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3 July 2020

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

Sent via submission link

INQUIRY INTO ELECTORAL LEGISLATION AMENDMENT

To whom it may concern,

Thank you for the opportunity to make a submission to the inquiry into the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (Cth), to comment on the proposed legislation.

Should you require any further information, please do not hesitate to contact me.

[redacted]
Julie-Ann Campbell
STATE SECRETARY

Comments by Australian Labor Party (State of Queensland) to inquiry into Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (Cth)

INTRODUCTION

1. This Bill represents the latest salvo in the Coalition Government's war against electoral integrity and fairness. Proposed new sections 302CA and 314B ("**the proposed amendments**") would have corrosive consequences for the electoral integrity of not just the Commonwealth, but all those State jurisdictions that have taken steps to bolster the integrity of the political process. For that reason, the Bill cannot be supported.

CONTEXT

2. In order to properly analyse the implications and true intentions of the proposed amendments, it is necessary to examine the context in which the proposed amendments arise.

3. In 2015, one of the first acts of the newly elected Palaszczuk Government was to decrease the donation disclosure threshold from $12,800 to $1,000.[1] This followed moves by the previous LNP Government to dramatically raise the donation disclosure threshold.

4. To accompany the lower donation disclosure threshold, the Palaszczuk Government introduced real-time disclosure laws that ensured donations above the donation threshold would be disclosed within seven working days[2]. Recently, amendments have been made to Queensland's Electoral Act to require that donations above the disclosure threshold that are made in the last seven days of an election campaign be disclosed within 24 hours.

5. As a consequence of the Crime and Corruption Commission's Operation Belcarra, the Palaszczuk Government implemented a ban on property developer donations.[3]

6. In light of the amendments set out above, the LNP, both in Queensland and at a Federal level, engaged in a cynical campaign of regulatory sabotage and obstructive litigation.

7. The Queensland LNP sought to have the Queensland donation disclosure threshold held invalid, owing to the fact that it was lower than the Commonwealth

[1] https://www.abc.net.au/news/2015-05-08/parliament-passes-retrospective-laws-for-political-donations/6454200
[2] http://statements.qld.gov.au/Statement/2017/2/23/palaszczuk-government-delivers-realtime-donation-disclosure
[3] http://statements.qld.gov.au/Statement/2018/5/17/palaszczuk-government-builds-on-integrity-record

disclosure threshold. Despite the LNP being unsuccessful at first instance[4], it used the prospect of an (ultimately unsuccessful[5]) appeal to justify withholding disclosure of hundreds of thousands of dollars' worth of donations made during the federal election campaign.[6]

8. Further to its challenges to the donation disclosure threshold, the LNP also sought to undermine Queensland's prohibited donor scheme.

9. Gary Spence, a former LNP State President, sought to have the property developer donation ban declared unconstitutional by the High Court. His case, in no small part, was aided by the previous amendments to 302CA and 314AB made by the Federal Coalition Government, that were made after the introduction of Queensland's property developer ban, but before Mr Spence's case was heard by the High Court. It could be argued that the singular purpose of the previous amendments of 302CA and 314B was to assist the Queensland LNP in receiving property developer donations.

10. Mr Spence's case was unsuccessful.[7] The High Court held Queensland's property developer ban was valid. Further, the majority of the High Court held that the previous amendments made in relation to 302CA and 314B were "wholly invalid".

11. The LNP at a State level and the Coalition at the Federal level have obstinately opposed fair minded electoral reforms that promote transparency and accountability. It is because of this fanatical opposition to common-sense reforms that the current amendments are being proposed.

12. The Committee should reject them.

PRACTICAL OUTCOMES OF PROPOSED AMENDMENTS

13. Beyond the rampant partisanship that motivates these amendments, it is necessary to interrogate the practical outcomes that would arise.

14. The proposed amendment to 302CA would create a greater integrity risk to state political parties and the candidates such parties endorse. Proposed section 314B would allow that integrity risk to flourish without the appropriate levels of disclosure that state jurisdictions currently require of political parties.

[4] https://www.queenslandjudgments.com.au/case/id/306566
[5] https://www.queenslandjudgments.com.au/case/id/340370
[6] https://www.theaustralian.com.au/nation/politics/lnp-donations-kept-secret-after-federal-poll/news-story/0f5ff172010bb97f39a8dfd01ef8caaf
[7] See: *Spence v Queensland* [2019] HCA 15 http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/15

Proposed section 302CA

15. The Coalition Government needs to articulate why it is that they believe democracy would be best served by a deluge of donations from property developers.

16. Regardless of the personal views of the Committee or the Government, property developers, have been identified as legitimate corruption risks.

17. While the Coalition Government might argue that the integrity risk posed by the above class of donors does not apply to the federal sphere of politics, it cannot be reasonably contended that the deluge of donations does not pose an integrity risk to state parties.

18. As was noted in *Spence*, the state branches of political parties endorse candidates for elections at the local government, state government and federal government level. If the proposed amendments become law, a donor with nefarious intent may secure access to state (or local government) politicians by making a donation to a state party, notwithstanding the donation being ostensibly made for a federal "purpose".

19. An example of how this might manifest itself is set out below:

> *Political Party A is a political party registered in Queensland. It endorses candidates for local government, state and federal elections. It decides to hold a fundraiser for property developers. It sells tickets to individual property developers at a price of $10,000 per person. At the event, the property developers will have the opportunity to be seated with the State Planning Minister. On the event invitation, it is noted that the funds will be used for federal electoral purposes.*

20. The above example would likely be permissible pursuant to the amendments proposed to 302CA.

21. Simply asserting a donation is for federal purposes does not insulate a state party, or the state candidates it endorses, from corruption risks.

Proposed section 314B

22. Proposed section 314B compounds the situation. If it is the view of the Coalition Government that the class of donors that are prohibited from making political donations in various state jurisdictions do not pose an integrity risk at the federal level, then the disclosure regimes of the state jurisdictions should not be fettered by this Bill.

23. Taking the example set out above, if Queensland's donation disclosure threshold applied to the property developer donations, the public would still be able to analyse the fact the donations had been made and draw inferences in relation to any future actions of the Planning Minister on that basis. If proposed section 314B

became law, the public would have no knowledge whatsoever of the donations being made.

24. If the Coalition Government does not believe they are doing anything wrong, they need to answer the question: what have you got to hide?

SOME REASONABLY AVAILABLE ALTERNATIVES

25. The bill proposes a course of action that has the potential to corrupt the processes of state political parties. Moreover, the corruption risk may flourish under the cover of darkness without the public having any knowledge whatsoever.

26. This is inexcusable. This is particularly so given there are some compelling alternatives that are available to the LNP.

Federal Secretariats as the legitimate vessel of federal donations

27. To my knowledge, there does not appear to be any law that presently precludes a person or entity who is prohibited from making a donation to state a party, making a donation to the federal secretariat of the relevant party.

28. This practice is preferable to the practice that would be enshrined by this Bill. That is because the federal secretariats of political parties do not have an organisational nexus with candidates across multiple levels of government. Instead, it is focussed upon the promotion and election of federal candidates to federal parliament.

29. There is no explication of why this practice is less desirable than allowing the same money to flow through state parties. If the argument is that donors prefer to donate to state parties because they have greater control as to where the money will be ultimately allocated, that in and of itself would be troubling.

30. Establishing federal secretariats as the hub for individuals or entities otherwise prohibited from donating at a state level would suitably insulate state parties (and by extension, state and local government candidates) from any integrity risks, actual or perceived, posed by prohibited donations.

Wholesale Electoral Reform: following the Queensland example

31. If the Coalition Government were serious about electoral reform, they would adopt the nation-leading approach implemented by the Palaszczuk Government. The *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019* establishes an example for all other jurisdictions to follow. Relevantly, it:

    - Caps electoral expenditure for:

i. political parties at $92,000 per endorsed candidate, with no more than $92,000 being permitted to be spent in an individual electorate;
ii. party endorsed candidates at $58,000;
iii. independent candidates at $87,000; and
iv. registered third parties at $1 million statewide, with no more than $87,000 in an individual electorate.

- Caps political donations so that a donor cannot:
  i. donate more than $4,000 to a political party;
  ii. donate more than an aggregated $6,000 to candidates of the same political party; and
  iii. donate more than $6,000 to the one independent candidate.

32. Real, lasting, electoral reforms have the capacity to reverse the declining levels of trust members of the public have in our political institutions. The Queensland reforms will ensure that everyone in the political process has the capacity to have their say and will prevent the corrosive political arms race of excessive expenditure and dodgy donations from self-perpetuating. The Federal LNP should put partisanship aside and join with the Queensland Labor Government in restoring trust back in politics.

CONCLUSION

33. The proposed amendments are nothing more than a puerile political attempt to undermine the nation leading political integrity scheme implemented by the Palaszczuk Government. It is distressing that in the midst of a global pandemic the Morrison Government has seen fit to introduce a Bill that is singularly focussed on ensuring partisan political advantage.

34. The Bill should be opposed.