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**Submission to the Joint Standing Committee on Electoral Matters Inquiry into the
Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019**

Dear Committee

Thank you for the invitation to make a submission.

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

Support for the Bill

This Bill is very modest.

The current long delay before information about donations is made public frustrates the purposes of transparency and the avoidance of improper influence underlying a disclosure regime. Those purposes are promoted by real-time reporting.

Real time disclosure is practical.

From time to time, some politicians suggest that real time disclosure would not be practical. For example, the following exchange took place during a hearing of the Senate Select Committee into the Political Influence of Donations on 30 January 2018:

Senator O'SULLIVAN: I just want to come back to one point that I asked the witnesses to take into account—this is not an adverse comment, but I sense a bit of ignorance of what's happening in the architecture of the real world—to try to tie it in with what these ideal recommendations are. I'll just quickly run through it. In my organisation in Queensland we have 542 party units filled with volunteers. The average age is 118 years. They travel 300 kilometres once every two months along a dirt road to go to a voluntary meeting in the CWA hall in the back of Monto or somewhere. Their pockets are stuffed with four or five donations from the newsagent and a grazier down the road and the one around the corner. I want real-time disclosure too, but I know it's not possible with the current structures. These are honorary, voluntary organisations. These people don't get paid. They just come along. They're ordinary people. This is what they do. I'm interested in us implementing. I want the changes. I want the reforms. But we have to do it in a way that it is humanly possible within the real world out there, not here where we're sitting in an air-conditioned room. What an ideal thing it would be to put in a \$1,000 cap and instant disclosure! These people don't even own computers, let alone get access to them.

Prof. BECK: If it's humanly possible for a Centrelink beneficiary to have to do it, I think it's humanly possible—

Senator O'SULLIVAN: Sorry?

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Prof. BECK: If it's humanly possible for a Centrelink welfare recipient to have to disclose their income within a 14-day period, I don't understand why it's not possible for anybody else to disclose. We don't give excuses to Centrelink recipients. Why should we give excuses to political parties and their volunteers?

Senator O'SULLIVAN: I'll have to disagree with you on that.

Real time disclosure of income already happens in Australia:

- Queensland currently uses an Electronic Disclosure System to implement its real time disclosure regime: <https://disclosures.ecq.qld.gov.au/>
- The Commonwealth also has a real time reporting of income regime for Centrelink welfare recipients.

Real time disclosure has been supported by federal parliamentary committees before. For example, in 2018 the Senate Select Committee into the Political Influence of Donations recommended the adoption of real time disclosure:

Committee view

5.88 Modern technological advances afford opportunities previously unavailable. The timeliness of donations and their subsequent disclosure are key elements in a transparent political finance regime. The current system, whereby donations can potentially be undisclosed for up to 18 months, is unacceptable. The committee strongly agrees with ICAC who said that voters deserve to know who is funding the parties or candidates when they walk into the polling booth.

5.89 On a similar technological theme, the ability for anyone to search through data to establish the sources of donations is a relatively small, but very important issue. The current useability of the AEC website to access data is poor, and requires significant upgrading.

Recommendation 5

5.90 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to require online, continuous real-time disclosure to the Australian Electoral Commission of donations to political parties, candidates and associated entities.

Recommendation 6

5.91 The committee recommends that the Australian Electoral Commission ensures that the presentation of political finance data on their website provides greater accessibility and functionality of files to facilitate public research and investigation.

Further reforms are needed

While I welcome this Bill and hope the Committee will support its adoption, further reforms are necessary to ensure proper transparency.

Two areas ripe for reform are the disclosure threshold for donations and the need to disclose non-donation revenue.

First, the disclosure threshold is far too high. I won't rehearse the arguments for a more sensible and lower disclosure threshold. Those arguments have been articulated many times

before and accepted by parliamentary committees. For example, in 2018 the Senate Select Committee into the Political Influence of Donations recommended the disclosure threshold be lowered:

Committee view

5.41 As many witnesses pointed out, there have been repeated calls over the years for substantial reform of the federal political finance regime. Many specific suggestions have been proposed in numerous policy papers, committee reports, and legislation. The committee is strongly of the view that the time has come for these changes to be implemented.

5.42 One of the cornerstones to a new regime is a substantial lowering of the disclosure threshold. The current donations threshold is high. It allows for the non-disclosure of significant amounts of donations, thus limiting the transparency of those who play a currently unrecognised role in the political process. The potential of donation splitting to further reduce visibility of donations is also an obvious concern.

5.43 Legislative changes in other jurisdictions in Australia have reduced the disclosure thresholds significantly. The committee heard evidence from a number of experts who sought to balance the administrative burden of disclosing donations, while ensuring that those donations that on paper have the potential to influence decision-making are fully disclosed. The broadly agreed figure was a threshold of \$1,000.

Recommendation 3

5.44 The committee recommends that the Australian Government amend the *Commonwealth Electoral Act 1918* to introduce a fixed disclosure threshold of \$1,000, to be calculated cumulatively over a whole party group.

Secondly, what is required to be disclosed to the Australian Electoral Committee is far less than what is necessary to be able to say that Australia's system of political financing is transparent. This issue was also examined in the 2018 report of the Senate Select Committee into the Political Influence of Donations:

Inconsistent and inappropriate use of 'other receipts'

5.45 Under the current AEC framework for annual disclosure returns, income is classified as either a 'donation' or an 'other receipt'. Income required to be classified as a 'donation' is that which meets the legislative definition of a 'gift' under the Electoral Act. Theoretically, 'other receipts' do not meet the legislative definition of a gift and include revenue such as payments of public funding, interest on investments, income from real estate, union subscriptions, and fee-for-service payments.

...

5.48 Of the Liberal Party's total income of \$78.6 million in the 2013–14 election year, only 25 percent (\$19.3 million) was declared to the AEC as 'donations', including payments received from associated entities and known third parties. Income classified as 'other receipts' made up 11 per cent of the Liberal Party's total income.

5.49 Declared 'donations' also made up only 25 per cent (\$11.6 million) of the ALP's total income of \$46.3 million for 2013–14. 'Other receipts' made up a further 26 per cent of the ALP's total income in the same year.

...

Committee view

5.55 The committee accepts that there are some legitimate sources of income that are not donations, and that a category for these is required. However, the current regime allows for items to be included in the 'other receipts' category which for all intents and purposes are donations. The committee is therefore of the view that a comprehensive examination of how all income is classified is required.

Recommendation 4

5.56 The committee recommends that the annual return reporting for political parties and associated entities require much more detailed reporting with specific classifications for each type of income currently listed under 'other receipts' to ensure that income is categorised transparently.

Conclusion

Increasing transparency does not assist one side of politics over any other.

Increasing transparency will also remove some of the improper pressures and influence faced by politicians and political parties. Transparency is good for democracy and it is good for individual politicians and political parties.

I trust this submission is of assistance.

Yours sincerely

Luke Beck