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Committee Secretary  
Joint Standing Committee on Electoral Matters  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Joint Standing Committee on Electoral Matters,

Please see below a written submission from the International Institute for Democracy and Electoral Assistance (International IDEA) regarding the conduct of the 2016 Federal Election and matters related thereto and in particular the issue of donations from foreign sources.

### **Introduction**

International IDEA is an intergovernmental organization that supports sustainable democracy around the world. Comprised of, and governed by, its thirty member states, including Australia, the Institute's mission is to support sustainable democratic change through providing comparative knowledge, assisting in democratic reform, and influencing policies and politics.

International IDEA has been working on the issue of money in politics for over fifteen years. Our activities in this area include stimulating national debates on legal reforms, building institutional capacity and producing global comparative knowledge. We carry out this work at our headquarters in Stockholm and through our regional and country offices around the world.

We take a holistic view of money in politics and our work is accordingly not restricted to a particular geographic region or sub-topic. Our aim is to improve understanding of the ways in which money and politics interact by sharing knowledge, experiences and good practice from around the world. International IDEA works in a non-prescriptive manner and therefore does not take a policy stance on the issue of financial contributions from foreign sources. Our role is rather to look at how other countries have addressed this issue and present the rationale and available options for regulating foreign donations.

## **The International Comparative View**

A ban on foreign donations to political parties and/or candidates is one of the most common political finance regulatory measures. International IDEA's Political Finance Database shows that almost two thirds (63%) of countries have a ban on donations from foreign interests to political parties, while half (49%) have a ban on foreign donations to candidates.<sup>1</sup> Among those established democracies that do not have a ban, it is common to place a limit on the amount that a foreign entity can contribute as a measure to curb undue influence. This is the case, for example, in Austria, Germany, New Zealand and Spain.

Australia is therefore among a small number of established democracies that does not have any regulations on contributions from foreign sources.

## **Rationale for banning or regulating foreign donations**

The rationale for banning or regulating donations from foreign sources is principally to prevent undue influence by foreign interests in domestic political affairs, or to phrase it differently to protect the principle of self-determination.

Foreign donations to political parties also risk diluting the impact of domestic donors. A party that receives a significant amount of its funds from overseas may be less reliant on generating funds at home, thus weakening the ties between it and the citizens it should represent.

The aim of regulating foreign contributions may also be to promote greater transparency of the origin and flow of money in politics.

On a more practical level, if foreign donations are permitted but are subject to the same regulations as domestic donations, this can present additional challenges in monitoring compliance and holding donors to account. What power would the political finance oversight agency have, for example, to require foreign donors to file reports or impose sanctions in case of violations?

## **Standards and Guidelines**

While there are no real global standards on political finance, European guidelines are clear that foreign donations should be regulated. The Council of Europe's recommendations to member states on *Common Rules against Corruption in the funding of Political Parties and Electoral Campaigns* from 2003 states in article 7 that, "States should specifically limit, prohibit or otherwise regulate donations from foreign donors."<sup>2</sup> This recommendation is endorsed and elaborated upon in the Organization

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<sup>1</sup> International IDEA Political Finance Database, <http://www.idea.int/data-tools/data/political-finance-database> 'Foreign interests' are defined as those entities who 'contribute directly or indirectly [and who] are governments, corporations, organizations or individuals who are not citizens; that do not reside in the country or have a large share of foreign ownership.'

<sup>2</sup> Council of Europe, Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, article 7 (Adopted by the Committee of Ministers on 8 April 2003)

for Security and Co-operation in Europe (OSCE) *Guidelines on Political Party Regulation*, published by its Office for Democratic Institutions and Human Rights (ODIHR).<sup>3</sup>

### **Designing regulation**

As with any regulation of political finance, the departure point should always be the identification of the problems, or risks, that you wish to address. This will also help determine the level and extent of regulation. As has been mentioned above, two thirds of countries globally have come to the conclusion that the risk of undue foreign influence on domestic politics from foreign contributions is sufficiently high that it warrants a ban of some kind.

### **Definition of 'foreign'**

Any legislation or regulation should clearly define what and who is considered as foreign. For individuals, the definition is often tied to the right to vote. Citizens of the country in question who temporarily reside abroad and retain the right to vote are generally not included in any ban on foreign contributions and not normally included in the definition of 'foreign'.

The status of foreign nationals who have the right to vote in the country of question also needs to be clearly established. In the United Kingdom, for example, citizens of the Republic of Ireland and Commonwealth countries who reside in the UK are permitted to vote in elections and are according to the rule governing donations therefore allowed to make financial contributions to political parties. While the United States of America has a clear ban on political donations by foreign nationals it makes an exception for 'green card' holders who have permanent residence. The same is true of Canada.

The status of corporations whose accounts and dealings cover several countries must also be defined. Numerous criteria can be used to define when a company is considered foreign or not, but any definition should be clearly spelled out. In the UK, "A UK-registered limited liability partnership (LLP) that carries on business in the UK" and "most UK-registered companies" are permitted to make donations to political parties, while in the USA 'foreign corporations' are included in the definition of foreign nationals that are banned<sup>4</sup>. The ban also extends to a domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) if "These activities are financed by the foreign parent or owner; or individual foreign nationals are involved in any way in the making of donations to nonfederal candidates and committees."<sup>5</sup>

### **Who to regulate?**

International IDEA recommends avoiding the creation of loopholes and possible circumvention of the rules when crafting any regulation. In order to achieve the aim of preventing undue influence from foreign sources, this would mean that any ban on foreign donations to political parties should ideally also apply to other electoral actors, such as candidates or third parties. In the UK, for example, third

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<sup>3</sup> OSCE/ODIHR Guidelines on Political Party Regulation, point 172 (Adopted by the Venice Commission on 15-16 October 2010)

<sup>4</sup> UK Electoral Commission, *Overview of Donations to Political Parties*, [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0014/102263/to-donations-rp.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0014/102263/to-donations-rp.pdf)

<sup>5</sup> United States of America Federal Election Commission, Foreign Nationals, <http://www.fec.gov/pages/brochures/foreign.shtm>

parties are regulated and the rules for accepting donations apply to them, including what is considered a foreign donation.

Most countries that ban foreign donations apply this to both legal and natural persons and therefore ban both individual and corporate foreign donations. There are some exceptions to this, such as Spain, where foreign individuals can make donations (within the limits for individual donations) but foreign corporations and governments are prohibited.

Foreign governments or political parties are sometimes explicitly mentioned in the context of a ban on foreign donations, such as in France, or in Sweden where there is a ban on receiving donations from a foreign power.

In other countries an exception to a ban on donations from foreign sources is made for support from ideologically like-minded political parties overseas. Such support is generally given through party internationals or foundations, such as the German *stiftung*, or through trade unions. This is the case in Finland, where the ban does not apply to donations from foreign individuals or international organisations that share the ideological stance of the political party.

#### **Explicit or *de facto* ban?**

Another consideration is whether any ban on donations from foreign sources should be explicit *or de facto*. In the USA, there is a specific ban on political contributions and expenditures by foreign nationals, which clearly outlines who may not contribute. The UK, on the other hand, has taken the opposite approach and the law instead stipulates from whom political parties, candidates and third parties can accept a donation. Anyone not included in this list are *de facto* not allowed to make contributions, which includes foreign donors.

I hope that these comments from an international comparative perspective are useful for the Committee and are able to inform the inquiry.

Yours faithfully,

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