



25 January 2018

Committee Secretary

Joint Standing Committee on Electoral Matters

By email: em@aph.gov.au

TI Australia submission to Joint Standing Committee Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Dear Secretary

Transparency International Australia is pleased to submit some brief comments to the Committee's Inquiry on proposed amendments to Australia's Electoral Legislation. Tabled in November 2017.

Summary

In summary, this submission on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth) ('the Bill') states:

1. TI Australia is unable to support the Electoral Funding and Disclosure Reform Bill 2017 – (The Bill).
2. The Bill imposes new, onerous and costly requirements on charities and Not-for-Profits' reporting requirements as part of the introduction of the 'Third Party Campaigner' and 'Political Campaigner' categories.
3. The Bill will impose a partial prohibition on receiving international funding through restrictive 'allowable donor' clauses.
4. The Bill proposes regulatory measures that are fundamentally inconsistent with charity law.
5. Any new regulation needs to promote coherence with existing charities law.
6. The Bill promotes legal confusion over the rights and proper procedures for charitable advocacy leading to self-censoring and causing a 'chilling effect' on charitable advocacy.
7. The Bill undermines the legitimacy of charities engaging in advocacy and stifles the legitimate voice of charities.

TI Australia endorses the submission by the Australian Council for International Development (ACFID) of which TI Australia is an affiliate member.

Transparency International Australia

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public-sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders.

TI Australia, is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

TI Australia position



1. Transparency International Australia is unable to support the Bill in its current form.
2. The Bill, as tabled, would ban foreign donations to charities undertaking advocacy. TI Australia holds the strong view that The Bill imposes new, and burdensome reporting requirements as part of the introduction of the *'Third Party Campaigner'* and *'Political Campaigner'* categories.
3. TIA is concerned this measure [*Third Party Campaigner* and *Political Campaigner*] will place a significantly higher and unwarranted burden on charities undertaking lawful advocacy.

It should be noted that the High Court upheld the right of charities to advocate and campaign on issues of public concern in the Aid/Watch case, finding advocacy activities to be essential to Australia's constitutional system of parliamentary democracy.
TIA opposes the new classes of *'Third Party Campaigners'*, and *'Political Campaigners'* and the resultant administrative burden and restrictions they will place on the charities required to register in these classes under the proposed legislation.
4. The Bill proposes regulatory measures that are fundamentally inconsistent with charity law. TIA is concerned that in seeking to apply the same regulatory measures to entities that engage in overtly party-political activities to win power and influence through the electoral process, with the non-partisan expression of views of charities, is fundamentally inconsistent with charity law.

TIA strongly believes that any new regulation needs to promote coherence with existing charities law.
5. As a registered charity, TIA complies with a series of limitations and prohibitions through the Charities Act.
6. TIA is concerned that The Bill will impose a partial prohibition on receiving international funding through the introduction of restrictive clauses such as 'allowable donors' and additional prohibitions including accepting donations from foreign bank accounts. TIA is part of a global movement to combat corruption. In some circumstances, we receive international funding to progress our work in combatting corruption and strengthening integrity systems.
7. TIA believes that the current legal regime is robust in outlining the purposes for which charities can legitimately be established, as well as in ensuring charities must demonstrate that they do not have a 'disqualifying purpose,' - the definition of which prohibits charities from having a 'purpose of promoting or opposing a political party or candidate for political office'.
8. The draft legislation indicates that activities by charities which are found to involve 'political expenditure' fall within disclosure rules under the Commonwealth Electoral Act 1918 (Cth).
9. Disclosure obligations already exist for all parties who incur 'over the disclosure threshold' of political expenditure in the Electoral Act, s314AEB – organisations who do so must file an annual return outlining the details of that expenditure. However, the definition of 'political expenditure' currently in s314AEB is far narrower than that in The Bill.
10. TIA joins ACFID in contending that The Bill introduces incoherence and potential confusion between this [Electoral Act] and the Charities Act. There is a significant risk that a charity could be classified as spending money with a 'political purpose' under the Electoral Act,



while at the same time prohibited from having a 'political purpose' under the Charities Act (complying with that prohibition, as political purpose is currently understood in charity law).

11. The definition of '*political expenditure*' under the proposed legislation and the introduction of '*political purposes*', blurs the lines between legitimate and lawful advocacy that advances charitable purpose, and partisan campaigning that results in public office.
12. TIA concludes that there are two resulting effects:
 - a. Promotes legal confusion over the rights and proper procedure for charitable advocacy leading to self-censoring and causing a 'chilling effect' on charitable advocacy; and
 - b. Undermines the legitimacy of charities engaging in advocacy and stifles their voice.

Conclusion

In summary, TIA strongly supports the need for a transparent and effective framework for regulating third parties in the electoral process. However, The Bill should not be progressed in its current form, and does not have our support.

TIA calls for, and would engage with, any further consultation with charities.

TIA supports the call for a detailed regulatory impact statement to assess compliance costs of proposed changes, and to ensure charities are excluded from any amendments which should not apply to them.

A handwritten signature in black ink, appearing to read 'Serena Lillywhite', with a stylized flourish at the end.

Serena Lillywhite

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