



Law Council  
OF AUSTRALIA

*Legal Practice Section*

23 October 2019

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

By email: [em@aph.gov.au](mailto:em@aph.gov.au)

Dear Committee Secretary

**Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019**

The Law Council welcomes the opportunity to provide comments to the Joint Standing Committee on Electoral Matters on the Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019 (**the Bill**). This submission has been prepared by the Charities and Not-for-Profit Committee of the Law Council's Legal Practice Section (**the Committee**).<sup>1</sup>

The Bill proposes a new section 305C to the *Commonwealth Electoral Act 1918* (Cth) (**the Act**). This proposed new section would apply to registered political parties, their State branches and political campaigners.

There are a number of charities which, because the definition of electoral matter can encompass issues-based communications, may meet the threshold to require registration as a political campaigner under the Act. These charities take a non-partisan role at election time, engaging the public in the issues that are important to their charitable purpose, and providing important education for the public in those issues at the time of elections.

Section 305B of the Act currently provides that if a gift is made to a political campaigner, and the gift is over the disclosure threshold, the maker of the gift must make a return to the Electoral Commission. However, subsection 305B(6) provides that if the political campaigner is a registered charity and the gift was not used on electoral expenditure, then there is no requirement for disclosure. With regard to annual returns required to be lodged by political campaigners describing gifts over the threshold, section 314AC of the Act provides a like exemption for registered charities.

These exemptions represent a sensible compromise, recognising that there are legitimate public policy reasons for enabling registered charities to protect the privacy of their donors,

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

but that where charities are engaging in electoral advertising, even where it is non-partisan, there are genuine transparency considerations.

The proposed section 305C would require these charities that have met the threshold to require registration as a political campaigner, to provide notice of every gift they receive within 5 business days of receiving it. No minimum threshold for the amount of the gift is proposed, nor any exemption for registered charities.

As a minimum, the exclusion in the current sections 305B(6) and 314AC should also be included in relation to the proposed section 305C. Otherwise all gifts to political campaigners registered as charities, no matter their amount or purpose, will be subject to an unreasonably burdensome disclosure requirement which charities are unlikely to be able to meet. Donor privacy will be infringed upon unnecessarily, and donor confidence may be undermined.

In addition, the proposed penalty is 60 penalty units. A charity which breaches the proposed new section 305C would therefore risk being in breach of Australian Charities and Not-for-profits Commission Governance Standard 3, which requires charities to not act in a way that, under Commonwealth, state or territory law, could be dealt with as a breach of law that includes a civil penalty of 60 penalty units.

The Committee does not express a view in relation to whether political parties and candidates should make real time disclosures of gifts received.

However, to extend any such requirement to political campaigners, which may well be registered charities, without the exemptions that were sensibly included in the 2018 amendments to the Act is to create an onerous administrative burden without any justification.

We strongly oppose the proposed requirement for political campaigners to make “real time” disclosure of all gifts received, unless registered charities are excluded therefrom.

The Committee is grateful for the opportunity to provide this input in relation to the inquiry. If you require further clarification, please contact the Chair of the Committee, Ms Jennifer Batrouney QC, at [Jennifer\\_Batrouney@vicbar.com.au](mailto:Jennifer_Batrouney@vicbar.com.au) or on (03) 9225 8528.

Yours sincerely



**Jonathan Smithers**  
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