

Submission to the Joint Standing Committee on Electoral Matters regarding the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Submitted by: Dr Nicholas Scott on his own behalf. Dr Scott is a retired academic engaged in Australia's public political discourse.

Summary: The provisions in this Bill that define and seek to regulate an 'associated entity' are considered oppressive, illogical and undemocratic. The control sought over participants engaging in rightful public political discourse, and the costs intended to be imposed on them, are likely to limit free speech by Australian citizens and groups to the detriment of society.

Context: The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 deals with various aspects of electoral funding and the registration of participants in the political process. This submission solely concerns section 287H, subsections (1) (b) and (5) (b) (iii) and (iv).

Subsection (1) (b) of s.287H states that an entity shall be registered as an 'associated entity' if its action is wholly or significantly "for the benefit of one or more registered political parties". Subsection (5) (b) (iii) and (iv) extends this registration of an associated entity to include any entity that spends most of its income on promoting one political party candidate (iii) or opposing one for the benefit of another political party (iv), thus adding a financial qualification to the obligation to register.

Arguments: I take grave exception to both the intent and proposed operation of s.287H, and I maintain that it will have a chilling effect on the free expression of political opinion by Australian citizens and groups, to the detriment of civil society and the democratic fabric of Australia.

- The concept "for the benefit of ... a political party" is so imprecise it could be interpreted to catch almost any type of political activity which the government of the day might choose to target, to impede or control it. Applied literally it includes indirect as well as direct benefits, so that simply advocating a point of view (for example promoting reliance on renewable energy or opposing tax cuts for large companies) could compel registration where the proponent's views simply reflect or coincide with the policy position of an opposition party. A mere coincidence in some views held by a political entity, such as an individual citizen demonstrating in front of their local member's electorate office say, and the policy position of a political party

cannot possibly be justified as grounds for control. Dissent is not a threat to public order or governance; indeed, it is an essential element of a well-functioning democracy.

- The act of registration of an associated entity brings with it an administrative burden which adds a cost in time, complexity and possibly money to political expression, puts in place a mechanism for control of all participants in public discourse, and threatens regulatory creep in the future that would constrain the right to free speech and political engagement by Australian citizens. It is therefore a punitive regime designed to limit rightful political expression.
- The choice of the legislation to trigger an imposition on citizens (registration) by some imputed benefit to another party even where there is no relationship between the entity and that party, is illogical. It seeks to impose regulation on negative grounds (because a benefit is gained indirectly by a party not involved in the political action), rather than positively in response to a harm suffered by the party which is the object of the action. Regulation where it is used punitively should only be used to reverse or mitigate harm, not to deny a benefit.

Recommendation: I ask the Committee to reject s.287H and its related sections as being undemocratic and an unwarranted attack upon our country's political discourse, and to excise it from this bill.

Dr Nicholas Scott