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**Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Electoral
Legislation Amendment (Miscellaneous Measures) Bill 2020**

Dear Committee

I am an Associate Professor of Constitutional Law at Monash University.

I recommend repealing sections 302CA and 314B of the *Commonwealth Electoral Act 1918* rather than replacing those provisions with revised provisions as the Bill proposes to do.

Section 302CA – overriding and weakening State/Territory anti-corruption measures

The existing section 302CA was declared to be wholly invalid by the High Court in *Spence v Queensland* [2019] HCA 15.

The practical effect of the proposed new section 302CA is to permit persons and entities that are banned from making political donations under State electoral laws to make donations to the federal branches of political parties if the donation is made “for federal purposes”. For example, a property developer in NSW will be permitted to make political donations to the Labor and Liberal party federal politicians in NSW despite being banned from making political donations to Labor and Liberal party State politicians in NSW.

In other words, the practical effect of proposed new section 302CA is to override and weaken State and Territory anti-corruption measures.

The Explanatory Memorandum does not explain why State and Territory anti-corruption measures should be overridden and weakened. In practice, a dodgy property developer donating money “for federal purposes” to the Labor or Liberal parties is still ingratiating him or herself to the party. Many corruption inquiries show where such ingratiation leads.

Section 302CA should be repealed and not replaced. State and Territory anti-corruption measures should not be overridden by federal law unless there is a very good reason to do so. No reason at all is identified.

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Section 314B – overriding and weakening State/Territory disclosure and transparency requirements

The practical effect of the proposed new section 314B is to exempt the kinds of donations permitted by proposed new section 302CA from being disclosed under State and Territory disclosure and transparency regimes.

In other words, the practical effect of proposed new section 314B is to override and weaken State and Territory disclosure and transparency rules.

The Explanatory Memorandum does not explain why State and Territory disclosure and transparency measures should be overridden. Sunlight is a good disinfectant; the more disclosure and transparency the better. This provision takes the opposite approach: it closes over the curtains and requires less disclosure and transparency.

Section 314B should be repealed and not replaced. State and Territory disclosure and transparency measures should not be overridden by federal law unless there is a very good reason to do so. No reason at all is identified.

A better federal disclosure and transparency regime is needed

Weakening disclosure and transparency is never a good idea. But right now is an especially bad time to be doing so.

Weakening disclosure and transparency rules for political donations can be seen a risk to Australia's national security. In his 2020 *Annual Threat Assessment*, the Director-General of Security commented that "parliamentarians and their staff at all levels of government" are potential targets for foreign interference. As members of this Committee would know, there have been various media reports of Australian politicians and political parties receiving donations from sources with potential links to foreign governments. A robust disclosure and transparency regime may deter foreign agents from offering donations.

Instead of the deficient provisions proposed in this Bill, Parliament should enact a far more comprehensive and vigorous federal disclosure and transparency regime to replace the existing weak federal transparency and disclosure regime.

This has been suggested several times before. For example, in 2018 the Senate Select Committee into the Political Influence of Donations recommended that the federal donations threshold be lowered to \$1,000, that more detailed disclosure be required, and that a system of real-time reporting be introduced.

I trust this submission is of assistance.

Yours sincerely

Luke Beck