



Committee Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600

30 June 2020

Dear Committee,

ACF Submission on Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020

About ACF

The Australian Conservation Foundation (ACF) would like to thank you for the opportunity to make a submission to the Senate Finance and Public Administration Committee on Senator Jacqui Lambie's Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020 (**the Bill**).

ACF is Australia's national environment organisation. We are 700,000 people who speak out for the air we breathe, the water we drink, and the places and wildlife we love. We are proudly independent, nonpartisan and funded by donations from our community.

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

The problem of hidden money in Australia's political system

In the 2018/19 fiscal year, which included the 2019 Federal Election, ACF analysis found that over \$100 million worth of income to the Labor and Coalition parties had no identifiable source¹. This is an unacceptable amount of hidden money to be flowing around in Australia's federal political system. Greater transparency over the sources of income funding federal politics is essential to maintain integrity and public confidence in our political system.

This Bill addresses this issue in several ways, including by:

¹ Australian Conservation Foundation (2019), 'Fossil Fuel Money Distorting Democracy', available at https://www.acf.org.au/fossil_fuel_money_distorting_democracy





AUSTRALIAN CONSERVATION FOUNDATION

- Expanding the definition of gift to include fundraising dinners and other events which exist for the primary purpose of raising money for a political party or candidate;
- Lowering the disclosure threshold from \$14,000 (indexed) to \$2500 per 6 months, indexed;
- Introducing 'real time' disclosure of donations within 7 days, as compared to the current annual disclosure system.

ACF strongly welcomes these reforms and believes that they are an important and significant step towards greater integrity in Australia's federal political finance system. However, reforms in this space become increasingly complex when applied beyond political parties and candidates. Our submission focuses on the impacts that this Bill will have on third parties and on charities who may be third parties or political campaigners. While this Bill considers carefully the obligations placed on charities, we highlight the potentially unintended consequences the Bill could have on small community groups without charity status and offer recommendations for mitigating these.

When taken in whole, this Bill introduces a number of important and well thought out reforms. **We believe that with a few minor amendments, detailed below, the Committee should recommend the Bill be passed.**

Importance of distinguishing between different types of participants at elections

Regulating third parties and political campaigners continues to be a deceptively complicated aspect of the reform of political funding and disclosure. While greater transparency over the income of third parties and political campaigners at elections is important to political integrity, it must also be balanced with the democratic importance of political freedom and participation. Unlike political parties and candidates, third parties and political campaigners exist for a variety of purposes other than political advocacy, such as a charitable or public interest purpose. Unlike donations to political parties and candidates, which serve to help these groups stand for election and win office, third parties and political campaigners receive donations for many non-political and non-electorally relevant purposes.

Electoral scholar Joo-Cheong Tham has highlighted these differences in submissions to various inquiries into the financing of the political system, noting that, while there are important reasons for capturing some third parties in reforms, "regulation of third parties should take into account that salient differences exist between these organisations and political parties"². Where third parties are treated equally as political parties and candidates, without consideration of these important differences, it is easy to get the balance wrong.

² Commonwealth of Australia (2018), 'Professor Joo-Cheong Tham, Additional Information 24— Attachment 1', p. 10, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Additional_Documents





Obligations on organisations with charitable status under the Bill

The Australian Conservation Foundation is a registered charity. We exist to pursue our charitable purpose of furthering positive environmental outcomes for Australia, it's people, animals and nature. ACF activities involve advocacy, by which we simply mean influencing decision-making in the interest of conservation and sustainability. ACF is at all times strictly non-partisan, and notes that charities are prohibited under the *Charities Act 2013* from partaking in partisan political activity. However, as advocacy activities frequently involve generating public awareness, these activities are occasionally captured under the definition of electoral expenditure.

Section 314AB of the Bill requires third parties, including charities, to undertake additional reporting to the Australian Electoral Commission (AEC) in the form of bi-annual returns. The returns would include information on the third party's total income, spending, and debts. Registered charities already make this information publicly available on an annual basis and would have no concerns with further reporting this information to the AEC.

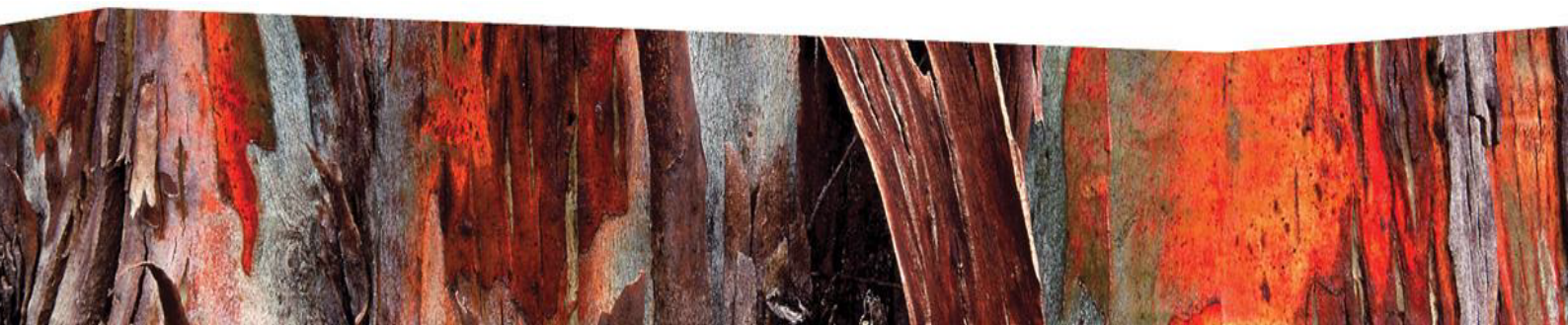
Under Section 314AC, the Bill also requires that organisations registered with the ACNC report additional information of funds used to incur electoral expenditure over the \$2500 disclosure threshold, including names and addresses of donors and the source of other income such as from investments. ACF is supportive of these requirements and believe it is appropriate for charities to disclose additional details regarding the source of income used to incur electoral expenditure. ACF is supportive of the lower disclosure threshold and the aggregation of donations being applied to all participants in elections.

Importantly, the Bill does not require organisations registered with the ACNC to report donor information on income which is not electorally relevant. ACF strongly supports this exemption. 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 name and personal address on a public register.

Treatment of third parties

For third parties that are not charities, this Bill also introduces a number of requirements in addition to the above. This Bill requires third parties to report *all donations, regardless of whether they are electorally relevant, in real time.*

Many small community groups may choose not to pursue charitable status for a variety of reasons, including the time and resources required to satisfy the requirements to achieve and maintain charitable registration. Nonetheless, these small community groups work on issues important to their community and are a vital part of insuring diverse participation in democratic debates. Under this bill, by spending as little as \$2500 on a communication which can be classified as electoral expenditure, such an organisation would then be required to report all donations,





whether electorally relevant or not, in real time. This is a significant and unnecessary burden to impose on small third party organisations. Such a requirement would most likely act as a defacto expenditure cap on small organisations unable to comply with the significant tracking and reporting obligations imposed by this Bill.

Additionally, whereas money gifted to political parties and candidates is invariably to be used for a political purpose, this is not the case for third parties and political campaigners who exists for other purposes outside of political advocacy. This makes real time disclosure a challenge for these groups, as a group may receive a donation and then only months later decide to spend it on an issue which has become electorally relevant. It is not always possible to predict which matters will become issues at elections or which communications a group may produce that will be captured as electoral expenditure.

Recommendation: Third parties should only be required to report donations which are electorally relevant and to report biannually, rather than in real time.

Threshold for becoming a third party

Currently, the definition of third party is tied to the disclosure threshold. By lowering the disclosure threshold from \$14000 (indexed) to \$2500, organisations that spend as little as \$2500 on electoral expenditure will be required to register as third parties and meet the numerous obligations on third parties who participate in elections.

The definition of third party should be decoupled from the disclosure threshold and set at an amount of electoral expenditure reasonable to then expect the related obligations on third parties. ACF recommends maintaining the third party disclosure threshold at the current threshold of \$14,000, and that third parties only be required to report on electorally relevant income over the disclosure threshold of \$2500. If the additional requirements on third parties to report donations in real time or to report all income were maintained, then the threshold for becoming a third party would need to be reconsidered and significantly raised.

Recommendation: The definition of third-party campaigner be decoupled from the disclosure threshold and set at \$14,000.

For more information:

JOLENE ELBERTH | DEMOCRACY CAMPAIGNER

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.

www.acf.org.au

