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

28 October 2019

Submitted via email: em@aph.gov.au

Dear Committee,

Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019

The Australian Conservation Foundation would like to thank you for the opportunity to make a submission to the Joint Standing Committee on Electoral Matters' inquiry into the Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019 ("the Bill").

The Australian Conservation Foundation strongly supports reforms to strengthen the integrity of Australia's federal donations and electoral expenditure regime, including greater transparency of political funding; caps on political donations to parties; caps on election spending; a fair system of public funding of political parties and candidates; and more effective regulation of lobbyists.

Real time disclosure of political donations is a critical reform to bring greater transparency and maintain public confidence in our political system. ACF welcomes the opportunity that this inquiry brings to carefully consider the application of real time disclosure. The first part of this submission focuses on the application of real time disclosure to political campaigners and charities and highlights several considerations which we urge the Committee to explore further. The second part of this submission highlights drafting concerns with the Bill.

A. The regulation of political campaigners

There are two competing considerations in the regulation of political campaigners. Principles of fairness and political integrity point to stricter regulation, whereas, the democratic importance of political freedoms and political participation points to less, especially if the proposed regulatory burden is considerable. The challenge lies in developing a workable regime that balances these considerations in the context where a political campaigner has a purpose other than political advocacy, such as a charitable purpose.



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The motivations for capturing political campaigners under real time disclosure regimes are different to other actors in elections. For political parties and candidates, the additional transparency of real time disclosure of donations can be understood as trying to achieve three primary objectives. First, it allows voters to make more informed decisions when choosing who to vote for in elections. Second, it seeks to maintain public confidence by providing greater transparency over the source of political donations in the political system. Finally, a main objective of real time disclosure is to deter or expose undue influence (including criminal corruption) which may arise through large or frequent political donations¹.

For political campaigners, the first two objectives apply, however the connection to the prevention of undue influence over as understood above is less clear. Politicians and political parties stand to end up in positions of power where they control or have influence over public resources, planning and decision-making processes. Large donations have the potential to exert inappropriate influence over those processes. On the other hand, political campaigners can only advocate for government or voters to take particular action and are removed from actual decision-making processes. Therefore, the primary objective of applying real time disclosure to political campaigners is to create greater transparency over the sources of funds used by political campaigners for electoral expenditure, so that the public is more informed over the influence that is intended to be achieved through political campaigning. Additional transparency in this sense may help to reveal the intentions and motivations of political campaigning activities, such as by exposing front groups established to obscure the true intentions of political campaigning activities.

Disclosure of gifts for political campaigners must be linked to electoral expenditure

Some organisations that may be registered as political campaigners under the Electoral Act exist for a variety of purposes outside of political campaigning. Simply because an organisation engages in some activities that are (and ought to be) captured by electoral law, does not mean it is, in its character, a political campaigning organisation akin to a political party. Charities, for example, exist to pursue a charitable purpose in the public interest and undertake a number of activities towards their charitable purpose of which political campaigning during election periods may be one component. This is different to political parties, candidates and associated entities whose primary purpose is to win, or assist candidates or political parties to win, office and therefore should disclose all gifts over the threshold.

Many charities receive small philanthropic gifts used towards their charitable purpose. Donors to these organisations who do not intend for their philanthropic gift to be used towards electoral expenditure have the right to privacy and should not be required to reveal their personal information on a public register. This is an important distinction as the regulatory burden of real time disclosure to charities who are third party campaigners is likely to be significant. Charities would be tasked in determining, in real time, which donations may be used at a future date for electoral expenditure. Charities that fall within the category of political campaigners should only be required to disclose in real time those

¹ Joo-Cheong Tham, 2010, *Money & Politics: the politics we can't afford*, page 26



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gifts over the threshold that are made with the intention of being used towards electoral expenditure. For example, gifts made in response to an appeal for an advertisement of an election issue during an election. Other gifts over the threshold used towards electoral expenditure are already required to be disclosed in an annual return and this should continue to be the case.

Recommendation: With respect to charities, only gifts made with the intention (of the donor) to be spent on 'electoral expenditure' should be captured under real time disclosure reforms. When there is no nexus between a 'gift' and electoral expenditure' that gift should fall outside the real time disclosure regime, however the requirement to disclose these gifts used towards electoral expenditure in an annual return should continue to apply.

The definition of "gift" must capture relevant non-donation income

Real time disclosure of political gifts seeks to create greater transparency, in real time, in relation to the source of money used by political campaigners to influence voters and political parties in elections. The current definition of "gift" is not adequate to capture the varying ways that money used towards electoral expenditure flows into the organisations of political campaigners. As the definition of gift currently stands, it does not capture money flowing into the largest political players by way of member fees, levies, subscriptions and the like and therefore misses a key opportunity to bring greater transparency of money used towards electoral expenditure.

Some of the biggest spenders on electoral expenditure during elections are industry groups. Table 1 below shows the top 10 third party electoral expenditures for fiscal year 2016/17, which includes the 2016 Federal Election. The majority of the organisations listed in Table 1 would likely rely on income structures based on membership fees, levies or subscriptions which are then applied towards electoral expenditure. For example, the largest single electoral expenditure during the 2016 election was by ACA Low Emissions Technologies Ltd on the 'Coal—it's an amazing thing' campaign. The ABC reported the source of this money as voluntary levies paid by coal companies intended for research into "clean coal" but which we're later spent on coal promotion. The levies were deducted from mining royalties which otherwise would have gone to state governments for public revenue.²

The way the current Bill stands means that an organisation could classify donations as 'membership fees' to circumvent transparency. For example, an organisation currently receiving small donations could create a membership structure whereby donations are classified as a membership fee, therefore not requiring disclosure.

² Stephen Long, 2017, 'Pre-election coal advertising funded by meant for clean coal research', Australian Broadcasting Corporation, <<https://www.abc.net.au/news/2017-02-20/coal-advertising-funded-by-money-meant-for-clean-coal-research/8287326?pfmredir=sm>>



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Table 1: Top electoral expenditure by third parties in Fiscal year 2016/17³

Organisation	Total Expenditure FY 2016/17
ACA Low Emissions Technologies Ltd	3,584,115.00
Minerals Council of Australia	1,297,025.00
Australian Education Union	894,372.00
Australian Council of Trade Unions	888,941.00
GetUp Limited	821,093.00
AEU NSW Teachers Federation	516,512.00
Universities Australia	510,934.00
United Voice	425,068.00
Australian Education Union Victorian Branch	371,934.00
Automotive Food Metals Engineering Printing & Kindred Ind. Union	371,934.00

This is a significant shortfall in the current Bill insofar as it aims to create greater transparency over the sources of money used for electoral expenditure. As is, this Bill would create an unequal regulatory burden for political campaigners by only capturing charities and not-for-profits which rely on gifts for income.

Recommendation: Reforms should capture relevant non-donation income such as membership fees, levies and subscriptions to political campaigners used towards electoral expenditure.

B. Drafting concerns with the proposed Bill

The Bill does not link gift disclosure for political campaigners with charity status to electoral expenditure

Charities engage in a wide range of activities in pursuit of their charitable purpose which do not include electoral expenditure. Real time disclosure of gifts should apply only to the *relevant activities* of charities. This distinction is currently made under section 305B of the Commonwealth Electoral Act, which requires charities who are political campaigners to disclose only those donations used towards electoral expenditure. As such, the Bill should require charities to disclose in real time only those gifts used towards electoral expenditure. However, given the potential regulatory burden in determining in real time which gifts may, at some point in the future, be used towards electoral expenditure (particularly if the disclosure threshold is lowered), only those gifts made with the intention of the donor to be used towards electoral expenditure should be captured under real time disclosure. Other gifts used towards electoral expenditure must still be disclosed in an annual return under current law.

³ Australian Electoral Commission, Summary of Political Expenditure Returns – 2016-17, <<https://periodicdisclosures.aec.gov.au/SummaryPoliticalExpenditure.aspx>>



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Recommendation: The Bill be amended to specify that charities disclose in real time only those gifts made with the intention that they be used for electoral expenditure.

The Bill requires the disclosure of all gifts regardless of amount

Both the amendments to section 302V and new section 305C refer to the disclosure of gifts in real time without relation to the disclosure threshold⁴. The Bill therefore appears to require the disclosure of all gifts, regardless of the amount of the gift, in real time. This does not appear to be in line with the intention in the explanatory memorandum which specifies the real time disclosure of gifts over the disclosure threshold⁵.

Recommendation: The Bill should be amended to specify the disclosure of gifts *over the disclosure threshold* in real time.

The Bill does not capture Associated Entities or candidates

Political parties, candidates, associated entities and political campaigners are all major actors in elections and should be covered under real time disclosure reforms. The present Bill only captures political parties, state branches and political campaigners and should be amended to include associated entities and candidates.

Recommendation: The Bill be amended to capture political candidates and associated entities.

In conclusion, ACF makes the following recommendations to the Committee:

- With respect to registered charities, only gifts made with the intention (of the donor) to be spent on 'electoral expenditure' should be captured. When there is no nexus between a 'gift' and electoral expenditure' that gift should fall outside the regime.
- Real time disclosure reforms should capture relevant non-donation income such as membership fees, levies and subscriptions to political campaigners used towards electoral expenditure.
- The Bill should be amended to specify the disclosure of gifts *over the disclosure threshold* in real time.
- The Bill be amended to capture political candidates and associated entities.

⁴ First reading of the *Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019*,

⁵ Explanatory Memorandum to the *Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019*



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Thank you for the opportunity to provide this submission. ACF would be happy to provide further information on request if it were beneficial to the Committee.

For more information:

JOLENE ELBERTH | Democracy Campaigner | [REDACTED]

The Australian Conservation Foundation is Australia's national environment organisation. We stand up, speak out and act for a world where reefs, rivers, forests and wildlife thrive.

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