Human Rights Law Centre

Human Rights Law Centre Ltd
ABN 31 117 719 267

Level 17, 461 Bourke Street
Me bourne VIC 3000
Australia

[redacted]
www hrlc.org.au

Committee Secretary
Joint Standing Committee on Electoral Matters

3 July 2020

Dear Committee

***Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020* (Cth)**

Thank you for the opportunity to make a submission to the inquiry into the Federal Government's *Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020* (Cth) (**Bill**).

We have two concerns regarding the Bill:

(i) it undermines State laws that restrict the influence of money in our political system and improve transparency around political donations;

(ii) it may invite voting officers at polling stations to ask voters to show their ID, which has the potential to disenfranchise marginalised communities.

We recommend that the Bill be amended to:

(i) repeal, not amend, current ss. 302CA and 314B of the *Commonwealth Electoral Act 1918* (Cth) (**Act**); and

(ii) to clarify in proposed s. 200DI that voting officers may not ask for a voter's ID.

Parliament should be passing laws to strengthen, not weaken, transparency and limits on political donations

The free flow of money into Australia's political system threatens the integrity of our democracy. Major political donations are designed to have political influence. Big donations may give donors extra access to politicians or, as put by the High Court, establish the donor as a politician's "client".[1] Occasionally, political donations may lead to *quid pro quo* corruption.

Victoria, Queensland and NSW have taken decisive action to stop big political donations by capping donations to candidates and political parties, and NSW and Queensland have taken the further step of banning entirely political donations from some industries associated with corrupt practices. The

[1] *McCloy v NSW* [2015] HCA 34 at [36] per French CJ, Kiefel, Bell, Keane JJ.

Federal Government should be following suit and passing rigorous laws to regulate political donations, not weakening State caps and disclosure obligations as the proposed ss. 302CA and 314B will do if passed.

We have benefited from Professor Joo-Cheong Tham's work to raise the alarm about the insertions of ss. 302CA and 314B into the Act in 2018.[2] Prior to these sections being introduced, there was no issue of conflict between State and Commonwealth political donation laws: they operated alongside one another. The introduction of s. 302CA in 2018 threatened to undermine State restrictions on political donations by providing that State branches of political parties could still accept otherwise forbidden donations where they "*may* be used" for Federal electoral purposes. That is, if the donor was silent about how the donation was to be used, the otherwise forbidden donation could be accepted and used by the State political party branch. Section 314B made matters worse by overriding State obligations to disclose such gifts.

The High Court struck down s. 302CA in *Spence v Queensland* [2019] HCA 15 on the basis that it went beyond the Federal Parliament's legislative power. The Federal Government is now hoping to revive the failed law with this Bill, by amending ss. 302CA and 314B so that State laws will not ban, cap or require disclosure of a donation given to a State political party branch if it is given and used for Federal purposes.

However, branding a major donation as being for Federal purposes does not deprive that donation of its potential to corrupt State politics, due to the way funding can be easily funnelled between State and Federal levels by political parties. There is no bright dividing line between State and national political party branches. A Federal branch of a political party may receive funds and distribute them to State branches for campaigning or administrative purposes, and vice versa. A large donation made officially for Federal purposes frees up money from other sources for State purposes, and a major party could realistically have many thousands of intra-party transfers each year.

As a result, the benefit and influence of a donation ostensibly made and used for Federal purposes can still flow down into a State system in which that donation is banned, thereby undermining that State's regulatory regime.

Parliament should repeal, not amend, current ss. 302CA and 314B of the Act. It should then introduce a reform proposal to limit donations to candidates and political parties at Federal level.

[2] Joo-Cheong Tham, Submission 4, *Inquiry into the proposed amendments to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 Submission 4*, Joint Standing Committee on Electoral Matters

The Bill should be amended to clarify that voting officers cannot ask voters to present their ID

Voter ID laws are known to be a barrier to voting for Aboriginal and Torres Strait Islander people in remote communities[3] and people experiencing homelessness, among other groups of people who may not have access to government-issued identification. Voter ID laws can effectively disenfranchise many people from marginalised communities.

The Act currently prescribes the precise wording that voting officers must use to identify voters on the electoral roll. Proposed s. 200DI of the Bill would remove these tight prescriptions in order to give greater flexibility to voting officers, so they can be more easily understood by voters. However, the language of proposed s. 200DI, by allowing the voting officer to ask any form of questions in order to ascertain the person's name, where they live and whether they have already voted in the relevant election, may leave the option open for a voting officer to ask to see a voter's ID.

Proposed s. 200DI of the Bill should be amended to clarify that a voting officer may not request the voter to show their ID.

We would be pleased to provide further information should it assist the Committee.

Yours sincerely

[redacted]

Daniel Webb
Legal Director

[redacted]

Alice Drury
Senior Lawyer

[3] For instance, in Queensland, only 38% of Aboriginal and Torres Strait Islander people hold a drivers licence, compared with 90% in the non-Aboriginal community: Skinner and Rumble, "A new approach to addressing driver licensing issues within Indigenous communities across Australia," *Austroads*, December 2012, p 2, available at http://acrs.org.au/wp-content/uploads/15_Robinson-N-PR.pdf. It is also estimated that thousands of Aboriginal and Torres Strait Islander people in Australia do not have birth certificates: See Paula Gerber, "Aboriginal people are still denied full citizenship", The Drum, 1 November 2012.