



# Foreign Donations Bill

ACOSS Briefing Note  
March 2018



The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, also known as the Foreign Donations Bill, seeks to regulate foreign donations to political parties and third party actors in elections, and a range of other things.

If passed, ACOSS believes this bill will have a chilling effect on the voices of charities and not-for-profits, and negatively impact on the fabric of our democracy.

## This bill goes too far.

ACOSS strongly opposes attempts to silence or constrain the voice of charities and not-for-profits.

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.

## If this bill is passed:

Advocacy will be prohibited, where that advocacy is funded by international philanthropy.

- + Charities (such as Meals on Wheels, Save the Children and World Vision) will have to register as political campaigners or third party campaigners, with new reporting requirements and criminal penalties if they are deemed to misbehave.
- + Charities and not for profits will need to appoint a financial controller and make an annual return (which includes audited accounts and the details of any political party membership by senior staff of the organisation).
- + Charities that receive foreign philanthropy will need to keep separate bank accounts to separate funds received from foreign and domestic sources, and verify that donations over \$250 have derived from an "allowable donor".
- + Because of the chilling effect on advocacy by charities and not for profits, political parties and business will be the primary actors during elections, advocating for their interests which are not necessarily in the interests of all of us.
- + It will have a strong negative affect on the national debate by excluding the important voices of organisations that work for and with the most disadvantaged and voiceless people in our society.

## ACOSS opposes this bill.

ACOSS is a charity and a peak body for the community services sector and civil society in Australia. We advocate on behalf of people on low incomes to reduce poverty and inequality.

ACOSS is very concerned about the silencing effect this bill will have on Australia's civil society sector,

and our ability to advocate for people in need, who typically struggle to have their voices heard, and lack the power and influence of wealthy interest groups. Charities and not-for-profits speak up for the interests of people and communities who are typically the least powerful in society. We are essential to our democracy. ACOSS strongly opposes attempts to silence or constrain the voice of charities and not-for-profits.

Further regulation of charities' advocacy on issues deemed likely to be debated during an election is unnecessary and harmful.

This Bill conflates the role of charities and not-for-profits 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 similar to political parties. It also characterises issues-based advocacy, such as advocacy for mental health services, housing, women's rights or the environment 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', and 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'.

International philanthropy forms an important part of the funding profile for some organisations where Australian funding is not available or falls short. This bill will restrict international philanthropy and foreign donations from non-permanent residents if it funds issues based advocacy.

## This bill could look very different.

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.

## Charities are a key part of civil society.

Charities are organisations set up to provide assistance for people who are vulnerable or in need. They are a key part of civil society, independent from government and business.

Charities are not allowed to make a profit. Their **purpose must be charitable** and for the public benefit, including:

- + Advancing social or public welfare (including the relief of poverty, caring for and protecting young people, providing child care services and certain disaster relief activities) (eg. ACOSS).
- + Advancing health, education, the natural environment, religion, culture, the security or safety of Australia or the Australian public (eg. The Wilderness Society).
- + Preventing or relieving the suffering of animals (eg. RSPCA).
- + Promoting or protecting human rights, or reconciliation, mutual respect and tolerance between groups of people in Australia (eg. HRLC).
- + Promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, in furtherance or protection of one or more of the above purposes.

Civil society in Australia comprises around **600,000 charities and not-for-profit organisations**, including sporting clubs, cultural groups, service clubs and national organisations.

## Charities advocate to get better policy for the people and communities they work for.

Charities and not-for-profits are experts in the issues affecting the people and communities with whom they work.

Their workers are at the front line. They hear and see what's going on. They know what's working, and what's not. They are in the best position to advocate in support

of people in need, and assist in government policy formation and implementation.

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 in Australia. Whether it is saving the Franklin Dam, reforming domestic violence laws, and policy on marriage equality, charities and not-for-profits have played a key role.

Advocacy by charities and agitation for political and legislative change for the public benefit has been **recognised by the High Court** as an important and representative part of the Australian democratic process.

Throughout the year, and during elections, charities and not-for-profits are best placed to contribute valuably about issues that affect people and communities.

## Charities and not-for-profits are advocates, not actors.

The Foreign Donations bill recasts charities and not-for-profits as political actors, similar to political parties. They are not.

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. You can access these guidelines [here](#).

## Charities are already regulated.

Charities' and their advocacy are already regulated. They are covered by two Acts:

- + *Commonwealth Electoral Act 1918*.
- + *Charities Act 2013*.

They are also regulated by the Australian Charities and Not-for-profits Commission (ACNC) for breaches of the Acts.

Under current legislation, a charity can advocate for governments to adopt policies to achieve public benefit. For instance, a charity seeking to reduce energy bill costs can advocate to government for policies on affordable electricity, energy efficient housing and adequate income support.

Charities can only undertake advocacy that is relevant to their charitable purpose. They are already prohibited from supporting or opposing candidates for election, and they must already report expenditure associated with election advocacy.

With all of this already in place, further regulation of advocacy by charities in the context of an election campaign is unnecessary.