernible upward trend in *actual election-period* spending overall, this virtually disappears when election spending is seen from a per capita (or per vote) perspective (see Anderson and Tham, 2014).

<sup>iii</sup> This included the ALP, Liberal, National, Christian Democrats, Australian Democrats, Shooters and Fishers, Country Labor, and Family First. The Greens were not included as it was not clear that all donations were directed to NSW state activities. Also excluded were donations to candidates – this would require further investigation and coding to identify all in this category.

