

Briefing – Electoral Act Changes

Key Points

- Proposed amendments to the *Commonwealth Electoral Act 1918* will impose wide ranging and extremely onerous new compliance requirements on charities undertaking public advocacy on policy issues
- They will impact on philanthropy as well, with donors being disclosed and some having new reporting requirements
- The amendments are highly complex, poorly drafted and were not the subject of public consultation
- They will have a chilling effect on charities, making it harder for them to undertake public advocacy on policy issues
- **The Electoral Act changes should be withdrawn, and redrafted to focus on undue foreign influence on political parties**

Why are Charities Covered by the Electoral Act?

The *Commonwealth Electoral Act 1918* (the Act) doesn't just regulate the activities of political parties and candidates – it also imposes requirements on other organisations that may get involved in public policy debates, this can include a charities.

Whether a charity has obligations under the Act depends on whether they incur what's called *political expenditure*. The proposed Electoral Act changes use a definition of *political expenditure* which includes the following activities (as well as some other activities such as advertising and commissioning opinion polls):

- a) the public expression by any means of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate;
- 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);

Both a) and b) cover public advocacy activities which charities commonly undertake and which philanthropy can fund. The definition of b) is very broad and vague and applies at all times and not just during election campaigns.

Once a charity spends \$13,500 on these activities, it has obligations under the Act.

The effect of this definition is that any charity which spends more than a minor amount of funds on any public advocacy on policy issues will be covered by the Act, and subject to the obligations discussed further below.

What Changes is the Australian Government Proposing?

The Australian Government is proposing to make wide-ranging and extremely onerous changes to how charities, business groups, and other bodies are regulated under the Act. It is doing this through the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, which was introduced into the Australian Parliament in December last year. The changes impose a massive new amount of red tape on charities which undertake public advocacy.

New Registration Requirements

Charities which undertake political expenditure will have to register with the Australian Electoral Commission (AEC):

- If they spend more than \$13,500 in a financial year – they have to register as a *third party campaigner*
- If they spend more than \$100,000 in a financial year, or in any one of the previous three financial years; or the spend more than \$50,000 in a financial year and it accounts for more than 50% of its revenue – they have to register as a *political campaigner*

New Reporting Requirements

At the moment, the equivalent of third party campaigners do have some reporting requirements to the AEC (and a small number of charities do provide annual returns), but they are more limited and less onerous – this will change. Both third party and political campaigners will have more onerous reporting requirements to the AEC.

Example

A homelessness charity is seeking to ensure that we have policies that support better services for homeless people and address the systemic causes of homelessness. It regularly makes submissions to a number of Australian Government consultations and Parliamentary Inquiries about this issue, frequently issues media releases promoting its policy positions and during the Federal Election it issues a statement calling on all parties and candidates to support policies that reduce homelessness. It spends more than \$13,500 of these activities. It would have obligations under the Act.

Example

The St Vincent De Paul Society has said [the following](#) about the new requirements:

[W]hile the St Vincent de Paul Society has a relatively high profile on social justice issues, the cost of the Society's advocacy is relatively modest. However, the cost is more than \$100,000. This means that if the Bill is passed into law, the Society will be required to register as a "political campaigner."

- A political campaigner will need to submit an audited annual return to the AEC. These will need to include the details of any donors who provided more than \$13,500, and the details of senior staff and their membership of any political party
- A third party campaigner will need to submit a less comprehensive annual return to the AEC. But it will still need to include the details of any donors who provided more than \$13,500, as well as the details of senior staff and their membership of any political party

This will all be publicly available information.

These requirements are highly invasive – what business is it of the AEC to know the political affiliation of senior staff of charities which undertake public advocacy?

Very Harsh Penalties

Non-compliance with the requirements will incur harsh penalties incurred *personally* on the *financial controller* of the third party or political campaigners.

E.g if a third party campaigner submits a late annual return, the *financial controller* will be personally liable for a penalty of \$37,800 *per day*.

This will be a very heavy burden for a charity staff member to carry.

Foreign Donations Prohibited

Charities which are third party or political campaigners will not be able to accept foreign donations over \$250 per year for use towards political expenditure. The Bill requires due diligence on all donors giving more than \$250 per year, including a requirement for donors to sign a statutory declaration stating that they are not a foreign donor.

This will be unworkable and impose a massive amount of red tape on charities.

What will be The Effect of These Changes on Charities?

The changes will have a chilling effect on charities, making it harder for them to undertake public advocacy on policy issues.

Charities will have more paperwork to fill out, and risk higher penalties for non-compliance. For some charities, they will decide that it's easier to just stay quiet. However, we need charities to be a voice for the voiceless, and to seek to address the causes of social and environmental problems. This often involves public advocacy on policy issues.

What will be The Effect of These Changes on Philanthropy?

The changes will also impact on philanthropy. Where a philanthropic organisation makes a grant to a charity over \$13,500, for use toward public advocacy on policy issues, the charity will need to report details of it in its annual return to the AEC, including the names and addresses of trustees.

Where a philanthropic organisation makes a grant to a charity over \$13,500, for use toward public advocacy on policy issues, and the charity is classified as a political campaigner, **the philanthropic organisation will also have to provide an annual return to the AEC detailing the grants it has made.**

But the Australian Government Says Only 7 Charities Will be Impacted?!

The Australian Government has said that only 7 out of Australia's 55,000 charities are likely to be impacted upon by the changes. **This is incorrect.**

This figure is based on the number of charities which have submitted returns to the AEC under the *existing and much more limited* compliance and reporting framework. However this is based on a different and narrower definition of *political expenditure* – this definition only applied to *the public expression of views on an issue in an election by any means*.

This was commonly understood to mean only the public expression of views during a previous election campaign (and there was no guidance provided by the AEC to indicate a different meaning) – but the new definition of political expenditure applies to views expressed about issues which may arise in elections into the future and is not limited views expressed only during an election campaign but instead applies all the time.

Because the new definition of political expenditure is broader than the older definition, more charities will be caught by it, and more charities (and philanthropic organisations) will be burdened by all the new requirements that the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* seeks to introduce.

Leading constitutional lawyer, Professor Anne Twomey has [said](#) that:

Given the wide range of issues that may be before electors in an election, the bill is likely to catch a large number of charities, along with universities, corporations and others.

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