



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

3 July 2020

Dear Committee,

Submission to the inquiry into the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020

The Australian Conservation Foundation (ACF) would like to thank you for the opportunity to make a submission on the Government's Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (**'the Bill'**).

ACF is Australia's largest and oldest environmental organisation. At ACF, we believe that a vibrant democracy is essential to our vision of a healthy, resilient Australia where people, nature, and wildlife thrive.

ACF believes that reforming Australia's political finance system is an important step to bringing greater integrity and public confidence to Australian federal politics. ACF supports reforms which seek to achieve the following objectives:

- Reduce undue influence of vested corporate interests in Australian politics,
- Provide greater transparency over the sources of political funding and expenditure,
- Level the playing field to ensure a fair contest between large and small parties and independents in elections,
- Restore public faith in our democratic institutions, and
- Promote participation: protect the ability of civil society organisations, especially small, grassroots community organisations to participate in democratic debates.

This submission is concerned only with sections 302CA and 314B of the Bill. Relevant to these sections, the Explanatory Memorandum for the Bill states that the act seeks to "clarify the relationship between federal and state and territory electoral donation and disclosure laws following the High Court decision in *Spence v Queensland* [2019]"¹

However, ACF is concerned that the result of sections 302CA and 314B would be to weaken state and territory governments' ability to apply stricter laws within their jurisdiction and ultimately will result in less integrity and transparency over political funding in Australia.

We recommend to the Committee that the Bill be amended to remove sections 302CA and 314B, and that current sections 302CA and 314B of the Commonwealth Electoral Act be repealed.

¹ Explanatory Memorandum, Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (Cth).





Context

In the absence of federal action to strengthen Australia's political finance laws, state and territory governments have led the way with reforms to bring greater transparency and integrity to the funding of the Australian political system. This has resulted in a number of states and territories having stricter political finance and disclosure regimes than at the federal level. Presently, with the exception of Tasmania, each of the states and the Northern Territory have stricter gift disclosure requirements than the federal regime.²

The ability of state and territory governments to legislate for greater transparency over the funding of political parties is integral to maintaining the integrity of the state electoral system. While it is stated that the aim of the proposed provisions is to clarify the relationship between federal and state and territory electoral donation and disclosure laws, the proposed provisions in fact would likely undermine state and territory legislation, and result in a significant reduction in transparency overall.

To this end, ACF submits the following concerns to the Committee:

1. The provisions undermine the ability of state and territory governments to manage the integrity of state and territory elections

Section 302CA of the Bill gives state political party branches the ability to accept donations from certain categories of donors prohibited under state legislation, where that donation is to be used wholly for a 'federal purpose'. In overriding state bans on prohibited donors in such a way, the provision is likely to render the state regulation entirely ineffective.

The separation of donations which are for a 'federal purpose' is a somewhat arbitrary distinction, in that large donations, whether for a federal purpose or state purpose, still have the same corruption risk no matter the stated purpose of the donation. Donations to a state party branch, albeit for a federal purpose, allow donors the same opportunities to build relationships and influence within the party and carry the same risk of corruption. As the state party branch is also responsible for state and local elections, there is a clear nexus between a prohibited donation, even if for a 'federal purpose', and the integrity of state and local elections.

2. The provisions will result in overall less transparency of political funding in Australia

Of greatest concern in this Bill is section 314B relating to the disclosure of donations. This section allows for donations made for a 'federal purpose' but given to a state branch of a political party to be disclosed under the federal gift disclosure threshold, rather than lower state or territory thresholds.

As stated above, donations made to a state branch with jurisdiction over state and local elections, even if made for a federal purpose, can have a trickle down effect when it comes to influence within the party. As was noted by the Supreme Court of Queensland in *Awabdy v Electoral Commission of Queensland*, it can therefore be understood that donations made for *any purpose* to a state registered party which has jurisdictions over state and local elections, could impinge upon the integrity of a state election and should therefore be subject to scrutiny by the state's electoral commission.³

² Department of Parliamentary Services (Cth), *Election Funding and Disclosure in Australian States and Territories: A Quick Guide*, Research Paper (2018)

³ *Awabdy v Electoral Commission of Queensland* [2019] QCA 187, 10





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Additionally, the Court found that there was no inconsistency between state and commonwealth disclosure requirements, and that “[t]he obligations can both be complied with. Disclosure to the State official does not require disobedience of the obligation owed to the Commonwealth official and vice versa.”⁴

The *Awabdy* ruling points to there being no meaningful justification for overriding stricter state donations disclosure provisions as section 314B would do. The only outcome from this measure would be to reduce the transparency of money flowing into state branches of political parties.

Conclusion

ACF is concerned that the result of the proposed provisions will be to undermine state and territory legislation and the overall weakening of political funding regulation in Australia.

ACF recommends to the Committee that the Bill be amended to remove sections 302CA and 314B, and sections 302CA and 314B of the Commonwealth Electoral Act be repealed.

For more information:

JOLENE ELBERTH | DEMOCRACY CAMPAIGNER | [REDACTED] | [REDACTED]

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

⁴ *Awabdy v Electoral Commission of Queensland* [2019] QCA 187, 10

