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15 February 2018

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

By Email: em@aph.gov.au

Dear Secretary,

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

Introduction

Philanthropy Australia thanks the Joint Standing Committee on Electoral Matters for the opportunity to appear before it on Wednesday 31 January.

Further to our evidence before the Committee, we write regarding the Committee's request for further information about possible amendments to the Bill which could address concerns we have raised in our submission and in our evidence before the Committee.

We have examined the Bill in further detail. Following this, we remain of the view that the Bill is highly flawed and believe that a fundamental rethink of the proposals contained in the Bill is necessary before it can be progressed. We remain very concerned that no proper rationale has been provided for the significant changes which the Bill seeks to introduce, and that there has been inadequate public consultation regarding these changes.

There is no straightforward way to amend the Bill to address the concerns Philanthropy Australia has, and therefore we believe that the appropriate way forward is to withdraw the Bill.

Following this, wide-ranging consultation should be undertaken with stakeholders, including charities and philanthropic organisations, and a comprehensive regulatory impact statement should be completed. This would enable a new Bill to be developed which is narrower in scope and addresses the various flaws in the current one.

Although we do not support progressing the Bill, to assist the Committee, Philanthropy Australia has identified some further specific concerns with it. These should be read alongside the concerns already set out in our submission to the Committee and raised as part of the evidence we gave at our appearance before the Committee.

The Definition of Political Purpose

The definition of 'political purpose' set out in the proposed new s287(1) is too broad and highly uncertain.

The definition largely replicates the definition of political expenditure as amended by the *Electoral and Other Legislation Amendment Act 2017* in September 2017.

That Act changed the definition from one where political expenditure could be incurred through

The public expression of views on an issue in an election by any means

to one where political expenditure could be incurred through

The public expression 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) by any means

There are a number of problems with this definition.

In the absence of any guidance regarding the definition, it was generally understood that previous definition only applied to public expression of views within an election campaign. This may explain why relatively few charities and other organisations previously needed to submit a return to the Australian Electoral Commission.

However in the absence of guidance to the contrary, the broadened definition will be interpreted as applying to all public advocacy regarding policy issues – as any such issues may be issues in an election. In doing so, the broadened definition effectively conflates public advocacy regarding policy issues with electioneering and seeks to regulate it as such. This is highly problematic.

Philanthropy Australia is very concerned that the broadened definition will effectively mean that any charities undertaking public advocacy regarding policy issues will be viewed as having incurred political expenditure, and will therefore become subject to the provisions of the *Commonwealth Electoral Act 2018* once they meet the relevant threshold. This will bring many more charities into the regulatory framework which the Bill seeks to introduce, burdening them with new compliance and reporting requirements.

In addition to the breadth of the definition, it is also highly uncertain. It is not clear what types of expenditure should be counted for the purposes of the definition. For example, should staff and office costs be apportioned?

The definition of political purpose in the proposed new s287(1) underpins the entire new regulatory framework which the Bill seeks to introduce for 'third party campaigners' and 'political campaigners'. If it is too broad and uncertain, then this means that the entire regulatory framework is too broad and uncertain.

For this reason, Philanthropy Australia believes that the definition of political purpose needs to be significantly revised. A considerably narrower and clearer definition is essential. At this stage, we are not in a position to recommend how this should be done, hence our recommendation that the Bill be withdrawn to enable further consultation.

Donations to Political Campaigners

Under the proposed new s314AB(2), a political campaigner must submit an annual return which sets out

*The total amount received by, or on behalf of, the party **or campaigner** during the financial year, together with the details required by section 314AC*

The details required by s314AC include the individual donations above the disclosure threshold which have been received, the names of the trust or foundation they were received from and the names and addresses of the trustees of the fund or of the foundation, or just the name and address of the individual where the donation is made in that capacity.

As it is currently drafted, the individual donations that a political campaigner will need to provide details for will not be restricted to donations used only for political expenditure, but will include all individual donations.

A charity may primarily undertake activities such as service delivery and receive individual donations for these activities. They may also undertake some activities which constitute political expenditure, and if they meet the relevant threshold they will be regarded as political campaigners. Such charities will then be required to provide details of all the individual donations above the disclosure threshold which have been received regardless of what they are used for (and for many charities, \$100,000 of political expenditure may represent a relatively small proportion of their overall activities and individual donations may actually fund their other activities).

This same issue applies in the case of the proposed new s305AB(1) and (2), which requires a person who donates more than the disclosure threshold to a political campaigner to provide a return to the AEC setting out all the donations to the political campaigner. As currently drafted, this would require setting out donations used for political expenditure, as well as donations used for other purposes.

Philanthropy Australia questions why such requirements are being imposed and is concerned about both the reporting burden it imposes on charities and donors. We are also concerned that it may be an unwarranted infringement on the privacy of donors providing funds to charities for activities unrelated to political expenditure.

Clarity Regarding the Status of Philanthropic Organisations Funding Political Expenditure

As the Bill is currently drafted it is unclear as to whether an organisation will only be classified as a third party or political campaigner if they directly incur political expenditure.

For example, a philanthropic organisation may provide a grant to a charity of \$15,000, to be used by the charity for activities which constitute political expenditure. In this case, the philanthropic organisation is not directly incurring political expenditure, however it could be argued that it is indirectly incurring political expenditure and could therefore be classified as a third party campaigner.

If this were the case, given the broadened definition of political expenditure, the Bill would bring many philanthropic organisations into the regulatory framework which it seeks to introduce. This would mean that the Bill not only burden charities with new compliance and reporting requirements, but also philanthropic organisations.

Information Relating to Allowable Donor Status

As currently drafted, the proposed new ss302E, 302M and 302P appears to require some charities to verify the identity of donors by asking them to sign a statutory declaration.

This is unworkable.

Although s302P provides that regulations may be made to determine what information other than a statutory declaration can satisfy the requirements of this section, reliance should not be placed on the making of regulations given that the alternative is unworkable.

Conclusion

Philanthropy Australia thanks the Committee for the opportunity to provide this further information. If the Committee would like to discuss the matters raised in this letter further, please do not hesitate to contact Krystian Seibert, Advocacy & Insight Manager, on (03) 9662 9299.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Sarah Davies', with a long, sweeping flourish extending to the right.

Sarah Davies
Chief Executive Officer