Queensland Law Society

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Office of the President

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

By email: [redacted]

Dear Committee Secretary

Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Thank you for the opportunity to provide comments on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth) (**Bill**). Queensland Law Society (**QLS**) appreciates being consulted on this important legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the Not-for-Profit Law Committee, whose members have substantial expertise in the not-for-profit and charities sector.

Our policy committees and working groups are the engine rooms for QLS's policy and advocacy to government. QLS, in carrying out its central ethos of advocating for good law and good lawyers, endeavours to ensure that its committees and working groups comprise members across a range of professional backgrounds and expertise.

In doing so, QLS achieves its objective of proffering views which are truly representative of the legal profession on key issues affecting practitioners in Queensland and the industries in which they practise. This furthers the QLS's profile as an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader community.

Executive summary

In light of the concerns outlined in this submission, QLS recommends that the Bill not be progressed in its current form.

The Bill has potentially wide-ranging impacts on the not-for-profit sector and the conduct of political debate.

In these circumstances, QLS calls for further comprehensive consultation on the Bill, during which the public has the opportunity to consider a detailed regulatory impact statement and to comment on the consequences of the proposed framework.

QLS raises a number of key concerns with the Bill:

- Given the complexity of the Bill in relation to not-for-profits and charities – if not-for-profits and charities are to remain within its ambit, it is incumbent upon the government to ensure appropriate funding for education and guidance materials for this sector because of its volunteer management and governance structures and seeming incongruence with the *Charities Act 2013* (Cth). Given the turnover of boards and volunteers this needs to be on going. Consideration should also be given to funding of sector capacity building bodies to also provide training, guidance and advice to the sector;
- The constitutionality of the proposed legislation, given the effect on the implied freedom of political communication as a result of:
    - the proposed ban on foreign donations; and
    - the financial regulatory burdens and compliance costs to be imposed on organisations who will be considered "*political campaigners*" and "*third party campaigners*";
- The red tape consequences for charities and not-for-profits arising from the proposed framework, in circumstances where such a compliance imposition is unlikely to achieve the objectives of the legislation and adversely affect the ability of these organisations to deliver services to the vulnerable in our community;
- The need for exemptions to be provided for where:
    - organisations, particularly professional membership organisations, are already subject to financial accountability and disclosure regimes;
    - a legal practitioner engages in conduct within the scope of legal practice regulated by the *Legal Profession Act 2007* (Qld) and similar regulatory legislation in other States;
- The existing regulatory burdens already imposed on charities in Australia with respect to the level of advocacy that they can undertake and the need to exclude charities from the operation of the Bill, especially in light of regulation already being in place for them in s11 of the *Charities Act 2013* (Cth) taken together with reporting already required to the Australian Charities and Not for Profits Commission (**ACNC**);
- The wide application of the registration framework, triggered by advocacy by a not-for-profit organisation on any issue that "is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election)" as prescribed in the proposed definition of "***political purpose***". This extraordinarily wide definition means that the

restrictions apply to advocacy regardless of whether or not an election period is on foot and regardless of the materiality of the relevant issue;

- The lack of clarity on how to calculate "***political expenditure***";
- The need for an exclusion from the definition of "***political purpose***" for responding to and participating in Government consultation processes;
- The scope of new section 302J offence (forming bodies corporate for the purposes of avoiding restrictions in this Division) with respect to professional advisors;
- The interaction of the Bill with the *Foreign Influence Transparency Scheme Bill 2017* (Cth);
- The potential negative affect on foreign giving to the Australian not-for-profit & charitable sector.

QLS has also had the opportunity to review the Law Council of Australia's submission on the Bill and QLS supports the content of that submission.

Constitutional concerns with the Bill

The High Court has held that there is an implied freedom of political communication in Australia.[1]

As recognised by the High Court in the *Unions NSW*[2] case, organisations other than registered political parties play an important role in democratic communications.

In considering legislation which is alleged to infringe the implied freedom of political communication, the High Court has determined that the test is whether a law burdens the freedom, and if so, is it reasonably appropriate and adapted, or proportionate, to serve a legitimate purpose? [3]

QLS considers that the Bill does not meet this test in its current form.

Infringement of the implied freedom of political communication

In modern Australian society, not-for-profit entities and charities provide a valuable contribution to political discourse and debate.

As grassroots organisations active in the community, these entities are well-placed to identify issues of concern to Australian society. These entities should be encouraged to generate community debate on matters within their area of expertise in light of their "on the ground" experience and intelligence.

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[1] *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106
[2] *Unions NSW v New South Wales* [2013] 252 CLR 530
[3] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; affirmed in *McCloy v New South Wales* (2015) 257 CLR 178

Not-for-profit groups bring a critical perspective on a wide range of social concerns including homelessness, disability services, other benevolent relief, education, medical research and animal rescue programs.

The prohibition on foreign gifts may infringe the implied freedom of political communication by adversely affecting the ability of many entities to participate in political debate:

- The Bill prohibits gifts from a donor who is not an "allowable donor" (effectively, anyone who is not an Australian citizen, an Australian permanent resident or an entity incorporated in Australia).
- This prohibition will mean that a wide range of organisations who would ordinarily participate in political debate will be unable to accept philanthropy from foreign sources unless they cease their advocacy activities, or, if they are registered charities with the ACNC, create complicated compliance frameworks to avoid breaching the legislation (see also our comments below in relation to the lack of clarity around the concept of "***political expenditure***").
- This ban will extend not only to donations from philanthropic organisations based overseas but also means that any individual who is not yet a permanent resident could not donate more than $250 to a not-for-profit organisation (which is not a registered charity with the ACNC) which is otherwise worthy of support, because the not-for-profit would fall foul of these restrictions.
- Under the current drafting, a person who is not an Australian citizen or permanent resident would be prohibited from donating more than $250 to the local sporting club where the foundation's activities might, from time to time, include meeting with local MPs to seek increased Government funding for improving sporting facilities (or making comment to this effect). This prohibition would apply even though the person might be living and working in Australia, married to an Australian citizen and is the parent of an Australian child. This seems to be an extraordinary overreach of the legislation.

The imposition of significant registration and compliance obligations on "political campaigners" and "third party political campaigners" will financially disadvantage a wide range of participants in political debate in Australia.

In particular, not-for-profit entities and charities caught by these new categories will need to divert valuable and scarce funds into compliance costs to meet the red tape requirements of this legislation.

Is the Bill reasonably appropriate and adapted, or proportionate, to serve a legitimate purpose?

QLS considers that this legislation would not be proportionate in addressing the purported purpose of accountability and transparency in the election process in light of the adverse consequences to robust political discussion as a result of:

- The blanket prohibition of foreign donations to the wide range of organisations caught by this legislation, where those organisations would not typically be considered "politically active" – this will have a direct financial impact on these organisations;

- The significant criminal and civil penalties which apply if a "political campaigner" breaches the legislation. This may lead to not-for-profit entities and charities choosing not to participate in advocacy in their area of expertise if the issue "is, or is likely to be, before electors in an election", for fear of breaching the legislation;
- The significant compliance costs of the registration framework in the new Division 1A of Part XX for those organisations who do choose to participate in public debate. These costs will directly affect the financial ability of not-for-profits and charities to deliver their services because of the diversion of funds to compliance costs. Ultimately, such a diversion takes valuable resources from helping the most vulnerable in our society, potentially creating greater pressure on the public purse; and
- If a not-for-profit or charitable organisation is required to register as a political campaigner, this could also affect the flow of donations to that organisation given that under the proposed changes, any person who makes a gift totalling more than the disclosure threshold in a financial year must provide a return to the Electoral Commission under the amended section 305B. This change imposes regulatory burdens on all generous donors, including ordinary citizens with no particular political leaning, who might exceed the threshold and unknowingly breach this legislation.

The Explanatory Memorandum does not adequately explain the real risk of foreign influence in Australian politics.

Ultimately, if a foreign actor seeks to covertly influence the debate in Australia, it is unlikely that these measures will prevent that occurring.

Despite this, the measures will adversely affect a wide range of not-for-profit and charitable organisations which otherwise benignly and properly participate in advocacy in areas connected to their purpose.

The outcome is that increased regulation and red tape, with the associated compliance costs, will be imposed on organisations who are not a risk to the legitimacy of public debate in Australia.

These measures may have the effect of silencing not-for-profits and charities as an important part of the Australian community, and act as a defacto 'gag order'.

Exemptions and amendments are required

If the Committee recommends that the Bill be progressed despite the serious concerns raised above, QLS considers that a range of amendments, including specific exemptions, should be incorporated as outlined below.

Exemption required for technical and professional services provider entities and other organisations where there is clear transparency of purpose, financial position and represented stakeholders

The registration of entities who participate in political debate in our society should not be about controlling how the community and community groups speak to Government.

QLS is concerned that this Bill has the effect of requiring QLS to register and comply with the obligations attaching to a political campaigner, where such registration does not achieve the objects of the Bill. Whether or not this is the case will depend on how an entity is required to calculate "political expenditure" (see comments below).

QLS considers that exemptions should be included for those organisations which are already subject to robust financial accountability and disclosure regimes such as QLS.

Objects of the Bill – transparency of donations and electoral expenditure

Proposed section 287E of the Bill indicates that the object of the registration framework in the new Division 1A is to "*Provide for the registration of certain persons or entities that are not registered political parties or candidates in elections in order to support the transparency of*" certain schemes in the *Commonwealth Electoral Act 1918* including the schemes relating to the disclosure of donations or electoral expenditure.

Exemption required for certain organisations already subject to robust disclosure obligations with high level of transparency

QLS submits that an exemption should be inserted for technical and professional services providers such as ours in circumstances where there is clear transparency and accountability about an entity's financial position.

The registration of such entities who undertake incidental advocacy as part of their professional role will not add significantly to the transparency of the political debate, given that any advocacy is clearly on behalf of its members and their interests.

Such an exemption in a similar context appears for the Queensland Law Society in section 41(3)(b) of the *Integrity Act 2009* (Qld), being 'an entity constituted to represent the interests of its members'.

There is no utility in adding a further layer of regulation on these professional organisations where there is a high level of existing transparency.

In general, professional organisations such as QLS are already subject to extensive regulatory environments of their own. The legal profession has extensive conduct, disciplinary, complaint and compliance requirements with respect to its members:

At a State level:

- QLS is required to deliver a comprehensive annual report to the Queensland Parliament each year, being a body which is incorporated under the *Legal Profession*

Act 2007 (Qld) and a statutory body for the *Financial Accountability Act 2009* (Qld) and the *Statutory Bodies Financial Arrangements Act 1982* (Qld);[4] and

- The information required to be disclosed is prescribed by the Queensland Government[5] and involves reporting on non-financial and financial performance.
- Further, the *Legal Profession Act 2007* (Qld) sets out an extensive regulatory regime for legal practitioners engaging in legal practice, which includes:
  - extremely high levels of professional responsibility including fiduciary duties;
  - a complaints and disciplinary regime through the Legal Services Commission and the Courts;
  - professional indemnity insurance and fidelity fund obligations;
  - fee agreement restrictions and disclosure obligations as well as a comprehensive, independent, cost assessment regime;
  - stringent admission requirements and ongoing registration requirements to ensure practitioners are fit and proper individuals and remain so; and
  - overarching duties to the Court for professional conduct and standards that precede duties to clients.

In relation to the Australian legal profession generally, QLS notes that:

- there is already in place an extensive statutory regulatory regime for the conduct of Australian Legal Practitioners in engaging in legal practice and there is little utility in further overlapping and repetitious compliance obligations being imposed;
- the consequence of this Bill requiring the registration of industry bodies who undertake incidental advocacy appears unjustified by quantifiable risk. Government should not impose additional regulation without a consistent rationale in response to a demonstrable mischief;
- it is a serious concern that this Bill has the effect of characterising comments by a legal professional body on the judicial system or a particular legal issue a "political purpose"; and
- there is a risk that a lawyer or law firm representing a client in open court being a "public" forum or speaking with the media in connection with it could trigger the obligations in this Bill.

Imposing registration and reporting requirements of the QLS, law firms, or lawyers amounts to unnecessary regulation and red tape.

The number of submissions that the QLS makes to Parliamentary committees at both the State and Commonwealth level is a prime example of public interest advocacy.

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[4] Section 682 of the *Legal Profession Act 2007* and section 63 of the *Financial Accountability Act 2009* (Qld)

[5] See section 49(5) of the *Financial and Performance Management Standard 2009* and the document "*Annual report requirements for Queensland Government agencies*" prepared by the Department of Premier and Cabinet (Qld) available at https://www.forgov.qld.gov.au/sites/default/files/annual-report-requirements.pdf

Even in matters which relate to our members, the QLS must take a balanced position as we represent members who are employers and employees, who act for vendors and purchasers, members representing the State and defendants in criminal matters or plaintiffs and respondents in civil matters, members who act for major corporations and for individuals affected by their actions or the State. In the sphere of legal practice there is no one view and no single interest to be advanced at the expense of all others.

In this regard the QLS has been asked many times to be an 'honest broker' in contentious matters and to provide input at all stages of the policy development cycle to ensure that proposals are fair, balanced and rights are respected. This is an important aspect of the value of the QLS to the Queensland (and Australian) community. Where we have not been approached confidentially we publish our submissions on our website.

We are firmly of the view that the burden of additional regulation needs to be in response to actual quantifiable risk.

The Explanatory Memorandum does not present any justification for the registration of entities such as the QLS in its proposals, other than it somehow making Government less transparent. Imposing additional regulation is of course a serious matter. It is the exercise of power of the Executive arm of Government which needs to be wholly justified to address some apparent mischief.

Exemptions are required

At least two categories of exemption are required:

- The Bill should provide for exemptions for technical and professional services provider entities. The Bill could provide for such entities to apply to the Minister for an exemption from registering as a political campaigner. Alternatively, the Bill could provide for regulations to prescribe exempt entities.
- There should be a clear exemption in the legislation that this framework does not apply to a legal practitioner engaging in conduct within the scope of legal practice regulated by the *Legal Profession Act 2007* (Qld) and similar regulatory legislation in other States.

  From the point of view of transparency, it is clear for whom legal practitioners and other professionals act in any transaction – a solicitor who is undertaking incidental lobbying will identify themselves as acting for a particular client, for example.

  It is therefore critical that there be no possibility that a lawyer representing a client in a genuine lawyer-client relationship be caught by the "political campaigner" category.

QLS would be deeply troubled if any scheme of registration resulted in frustrating access to justice for those at risk in our community.

Charities should be exempted from this framework

Charities in Australia are already restricted with respect to the level of advocacy that they can undertake.

Charities must be established for a "charitable purpose" and a charity can undertake advocacy to further or aid another charitable purpose.[6]

The effect of sections 11 and 12 of the *Charities Act 2013* (Cth) is that a charity cannot have a "disqualifying purpose", being:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
(b) the purpose of promoting or opposing a political party or a candidate for political office.

As noted by the ACNC:

> "*The public benefit of advocacy is its contribution to public discussion, which informs the public and policy-makers. The methods of advocacy used and its aims must not be inconsistent with the rule of law and the established system of government.*" [7]

As discussed above, charities and not-for-profit entities have a valuable contribution to make to political debate in Australia and it would concerning if this legislation had the unintended effect of silencing these bodies due to fear of breaching the compliance obligations.

In light of the existing restrictions on charities' advocacy, the Bill would add another unnecessary layer of regulation to their activities.

It is unclear how imposing the registration framework on charities will achieve the objects of the Bill set out in clause 11 (new section 287E) of the Bill.

In addition, the compliance costs associated with registering as a "political campaigner" will have the result that charities divert financial resources away from achieving their charitable purpose to ensuring compliance with the legislation. This has the potential to reduce aid to the most vulnerable in our communities.

Charities established under the *Charities Act 2013* should be exempt from the new registration requirements proposed for Part XX of the *Commonwealth Electoral Act 1918*.

It is noted the new sections 302E and 302F propose specific processes for donations by "non-allowable donors" to a political campaigner that is a registered charity or registered organisation. The intent is that such donations much be kept in an account that is not used for political expenditure or for paying gifts to political entities or political campaigners. This adds additional compliance cost for, we suggest, little utility.

In the case of registered charties with the ACNC, they are already subject to public reporting obligations to the ACNC. This reporting is generally made fully available on the ACNC Register (accessible by the public free of charge). Additionally registered charities risk losing their registered charity status (and associated tax concessions) if they offend the prohibited political activies contemplated in the *Charities Act 2013* (Cth). Therefore, it seems that along

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[6] See definition of ***charity*** in section 5 of *Charities Act 2013* (Cth)
[7] ACNC website available at: http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

with current proposed exemptions for journalism and academic work an exemption should also be considered for registered charities.

Clarification of definition of "political expenditure" is required

The effect of the Bill is that if an organisation incurs sufficient ***political expenditure***, being expenditure for a ***political purpose***, in a particular time period, the organisation must be registered either as a ***political campaigner*** or a ***third party campaigner***.

"***Political expenditure***" means expenditure incurred for one or more ***political purposes***.

The definition of ***political purpose*** is extremely broad.

Of most concern is paragraph (b) of the definition which provides that the following is a ***political purpose***:

> "(b) the public expression by any means of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election);"

There are three primary concerns with the current drafting:

- firstly, and most seriously, the matters listed are not "***purposes***", but rather "***activities***". This distinction is well understood in not-for-profit and charity law.[8] If not-for-profits and charities are not to be exempt this drafting issue will need to be addressed;
- it is unclear what type of expenditure contributes to the calculation of "political expenditure"; and
- the definition of ***political purpose*** is extremely broad and will capture a wide range of public communications which would not ordinarily be considered "political".

Additionally the drafting does not seem to take into account the reasoning of the High Court in the 2010 AID/WATCH decision[9] where AID/WATCH "was not disqualified from charitable status by virtue of its main purposes which included to generate public debate about the effectiveness of foreign aid"[10]. The majority stated, "... *the generation by lawful means of public debate ... concerning the efficiency of foreign aid directed to the relief of poverty, itself is a purpose beneficial to the community ....*"[11]

What does "political expenditure" mean?

If an organisation arranges for advertisements to be published on billboards during an election in support of a particular policy issue raised by a political party, it would ordinarily be understood that this is "political expenditure".

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[8] See for example the High Court's decision in *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Ltd* [2008] HCA 55, where the carrying on of funeral business (activity) for chartiable purpose (purpose) was charitiable.

[9] *AID/WATCH Incorporated v Commissioner of Taxation* [2010] HCA 42

[10] QUT case note. Source: https://wiki.qut.edu.au/display/CPNS/AidWatch+Incorporated+v+Commissioner+of+Taxation

[11] AID/WATCH Incorporated v Commissioner of Taxation [2010] HCA 42 at para 47

It is also relatively easy to calculate the amount of the expenditure as it will be the cost of hiring the billboards.

However, most examples are not as straightforward.

Do the following examples fall within "political expenditure" for the purposes of the Bill?

- A State-wide organisation established to provide food to the homeless publishes a newsletter to previous donors asking for further donations because of a cut in Government funding affecting their organisation.
- What are the implications for a charity allowing politicans to make speeches or press interviews on their property? More specifically, if a church facilitates an all party debate on an issue without supporting a particular view or group – does it have to calculate the rent and advertising of the debate?
- A metropolitan football club is concerned about a new road to be constructed adjacent to their sporting fields. The club posts a notice on social media asking their members to contact their local MP seeking assurances that adequate fencing is constructed as part of the project to prevent children in their junior squads running onto the road.
- A medical research foundation sends a submission to a Senate inquiry on a bill raising concerns about a change to health regulation and the impact that it will have on their research. The submission is subsequently published by the inquiry.
- A national animal rescue not-for-profit employs a marketing team to conduct social media campaigns as part of their fundraising efforts. For the current financial year, two of the many campaigns include encouraging the public to lobby their local MPs to fully fund a micro-chipping program for pets. The total annual salaries of the marketing team are $110,000.
- The QLS is asked by a government department to participate in a working group comprising representatives from different industry groups to develop a guideline required under recently passed legislation. During working group meetings, the representatives openly discuss issues of concern to their respective memberships and how they might be addressed in the guideline. When the guideline is published, the QLS also publishes a note to its membership summarising the recommendations of QLS to the working group.

It is acknowledged that some smaller organisations are unlikely to trigger the financial thresholds for registration in proposed new section 287F of the Bill with these activities.

However, the examples above raise serious concerns about whether activities of this type would amount to "political expenditure", which would then trigger consideration of whether the organisation is required to register as a political campaigner.

It is unclear whether political expenditure only relates to the cost of a particular campaign or other expense, or whether it encapsulates volunteer time, employee time or gifts in kind.

If the concept is intended to capture employee time, this will be a difficult if not impossible task for organisations whose staff are not full-time "campaign" staff.

For example, would it extend to the time spent by a CEO of an electric car company being interviewed by the media? At the time of the interview, it may simply be a matter of interest to the community but 2 years later, a political party runs a policy platform in support of subsidies to encourage electric car purchases. If the CEO is then asked for further comment, should the CEO start recording the time spent speaking publicly on matters which might qualify as a "public purpose"?

Greater clarity is required about the scope of "***political expenditure***".

Further exclusions are required for responding to Government consultation processes

QLS notes that there is an exclusion from the definition of "***political purpose***" where the purpose is for the sole or predominant purpose of reporting the news or for genuine satirical, academic or artistic purposes. Such purposes do not count towards the calculation of political expenditure.

QLS also submits that exemptions should be included for the "expenditure" that an organisation incurs in the following circumstances:

- Responding to parliamentary enquiries about Bills introduced to the relevant parliament. This is a public consultation process which is critical to the democratic process.

  Penalising organisations for participating in a public consultation process is contrary to the idea of the community contributing to the development of laws.

  Open and fearless debate on these issues leads to improvements in draft legislation. Participation should be encouraged by specifically excluding the "expenditure" incurred in such participation from the calculation of political expenditure under this legislation.

- Confidential consultation by Government, at the request of Government, with stakeholder bodies such as QLS and other industry representatives.

  An organisation should not be penalised because their views are sought confidentially on matters within the organisation's expertise.

QLS is a practical example of organisations who participate in such consultation processes.

In representing the views of its members to Government, QLS addresses many issues of public benefit. QLS and other legal professional organisations are often best placed to provide views about unintended consequences of a particular approach to legislative drafting due to that being a specific skill of its members.

As noted above, QLS submits that there should be clear exemptions for such organisations.

QLS also submits that the participation in the development of law and policy at the invitation of Government, through a public or private consultation process, should not be captured in the concept of "***political expenditure***."

Otherwise, these changes will result in the imposition of regulatory burdens when the organisation's involvement is intended to be for the public good.

New section 302J – Forming bodies corporate for the purposes of avoiding restrictions in this Division

New section 302J proposes to establish a new offence if:

(a) a person forms, or participates in the formation of, a body corporate in Australia; and

(b) the person does so solely or predominantly for the purpose of making a gift that, under the relevant Division, it is unlawful to receive or retain, or use for a political purpose.

The new section 302R applies the relevant provisions of Chapter 2 of the Commonwealth Criminal Code to the offence provision.

QLS queries whether this behaviour is already captured by section 11.2 of the Commonwealth Criminal Code and if so, this offence is unnecessary.

QLS is also concerned that its members, and professional advisors generally, may unwittingly be caught by this offence because a solicitor or advisor has been engaged to advise a client on the formation of a body corporate in Australia.

The provision must be clarified to ensure that where a person is merely assisting with the formation of the body corporate and is unaware of or does not participate in a second person's intention to make an unlawful gift, the first person is not guilty of committing the offence.

The provision should also include a defence provision allowing for the person to demonstrate a reasonable excuse.

Otherwise, professional advisors such as solicitors and accountants are at a significant risk of unintentionally breaching this legislation by virtue of assisting clients.

Interaction with Foreign Influence Transparency Scheme Bill 2017

The Foreign Influence Transparency Scheme Bill 2017 (**FITS**) also introduces a registration scheme, but for "persons or entities who have arrangements with, or undertake certain activities on behalf of, foreign principals."

Under the FITS scheme, a person is entitled to enter into an arrangement with a foreign principal, and undertake advocacy and lobbying on their behalf for commercial reward, provided the person registers and discloses the nature of the relationship.

As outlined in the Explanatory Memorandum for the FITS Bill:

> *"18. The scheme will not prohibit persons acting on behalf of foreign principals in undertaking certain activities – rather, it requires that the involvement of the foreign principal be transparent. Provided a person registers under the scheme, they will still*

be able to undertake activities on behalf of foreign principals for the purpose of political or governmental influence …"

This seems at odds with the blanket prohibition in the Bill on gifts from a donor who is not an "allowable donor".

It seems incongruous that under the FITS scheme, it is permissible for a person to have an ongoing commercial relationship with a foreign principal, whereas under the Bill, a political campaigner can be guilty of an offence for accepting a one-off donation of more than $250 from a person who is not an allowable donor.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Principal Policy Solicitor, Wendy Devine, [redacted] or by email to [redacted].

Yours faithfully

[redacted]

Ken Taylor
President