

Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Submission to the Joint Standing Committee on Electoral Matters

25 January 2018



About ACOSS

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for community services and the not-for-profit sector. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities have the opportunities and resources they need to participate fully in social and economic life.

Summary

ACOSS accepts the need for further regulation to prevent foreign influence on Australian elections and the Australian political process. That said, this Bill goes too far. It would prohibit legitimate advocacy by charities and not-for-profits where that advocacy is funded by foreign philanthropy. It would also place a new, undue compliance burden on all charities and not-for-profits engaged in advocacy on issues deemed likely to be debated during an election. Further, it would have a chilling and silencing effect on advocacy by charities and not-for-profits. ACOSS strongly opposes attempts to silence or constrain the voice of charities and not-for-profits.

Existing legislation already provides effective regulation for charities, who make up the majority of community sector organisations affected by this Bill. The *Electoral Act 1918* and the *Charities Act 2013* require charities to only undertake advocacy in furtherance of their charitable purpose, while prohibiting charities from supporting or opposing candidates for election, and requiring the reporting of expenditure associated with election advocacy. Further regulation of charities' advocacy on issues deemed likely to be debated during an election is unnecessary and harmful.

Charities and not-for-profits contribute valuably to election debates and should be treated differently to political parties and candidates. The proposed Bill inappropriately conflates their role. Charities and not-for-profits are experts in the people and communities they work for and with, and are best placed to contribute to debates about issues that affect these people and communities. The advocacy of charities and not-for-profits has been central to the achievement of many of the rights, laws and policies that we now take for granted.

The Bill will have a chilling effect on essential advocacy by charities and not-for-profits, even when that advocacy is *not* funded by international philanthropy or donations. Community advocates, for the first time, would be required to register as political campaigners, with new reporting requirements and criminal penalties.

The Bill will also violate the principle of freedom of association, and introduce unnecessary and burdensome red tape for charities and not-for-profits.

The harmful impact on charities and not-for-profits is so deeply embedded in the Bill that it is difficult to see how it could be amended to address these significant concerns.

Recommendation

The Bill should be withdrawn and redrafted, following a comprehensive consultation process with charities and not-for-profits and the preparation of a Regulatory Impact Statement. The new Bill should ensure that:

- there is no prohibition on advocacy by charities and not-for-profits who are part or fully funded by international philanthropy; and
- charities and not-for-profits are able to continue to advocate on issues deemed likely to be debated during an election without new and additional restrictions and penalties.

Discussion

1. Advocacy by charities is already well regulated

The majority of community sector organisations affected by this proposed legislation are charities, whose activities are already effectively regulated by the Commonwealth *Electoral Act 1918* and the *Charities Act 2013*. Taken together, this legislation requires that charities only undertake advocacy in furtherance of their charitable purpose, prohibits charities from supporting or opposing candidates for election, and requires the reporting of expenditure associated with election advocacy. Additionally, charities are regulated by a statutory regulator, the Australian Charities and Not-for-profits Commission (ACNC), which investigates and impose sanctions for breaches of the Acts.

As charities are unable to participate as partisan actors in election campaigns, and noting the existing regulation and penalties, further regulation of advocacy by charities in the context of an election campaign is unnecessary.

2. Foreign philanthropy makes for stronger charities and society

This Bill places a ban on advocacy on issues deemed likely to be debated during an election (eg. housing, jobs, health, social security), where that advocacy is part or fully funded by international philanthropy or foreign donations. This ban will restrict an important funding source (international philanthropy and foreign donations) from funding advocacy, requiring charities to choose between issues advocacy and international funding.

ACOSS members report that international philanthropy for advocacy forms an important part of the funding profile for some organisations. Removing this funding source will mean that

organisations will need to either identify domestic income sources for their advocacy, or not undertake the work at all.

Further, migrant communities and organisations may be disproportionately impacted by this ban. Advocacy is an important part of the work of these organisations, and international philanthropy and donations from non-permanent residents are an important feature of their funding.

ACOSS rejects any proposal that curbs funding for the crucial advocacy role of charities and not-for-profits. Advocacy is an essential aspect of charities and not-for-profits' ability to participate in public life and influence public policy and action on behalf of the communities they assist. The Australian Government should be encouraging, not inhibiting, the public participation of charities and not-for-profits. Charities and not-for-profits should continue to be clearly entitled to engage in public debates consistent with their purpose even when that advocacy is part or fully funded by international philanthropy or foreign donations.

3. Charities contribute valuably to election debates and should be treated differently to political parties and candidates

Charities and not-for-profits have a special place in the civic life of the nation. They work for and with some of the most disadvantaged people and communities, and have played a leading role in the development of some of the rights, laws and policies that we take for granted today. Whether it is campaigning for people experiencing homelessness, mental health, women's rights or environmental justice, charities and not-for-profits have played a key role in those debates.

This Bill conflates the role of charities with political parties and candidates for election. It characterises charities who advocate in accordance with their charitable purpose as "political campaigners" or "third party campaigners" and places administrative and other requirements on them that are similar to political parties. It also characterises issues-based advocacy as a "political purpose" and spending on issues-based advocacy as "political expenditure".

As a consequence of this Bill, any expenditure on a 'political purpose' is 'political expenditure', any charity or not-for-profit engaged in anything more than limited, incidental advocacy will likely find itself required to be registered as a 'political campaigner' or 'third party campaigner'. This characterisation is in and of itself problematic, and recasts charities as political actors, when they are already expressly prohibited from partisan election campaigning. Indeed under the proposed legislation the definition of 'political expenditure' and the introduction of the concept of 'political purposes' blurs the lines between issues-based advocacy in line with a charity's charitable purpose, and partisan campaigning for public office.

It is well established that supporting a political party or candidates for election, as distinct from supporting, opposing, or comparing policies or issues, is not a valid charitable purpose. Guidelines published by the ACNC already provide sensible advice on how charities can

distinguish in practice between advocacy in pursuit of a charitable purpose and ‘political’ purposes. These guidelines should continue to apply to charities to ensure they continue to remain non-partisan participants in the civic life of the nation.

Because these categorisations are so integral to the operation of this part of the Bill and the policy that it gives effect to, it would be extremely complicated to amend the Bill into a workable piece of public policy.

ACOSS recommends that the Bill should be withdrawn and redrafted, following a comprehensive consultation process with charities and not for profits, and the preparation of a Regulatory Impact Statement.

4. Chilling effect on advocacy

Advocacy is an essential aspect of charities and not-for-profits’ ability to participate in public life and influence public policy and action. Advocacy is the act of having a voice in the public arena and is an essential element of a free society. Advocacy contributes to the development of better public policy.

The provisions of this Bill, when taken together, will have a chilling effect on the voices of charities and not-for-profits in the public debate. The new characterisations of advocates as “political campaigners” and “third party campaigners”, the new and onerous administrative requirements associated with engagement in advocacy, the risk of being listed as an “associated entity” of a political party, and the new criminal penalties, all form a new and burdensome regime that will result in some organisations choosing not to engage in election advocacy or to limit the extent of their advocacy. This will negatively affect the national debate, and exclude the important voices of organisations that work for and with the most disadvantaged and voiceless people in our society.

The Australian Government has an obligation to encourage public participation by charities and not-for-profits. ACOSS strongly opposes attempts to silence or constrain the voice of charities and not-for-profits.

5. Freedom of Association should be upheld in any legislation

This Bill offends the principle of freedom of association in two ways.

First, it categorises organisations that may have shared values or perspectives on issues with one or more political parties as “associated entities”. This characterisation is problematic and establishes in the public mind an association between a political party and a charity or not-for-profit that likely does not exist. It means that a charity or not-for-profit with limited real connection to a political party will be associated with that party merely because of a shared perspective on one or more policies, and in spite of their objections to the association.

A critical element of the principle of freedom of association is the right to *not* associate with an entity that may have a different purpose and agenda than your own, simply because you agree on one issue. This Bill offends that principle.

Secondly, the Bill requires that charities and not-for-profits registered as “political campaigners” or “third party campaigners” include details of their senior staff’s membership of a political party in their election return. This requirement will mean that staff members of charities may have to choose between continuing their membership of a political party, or risking the reputation of their employer.

6. No new red tape

Charities and not-for-profits are already required to report to the ACNC and a range of other regulatory and funding bodies on their activities and finances. Further, a number of charities and not-for-profits already report election activity to the Australian Electoral Commission (AEC). This bill goes further, and requires charities and not for-profits who are engaged in advocacy on election issues also register as “political campaigners” or “third party campaigners”, appoint a “financial controller” who is responsible for a number of functions, operate separate bank accounts for funds received from foreign sources, and make an annual return. The annual return must include details of an organisations’ finances (including a set of audited accounts) and expenditure on advocacy, details of senior staff and their membership of political parties, details of funding and other benefits received by federal, state or territory governments, and a statement confirming compliance with the restrictions on international donations.

These new requirements go significantly further than what is required to restrict foreign influence on elections, and create a new and burdensome regime for charities and not-for-profits to comply with. In addition, there are criminal penalties for non-compliance that will provide a significant disincentive for organisations to engage in election advocacy or will result in charities and not-for-profits limiting the extent of their advocacy.

The ACNC and the Australian Government are focussed on reducing red tape for charities and not-for profits. This Bill takes the opposite approach, and places new obligations on charities and not-for-profits engaged in election advocacy that increase the overall compliance burden.