

Committee Secretary  
Senate Finance and Public Administration Legislation Committee

1 July 2020

Dear Committee

***Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020 (Cth)***

Thank you for the opportunity to make a submission on Senator Jacqui Lambie's private member's bill, the *Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020 (Cth)* (**Bill**).

The Bill would lower the current disclosure threshold for donations to candidates, political parties, associated entities, political campaigners and third parties from \$14,000 per annum (indexed), to \$2,500 per 6 months (indexed). It would also require donations over the threshold to be disclosed within 7 days of receipt.<sup>1</sup>

We support the purpose of this Bill - there is an urgent need for greater transparency regarding money in politics in Australia. Lowering the disclosure threshold for donations to politicians and political parties and requiring real time disclosure would be a firm step in the right direction.

However, some minor amendments are required to ensure small grassroots community groups that do not have charitable status are not prevented from advocating in the lead up to elections by overly restrictive laws.

**The Committee should support this Bill, subject to the recommendations detailed below.**

### **Why transparency of political donations matters**

Big political donations are intended to have political influence. There is a sliding scale of influence enabled by political donations: at the lower end, a sizeable donation can ensure the donor gets access

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<sup>1</sup> With the exception of third parties that are charities registered with the ACNC: proposed subs. 305A(3) of the Bill.

to a politician that ordinary Australians wouldn't get.<sup>2</sup> A step above that, is what the High Court has described as "clientelism", or a "subtle kind of corruption... [where] 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".<sup>3</sup> At the far end, is "quid pro quo" corruption – illegal bribes – where politicians explicitly make promises in exchange for donations. This last kind may be rare (although in the absence of a Commonwealth integrity commission, we do not know how rare), but the other forms of influence have become prevalent in our political system.<sup>4</sup>

The ever-increasing cost of election campaigns puts pressure on politicians to keep big donors happy, and current laws effectively bake political inequality into our democracy. Ideally, Federal Parliament would follow the example of NSW, Queensland and Victoria by capping donations to politicians to prevent this coercive relationship from developing. Second to that outcome, however, greater transparency regarding who is influencing our politicians through making large donations would be a big step forward.

### **Why the disclosure threshold for donations to politicians should be lowered**

The current political donation disclosure threshold of \$14,000 is too high and out of step with the public expectation that our political parties be transparent and accountable. Further, donors can avoid publicly disclosing donations many times this amount by also giving \$13,999 to each State branch of a political party.

The high disclosure threshold contributes to the vast amounts of hidden money in our political system. The Centre for Public Integrity estimates that the source of over \$100 million received by the major parties in 2018/19 alone was hidden from public view, in part because of the high donation disclosure threshold.<sup>5</sup>

Lowering the disclosure threshold to \$2,500 per 6 month period would help ensure much needed transparency over the money flowing through our political system. Further, this Bill would require more types of donations, in the form of fundraisers, as well as membership fees, to be disclosed, which is an important inclusion for transparency.

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<sup>2</sup> D Wood, K Griffiths, "Who's in the Room: Access and Influence in Australian Politics" *The Grattan Institute*, 23 September 2018.

<sup>3</sup> *McCloy v NSW* [2015] HCA 34 at [36] per French CJ, Kiefel, Bell, Keane JJ.

<sup>4</sup> For a break-down on how special interest groups convert economic power into political power, see D Wood, K Griffiths, "Who's in the Room? Access and influence in Australian politics" *The Grattan Institute*, September 2018.

<sup>5</sup> Centre for Public Integrity, "Hidden Money in Politics: What the AEC Disclosures Don't Tell Us", *Briefing Paper*, February 2020.

### **Why donations to politicians should be disclosed in real time**

Currently, Federal candidates and political parties are required to disclose their donations only once a year. Disclosure of incoming amounts for the financial year is made to the Australian Electoral Commission (AEC) in October of each year, and published on the AEC's website in February of the following year. This timeline means that up to 20 months can elapse between receipt of the donation and its being made public.

Knowledge of who has made substantial contributions to politicians is of heightened importance in the lead up to an election. Knowing the timing of donations at other times of the government term can also be informative: for instance, a political donation made by a corporation during a tender process could have immense significance.

By requiring donations over the new disclosure threshold to be disclosed publicly within seven days of receipt, this Bill would make the role that money plays in our political system more transparent.

### **Unintended consequences for small groups**

Law reform in this area can often have an unintended but significant adverse impact on small grassroots community groups' ability to advocate on issues that matter to them.

Donations to community groups and charities should not be regulated in the same way as donations to candidates and political parties. This is because:

1. **The compliance burden imposed by complex laws can exclude small community groups from advocating in the lead up to an election:** these groups rarely have the resources to comply with the regulatory burden imposed by complex electoral laws, and they will opt not to participate in election debates rather than risk facing tough penalties for getting the laws wrong.
2. **There is not the same public policy imperative to regulate small community groups as there is to regulate politicians and political parties:** donations to community groups and charities cannot be used to buy access to and influence over politicians. Community groups and charities do not pass laws, hand out corporate tax breaks or make planning approvals.

Community groups and charities are vital contributors to our election debates, and should be protected by burdensome laws, not silenced by them.

While this Bill includes some important exemptions for charities, it unintentionally burdens small grassroots community groups that do not have charity status.

**The Bill should not set the threshold for becoming a third party at \$2,500 in electoral expenditure**

Section 287 of the *Commonwealth Electoral Act 1918* (Cth) (**Act**) defines “third party” as an entity which has incurred electoral expenditure in excess of the disclosure threshold (but is not a political campaigner). In lowering the disclosure threshold from \$14,000 per year to \$2,500 per 6 months, this Bill would also lower the threshold at which community groups and charities become third parties and be subject to the disclosure and reporting regime under the Act.

Having the threshold for becoming a third party set so low will expose small grassroots community groups to onerous reporting requirements for very small spends, equivalent to a couple of ads in a local newspaper. Unless they have charity status under the *Charities Act 2013* (Cth) (and many won't), they will be required to disclose all their donations over the disclosure threshold within seven business days of receipt (proposed s. 305A of the Bill).

On top of that, the biannual reporting burden under the Bill is far more onerous than the current disclosure obligations on third parties. Currently under ss. 314AEB and 314AEC of the Act, third parties must disclose their electoral expenditure and gifts used to incur that electoral expenditure, if those gifts were over the disclosure threshold.

If this Bill were passed, third parties not registered as charities would have to disclose all their income and every single donation over the threshold received, regardless of whether it was used to incur electoral expenditure. Under the Bill, the penalty for not complying is substantial: even inadvertent non-compliance could lead to a \$25,200 fine (proposed s. 314AB). Such broad disclosure imposes an enormous burden on local groups while, again, **providing little, if any public interest benefit.**

**Recommendation 1**

**The Bill be amended to:**

- (i) decouple the disclosure threshold from the spending threshold at which a person or entity becomes a third party; and**
- (ii) maintain a spending threshold for becoming a third party of not less than \$14,000 indexed. Note that an even higher threshold may be warranted, taking account of the experience of community groups and charities complying with the Act, together with analysis indicating the level of spending that may influence the outcome of an election in a single electorate.**

***Recommendation 2***

**The Bill be amended to:**

- (i) retain a disclosure threshold of \$14,000 for third parties;**
- (ii) only require disclosure of donations over the threshold used to incur electoral expenditure; and**
- (iii) not require third parties to disclose all their total income, spending and debts.**

We would be pleased to appear before the Committee should it assist.

Yours sincerely



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