

# THE ELECTORAL LEGISLATION AMENDMENT (ELECTORAL FUNDING AND DISCLOSURE REFORM) BILL 2017

Gideon Rozner, Research Fellow

## A threat to free speech and civil society

The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill), introduced into Parliament late last year, seeks to amend the *Commonwealth Electoral Act 1918* (the Electoral Act) to make two key changes to funding and disclosure laws:

1. prohibiting donations from 'foreign sources'; and
2. applying funding and disclosure laws to new categories of 'political campaigners' and 'third party campaigners'.<sup>1</sup>

This brief will focus on the second item: the extension of the Act to entities the government describes as 'non-party actors'.<sup>2</sup>

### **The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 will radically expand the Commonwealth Electoral Act:**

- The Bill will create new public registers, maintained by the Australian Electoral Commission (AEC) for 'political campaigners' and 'third party campaigners'. Entities will be required to register if they incur a certain amount of expenditure on 'political activity'.<sup>3</sup>

Critically, the definition of 'political activity' includes:

[T]he public expression, by any means, of views on an issue that is, or is likely to be, before electors at an election (whether or not a writ has been issued for the election).<sup>4</sup>

- In addition to registration with the AEC, 'political campaigners' and 'third party campaigners' will be subject to a suite of new and existing requirements under the Electoral Act's funding and disclosure regime. These include:
  - obtaining a statutory declaration from every donor to verify that they are an 'allowable donor';<sup>5</sup>
  - submitting lengthy annual returns, which must include detailed financial information, an auditor's report, donor information and details about senior staff (including whether they are members of any registered political party);<sup>6</sup>
  - the appointment of a financial controller, who in many cases will be personally liable for their entity's failure to comply with the Electoral Act;<sup>7</sup> and
  - substantial civil and criminal penalties for non-compliance, including imprisonment.<sup>8</sup>

If passed, the Bill will have serious consequences.

## The Bill would set a dangerous precedent for freedom of speech

---

The Bill is an extraordinary and radical attempt to regulate political discourse in Australia.

By defining ‘political activity’ to include any ‘public expression’ of ‘views on an issue’, the Bill will bring a suite of organisations under the remit of the Electoral Act that have no involvement with the political process other than commenting on public policy matters.<sup>9</sup>

The precedent set by a change of this nature cannot be underestimated. For the first time, many organisations in Australia will be required to register with the AEC – a Commonwealth statutory authority – in order to express views on public policy matters and participate in the national political debate.

## The Bill will impose a crippling red tape burden on civil society

---

In addition to underlying principles, the practical impact of the Bill are highly concerning. Subjecting charities, religious bodies, community organisations and other groups to rules developed to regulate political parties is as impractical as it is inappropriate.

The Commonwealth funding and disclosure regime – which will be enlarged by the Bill – is complex, extensive and beyond the organisational capabilities of many civic groups. In particular, the new requirement to obtain a statutory declaration in relation to every donation is an extremely onerous requirement that will deprive many volunteer and not-for-profit organisations of funding.

The red tape burden created by imposing the Electoral Act on charities and non-profit groups is compounded by the fact that substantial civil and criminal penalties apply for

non-compliance, including imprisonment. This is particularly concerning given that in many instances, an entity’s financial controller – who in the case of many organisations will be a volunteer with little or no expertise on regulatory compliance – will be personally liable for such contraventions.<sup>10</sup>

Further, many of the requirements imposed by the Bill are identical or substantially similar to those already in place under existing regulation of charities and not-for-profit sector.<sup>11</sup> In this way, many of the Bill’s provisions will effectively double the red tape burden on many organisations for no public policy gain.

## The Bill’s limited exemptions are arbitrary and unjustified

---

The definition of ‘political purposes’ contained in the Bill includes a few limited ‘carve-outs’. The expression of views on public policy matters will not be considered ‘political’ in nature if it:

- constitutes ‘editorial content in the news media’; or
- is ‘solely for genuine satirical, academic or artistic purposes’.<sup>12</sup>

This means that if the Bill is implemented, some sources of speech will be unaffected – and hence favoured – and others will not. An opinion on public policy expressed by, for example, a minister on behalf of a religious body will be deemed ‘political’, but an equivalent opinion expressed by a presenter on an ABC programme will not. An article advocating a change in government policy would be captured by the Bill if it appeared on the website of an industry association, but not if it appeared on the website of a newspaper. There is no reason for this arbitrary double standard.

For more information contact  
Gideon Rozner, Research Fellow at [grozner@ipa.org.au](mailto:grozner@ipa.org.au)

---

1 See Explanatory Memorandum, Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), 5.

2 Ibid.

3 Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), sch 1, item 11.

4 Ibid, sch 1, item 7 (emphasis added).

5 Ibid, sch 1, item 33.

6 Ibid, sch 1, items 11, 84, 87 and 100.

7 Ibid, sch 1, item 26.

8 Ibid, sch 1, item 33.

9 Above n 4.

10 Ibid, sch 1, item 10.

11 See *Australian Charities and Not-for-profits Commission Act 2012* (Cth), sub-div 60-C.

12 Above n 4.