

Joint Standing Committee on Electoral Matters

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

Submission by Professor Graeme Orr, University of Queensland

In Principle

The bill seeks to institute a form of real-time disclosure at the Commonwealth level.

That aim is admirable, and long overdue.

The bill complements the government's 2018 'transparency register' reforms.

In outlining the 'menu' of options for regulation of political and party finance, Professor Keith Ewing stated that 'the starter [dish] is transparency, which is now fully recognised as the prerequisite by almost everyone'.¹ He goes on to say that the 'main course' should involve caps on either or both of spending or donations. Disclosure does not necessarily address corrupting donations, let alone further other aims such as fair political competition or dampening campaign arms' races. However as this bill is limited to enhancing disclosure I will not bore the committee with the arguments in favour of caps.

In the mid-2000s I argued that our Commonwealth disclosure law was 'lackadaisical', both in itself and compared to other jurisdictions, and have argued for timely.² Elsewhere I have described the long-standing New York and recent Queensland real-time disclosure systems.³

Drafting

The explanatory memorandum states:

This Bill amends the Act to require the agent or financial controller of the party, branch or campaigner to advise the electoral commission of any donation received by the party, branch or campaigner **that meets or exceeds the disclosure threshold**.

The notification must occur within 5 business days of receipt of the donation

I doubt the Bill as drafted does this. Proposed section 305C requires *any* 'gift' to be notified within 5 days. (See also proposed amendment to section 302V). A 'gift', as defined in section 287, encompasses anything tangible given without full consideration. That is, any disposition of money or property, other than as a purchase. So a term other than 'gift' needs to be used and defined. Or 'gifts that are more than the disclosure threshold' used in section 305C instead. (I note her that 'more than', rather than 'meets or exceeds', is the current rule for disclosure).

If the bill intends all gifts be disclosed in real-time that would have major ramifications for the system: especially for small donor privacy and the administrative burden on parties and the AEC.

¹ KD Ewing, 'Political Party Finance: Themes in International Context', in J-C Tham, B Costar and G Orr (eds), *Electoral Democracy: Australian Prospects* (MUP, 2011) 150.

² G Orr, ['Political Disclosure Regulation in Australia: Lackadaisical Law'](#) (2007) 6 *Election Law Journal* 72. Also G Orr, *The Law of Politics* (1st ed, Federation Press, 2010) 245 and (2nd ed, 2019) 242.

³ G Orr, ['New York: Where Political Finance Never Sleeps'](#), *Inside Story* (4 Feb 2014) and ['On Political Donations: Queensland Sets the Pace'](#), *Inside Story* (13 Mar 2017).

Issues of Design

Here are three issues not addressed by the bill. I realise the intention may have been to not deal with them, to keep the bill simple.

- **Multiple Gifts below Threshold.**

A donor, especially one advised by a party, could avoid early disclosure by donating below the threshold. Perhaps the bill's intention is to allow that and only capture singular large donations.

The alternative regulatory option is for the disclosure obligation to be triggered whenever the threshold is exceeded cumulatively from one source, within the relevant period (currently a financial year). This is the case in some State systems. In Queensland this obligation falls on a party and donor when the cumulative donations hit \$100 000.⁴ (It should be noted that Queensland parties must also give running disclosure of every individual gift over \$1000.⁵) In Victoria, an obligation falls on the donor to track its cumulative donations and report when it hits the \$1000 threshold.⁶ In New South Wales, both party and donor have to track cumulative donations and report when they hit \$1000; but a real-time (as opposed to half yearly) disclosure obligation only arises during the approximately 6 month period leading up to an election.⁷

- **Identity of Donor.**

The bill just requires name and address. New South Wales law requires non-individual donors to be also identified by their ABN (or ASIC corporate identifier).⁸ A business's public trading name is a useful piece of public identification. But adding a unique identifier like an ABN has the virtue of making it easier for the media and others to trace and connect donations from the same underlying source and for the electoral commission to correct misdescribed business names.

- **Unwanted Gifts.**

Under the Queensland system, if a party returns a political donation to the donor within 6 weeks, then the published record must note that.⁹ Queensland, it should be noted, has built an electronic disclosure system which endeavours to match donor disclosures with party disclosures. These measures in Queensland may avoid the mischief of embarrassing donations – eg from a source seen as socially undesirable or against a party's policies on acceptable sources. In theory an extremist group might donate to embarrass a party and it take some time for the party to twig.

There is no such allowance in the bill before this inquiry. However the 'disclose within 5 business days rule' would give a kind of grace period. It might also be thought unlikely that a donor would part with close to \$14 000 or more just to attempt to embarrass a party.

⁴ *Electoral Act 1992* (Qld) s 266B. The time given to report is 7 business days: *Electoral Regulation 2003* (Qld) reg 8E.

⁵ *Electoral Act 1992* (Qld) s 264(4), (5)

⁶ *Electoral Act 2002* (Vic) s 216. The time given to report is 21 days.

⁷ *Electoral Funding Act 2018* (NSW) ss 6, 15.

⁸ *Electoral Funding Act 2018* (NSW) ss 19(2)(f), 46.

⁹ *Electoral Act 1992* (Qld) s 260.

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