

Joint Standing Committee on Electoral Matters, Parliament of Australia
Inquiry into Commonwealth Electoral Amendment (Lowering the Donation Disclosure Threshold) Bill 2019

Submission from Professor Graeme Orr, University of Queensland Law School

Thank you for the opportunity to make a submission on this private member's bill.

Principle

As to the principle behind this short bill, I support lowering the current threshold. It would better be lowered as part of a more holistic reform of the finance regime in Part XX of the *Commonwealth Electoral Act*, of the kind seen in the eastern States. But some reform is better than none.

Amount

Whether \$1000 is the ideal figure is a matter over which reasonable people may disagree. The purpose behind disclosure regimes is to enable scrutiny of monetary contributions, given two types of public concerns:

(a) *Anti-corruption and the integrity of public bodies.* This is the risk, actual and perceived, of money buying influence over parties, candidates and public policy. This integrity concern focuses on donations that are not purely ideological.

(b) *Accountability of private action in the public sphere.* Over some threshold, donations to leverage a partisan or ideological cause should be open to public scrutiny: just as if the donor used that money to campaign directly, given the law seeks to require such campaign material to be authorised by its true source.

The existing threshold is high, in a policy and a practical sense. It is well above the amount most ordinary folk can afford to donate to a political cause in any year. Also, one can donate to just below the threshold, across each division of a party – as well as donating to candidates – and potentially leverage real influence within the party as a whole, as well as funding significant electioneering, whilst avoiding scrutiny.

On the other hand, \$1000 equates to a direct debit of just \$20 per week to support a political cause. That is not beyond people on median incomes. On its own, it is not an amount likely to leverage influence or invite accountability scrutiny. But its disclosure (required by section 305B(1)) might deter a public servant or a small retailer from using such a modest sum to associate with a political cause.

Detail and Unintended Consequence for 'Third Parties'

The Bill may have unintended consequences for 'third parties'. That is, for civil society groups involved in limited electoral activity who are currently caught in the net of the Act. This is because in defining 'third party', section 287 borrows the current disclosure threshold to use as a proxy for the amount of 'electoral expenditure' that makes a group a 'third party' liable to offences involving foreign gifts (sections 302E-F) and annual financial disclosure obligations (sections 314AA and AEB).

I doubt it was intended, by earlier Parliaments, that a body outlaying a mere \$1000 in a year on 'electoral expenditure' should be caught up in either, potentially intricate, net.

The obvious answer is that, in lowering the threshold for disclosure of 'gifts' from individual sources, the Act should ensure a higher threshold of electoral expenditure before roping in 'third parties'.