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27 September 2018

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

By email: em@aph.gov.au

Dear Sir/Madam,

Inquiry into the proposed amendments to the *Electoral Legislations Amendment (Electoral Funding and Disclosure Reform) Bill 2017*

Philanthropy Australia thanks the Joint Standing Committee on Electoral Matters (JSCEM) for the opportunity to make a submission to the inquiry into proposed amendments (the amendments) to the *Electoral Legislation Amendments (Electoral Funding the Disclosure Reform) Bill 2017* (the Bill).

We welcome the manner in which the Australian Government has responded to the recommendations of the previous JSCEM Inquiry into the Bill. Philanthropy Australia strongly supports the important role of advocacy by charities, and many of our Members fund such advocacy activities. Advocacy by charities is essential to our democratic system of government, and should therefore be encouraged by Government through a supportive policy and regulatory framework.

At the same time however, there is a strong public interest in ensuring the transparency and integrity of our electoral system. Therefore, appropriate measures are necessary to promote this transparency and integrity, including well targeted and proportionate disclosure requirements on third parties which undertake electioneering activities that are specifically focused on influencing how people vote.

Philanthropy Australia, along with many other stakeholders, raised major concerns about the Bill when it was first introduced by the Government and made these views known to JSCEM as part of its first Inquiry.

The Bill as currently drafted uses a highly flawed definition of 'political expenditure' which can capture much of the issues based advocacy which charities undertake and which philanthropy funds. In doing so, it imposes significant new compliance burdens on these charities, which can stifle their ability to advocate for their charitable purposes.

The proposed amendments which are the subject of this Inquiry are therefore very welcome, and address many of the concerns which have been raised about the Bill. They include a new, narrow and clearer definition of 'electoral expenditure', reductions in penalties to make them more reasonable and proportionate, and decreases in other compliance obligations.

Some more detailed comments on the Bill and draft amendments are provided below. We believe there are a number of matters which still need to be addressed before the amendments are suitable and the amended Bill can be passed.

Definition of Political Expenditure

The most significant concern that Philanthropy Australia has with the Bill is that the definition of 'political expenditure' it uses is very unclear and potentially very broad, and therefore is likely to cover many of the issues based advocacy activities which charities undertake. This was the primary concern of Philanthropy Australia as the important, and legitimate, work of charities advocating for their charitable purposes should not be subsumed into the framework for electoral regulation unless those activities are actual electioneering.

Philanthropy Australia therefore welcomes replacing the term 'political expenditure' with 'electoral expenditure'. The new definition of 'electoral expenditure', which is narrower and clearer than the definition of political expenditure, is specifically focused on electioneering activities whose dominant purpose is to influence the way electors vote in a federal election.

In particular, the matters set out in section 4AA(3), which provide guidance about what should be taken into account when determining whether something is 'electoral matter' are helpful, as are the exclusions in section 4AA(4).

Section 4AA clarifies that the vast majority of the issues based advocacy activities undertaken by Australian charities and funded by our Members will not be within the scope of the Act should the amended Bill be passed.

In addition, Philanthropy Australia is confident that international philanthropy will therefore be able to continue to support the vast majority of issues based advocacy activities by Australian charities. The only activities which will not be able to be supported will be actual electioneering activities.

Disclosure by Political Campaigners

Philanthropy Australia is pleased to see that the amendments increase the threshold for political campaigners. This combined with the narrower definition of electoral expenditure, will mean that fewer entities are likely to be classified as a political campaigner. However, despite these improvements, there are still problems with the Bill, which have not been adequately addressed by the draft amendments.

Section 314AB(2)(a)(ii) provides that a political campaigner's annual return to the Australian Electoral Commission must provide the details required by section 314AC in the *Commonwealth Electoral Act 1918*.

Section 314AC in turn requires the disclosure of all amounts received above the disclosure threshold, including the details of those who provided them.

Philanthropy Australia believes that this is an unreasonable requirement, which would breach the privacy of donors which have provided amounts that were not intended to be used for incurring electoral expenditure. We also have a concern that philanthropists who provide untied donations to charities could end up being reported to the AEC as a political campaigner, regardless of the intent of their gift.

Philanthropy Australia recommends that section 314AC be amended to specify that political campaigners must only provide details of amounts which were provided for the purpose of incurring electoral expenditure.

Annual returns by Donors to Political Campaigners

Under subsection 305B(1) a person or entity which provides gifts to a political campaigner totalling more than the disclosure threshold must provide a return to the AEC. This is an issue which is worthwhile to address in order to improve transparency in situations where donors may make many smaller gifts to a single political campaigner which therefore are not required to be disclosed by the political campaigner.

However it is recommended that this disclosure requirement should only apply to gifts to a political campaigner which are intended to be used for electoral expenditure as opposed to gifts for other purposes.

Conclusion

Philanthropy Australia wishes to acknowledge the leadership of the Hands Off Our Charities alliance as part of the debate around the Bill. Their engaged and proactive advocacy has been critical to improving the Bill and their submission points out a number of further matters for JSCEM's consideration.

Philanthropy Australia would also like to acknowledge the work of the offices of the Minister for Finance, Senator the Hon Mathias Cormann, the Shadow Special Minister of State Senator the Hon Don Farrell, and the Shadow Minister for Charities and Not-for-profits the Hon Andrew Leigh MP, for their regular engagement and communication with Philanthropy Australia regarding our concerns.

We also recognise the work of the members of JSCEM and their clear commitment to ensuring that any Bill which is passed is fit-for-purpose, as was evident in the recommendations they made following their previous Inquiry into the Bill.

Philanthropy Australia would welcome the opportunity to discuss the matters raised in this submission further. In this regard, please do not hesitate to contact Sarah Wickham, Policy and Research Manager, on (03) 9662 9299.

Yours Sincerely



Sarah Davies
Chief Executive Officer