Foreword

While most would agree that only Australians should have the power to influence our election outcomes, our nation is one of the few western democracies where foreign money can still be used to influence domestic elections.

In December 2017, the Turnbull Government introduced the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 to ban foreign political donations. This was in response to the Committee’s second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations.

Despite broad consensus on the principle of banning foreign donations, there has been significant, and important, public debate as to who and what activities the ban should be applied to.

At the heart of this debate lies the fact that election campaigning today is very different from that in the mid-1980s when relevant provisions in the Electoral Act were written. The campaign period has moved well beyond the time in-between the issuing and return of the election writs. Today, campaigning is continuous and largely issues-based. Campaign messaging is also communicated via a wider range of mediums by a much wider range of entities, including charities, industry groups and religious institutions.

The committee agrees in-principal to the passage of this Bill, subject to the government addressing the report’s 15 recommendations. These recommendations provide greater clarity for charities and align definitions as closely as possible with the intent and principles of the Bill, while ensuring regulatory and compliance burdens are minimised.

Australian citizens must have visibility of who is seeking to influence their votes and have confidence that foreigners are not seeking to influence the outcome of their votes. Therefore, Australia’s electoral laws must apply equally to all participating in the political process with the aim of influencing electors voting intentions. The committee therefore recommends introduction of a new and easily
accessible transparency register to provide voters with the ability to readily identify who is seeking to influence their vote. A transparency register would also assist all third parties, particularly those not compliant with current legislative requirements, to better understand and comply with regulatory obligations.

All JSCEM committee members are deeply committed to ensuring the health of Australia’s democratic institutions. While Australians may not like the outcome of an election, they must have confidence that the result accurately reflects the will of the majority of Australian voters.

Deliberations on this multi-partisan report were underpinned by the principles of national sovereignty, voter transparency and the preservation of democratic freedoms.

The Committee thanks all submitters for the high level of interest and engagement in this inquiry, and also for the high quality of evidence received.

On behalf of the Committee, I sincerely thank the Committee Secretariat; Lynley Ducker, Siobhan Leyne and Nathan Fewkes, for their tireless support, professionalism and patience.

Thank you to all Committee members for their tireless commitment to tackling the detail and complexity of this inquiry to deliver a multi-partisan report on this issue of such importance to the operation of our Democracy.

Lastly, my thanks and gratitude to Andrew Giles MP, Deputy Chair of the Committee and Senator Lee Rhiannon for their support, engagement and genuine resolve to working together to deliver implementable report recommendations.

Senator Linda Reynolds CSC
Chair
List of Recommendations

Recommendation 1

2.33 The Committee recommends the Government reconsider introducing the term ‘political purpose’ into the Electoral Act 1918, having regard to potential confusions with the Charities Act 2013 in which the term has a divergent meaning.

Recommendation 2

2.34 The Committee recommends that the Government consider amending the definition of ‘political expenditure’ to define the type of expenditure which constitutes expenditure undertaken to influence voters to take specific action as voters, so as not to capture non-political issue advocacy.

Recommendation 3

2.56 The Committee recommends that instead of the categories of ‘third party campaigner’ and ‘political campaigner’ being established as registration thresholds, the Government consider establishing a publically available ‘Transparency Register’ be established that provides:

- voluntary registration for all entities engaged in ‘political expenditure’;

- mandatory registration for all entities engaged in activities that require disclosure of ‘political expenditure’ that reach a minimum ‘expenditure threshold’; and

- disclosure obligations that are commensurate with levels of expenditure.
The registration process for the Transparency Register should be simple and provide access to additional support for registrants to fulfil their reporting obligations.

Recommendation 4

2.61 The Committee recommends that the Government consider setting expenditure thresholds for triggering increased reporting obligations under the proposed Transparency Register be set at a level that could reasonably be expected to have a significant impact on voter behaviour and that these obligations be proportionate to levels of expenditure.

Recommendation 5

2.65 The Committee recommends that the Government consider establishing a process that requires, prior to each election, all political parties to reaffirm their registration or be subject to automatic deregistration.

Recommendation 6

2.80 The Committee recommends that the Government reconsider the definition of ‘associated entity’ proposed in the Bill, and instead consider retaining the definition of ‘associated entity’ currently in the Electoral Act.

Recommendation 7

2.87 The Committee recommends that the Government consider introducing administrative action to support consistent compliance with the provisions of the Electoral Act, as amended, by third party entities.

Recommendation 8

3.30 The Committee recommends that the Government give consideration to replacing the definition of ‘allowable donor’ with a definition of ‘non-allowable’ donors.

Recommendation 9

3.36 The Committee recommends that the Government consider:

- removing the potential requirement for statutory declarations for all gifts;
- simplifying the process for entities to verify whether a donor is a non-Allowable donor.

**Recommendation 10**

3.37 The Committee recommends that the Government consider removing the aggregation of donations received under the allowable amount, provided that appropriate anti-avoidance measures are implemented.

**Recommendation 11**

3.50 The Committee recommends the Government consider providing a legislative mechanism to give greater transparency of foreign funds that are moved through multiple organisations, whether they be charities, not for profits, industry associations or businesses, and to prohibit the use of such funds by way of political expenditure; noting the need to reach agreement on defining ‘political expenditure’ and noting the Australian Greens’ concerns that non-partisan issue based advocacy not be included in the definition of ‘political expenditure’.

**Recommendation 12**

3.83 The Committee recommends that the Government consider establishing a minimum expenditure threshold before requiring substantiation for public funding claims.

3.84 Subject to the above amendment, the Committee recommends that the proposals relating to public funding be agreed.

**Recommendation 13**

4.17 The Committee recommends that the Government consider reducing the proposed penalties in the Bill, and that penalties be proportionate to the type of breach displayed.

**Recommendation 14**

4.18 The Committee recommends that the Government consider:

- an appropriate legislative mechanism whereby organisations which hold Deductible Gift Recipient (DGR) status which donate funds to another organisation in breach of their DGR obligations forfeit the right to DGR status; and
that any legislation include a mechanism to allow for a warning before removal of DGR status.

Recommendation 15

4.19 The Committee recommends that the Government appropriately resource both the Australian Electoral Commission and the Australian Charities and Not-for-profits Commission to undertake a comprehensive education campaign for business, for industry associations, and for the charity sector on their obligations under the *Electoral Act 1918*.
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LP, WA

Deputy Chair

Mr Andrew Giles MP  
Scullin, VIC

Members

Senator Carol Brown  
ALP, TAS

Senator Barry O’Sullivan  
Nationals, QLD

Senator Lee Rhiannon  
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Mr Scott Buchholz MP  
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1. Introduction

1.1 The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (‘the Bill’) was introduced in the Senate on 7 December 2017. In anticipation of its introduction, the Minister for Finance referred it to the Joint Standing Committee on Electoral Matters (JSCEM) stating:

Australians do not want foreign governments, foreign billionaires, or foreign companies influencing Australian politics. I am pleased to note this important principle has broad support across the Parliament.

Importantly, this Bill takes into account the realities of contemporary political campaigning, in which may different political entities – political parties, independent candidates, trade unions, interest groups, advocacy groups and others – spend millions of dollars each year to influence voters.1

1.2 The Explanatory Memorandum further states the Bill’s intent:

The integrity, real and perceived, of Australia’s electoral system is critical to our system of government. However, Australia’s regulatory approach to political finance has not kept pace with international and domestic developments.

Election campaigning has radically changed through the professionalisation of politics and the proliferation of media advertising. New political actors neither endorse candidates nor seek to form government, yet actively seek to influence the outcome of elections. While a positive indicator of the strength of Australian civil society and civic engagement, these new actors lack the public

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1 Senator the Hon Mathias Cormann, Minister for Finance, correspondence dated 6 December 2017.
accountabilities of more traditional actors, such as registered political parties or parliamentarians.

Internationally, media reports increasingly document foreign attempts to influence elections around the world. This is problematic, because the real and perceived integrity and fairness of elections is critical to peaceful democratic government.\(^2\)

1.3 **Amending the *Commonwealth Electoral Act* 1918, the Bill proposes to:**

- establish public registers for key non-party political actors;
- enhance the current financial disclosure scheme in the *Commonwealth Electoral Act* 1918 (the Electoral Act) by requiring non-financial particulars, such as senior staff and discretionary government benefits, to be reported;
- prohibit donations from foreign governments and state-owned enterprises being used to finance public debate;
- require political actors to verify that donations over $250 come from:
  - an organisation incorporated in Australia, or with its head office or principal place of activity in Australia; or
  - an Australian citizen or Commonwealth elector;
- prohibit other regulated political actors from using donations from foreign sources to fund reportable political expenditure;
- limit public election funding to demonstrated electoral spending;
- modernise the enforcement and compliance regime for political finance regulation; and
- enable the Electoral Commissioner to prescribe certain matters by legislative instrument.\(^3\)

**Definitions**

1.4 **The Bill introduces and expands a range of definitions *Commonwealth Electoral Act* 1918.\(^4\) The most important are:**

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\(^3\) Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, *Explanatory Memorandum*, pp. 3-4.

\(^4\) See Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, proposed s287(1); *Explanatory Memorandum*, pp. 11-16.
allowable amount – any amount received by the person or entity, or to which the person or entity has access, during the financial year except gifts from a non-allowable donor, and loans.

allowable donor – an individual who is an Australian citizen or resident; an entity that is incorporated or whose principle activity is based in Australia.

associated entity – (expanded definition) an entity that operates wholly, or to a significant extent, for the benefit of registered political parties.

political campaigner – a person or entity that incurs political expenditure of $100,000 over the previous 3 financial years, $50,000 or more in a financial year or 50% of the allowable amount in a financial year.

third party campaigner – a person or entity that incurs political expenditure of more than the disclosure threshold ($13,500 indexed) in a financial year.

political purpose – the public expression of views on a political party, candidate, Member, Senator or on an issue likely to be before electors in an election; the broadcast of certain political matter; the carrying out of opinion polls or research relating to an election or voting intentions.

1.5 The term gift is used throughout the Bill, as this is the term used in the Act to refer to donations. The new definition of allowable amount makes clear that other funds used by an entity for political purposes, such as corporate funds and membership fees, are also captured by the Bill.

Previous Committee comment

1.6 As part of its inquiry into the conduct of the 2016 federal election, the Committee has been considering the matter of political donations. Evidence to that inquiry has informed the Committee’s consideration of this Bill.5

1.7 The Bill responds to the Committee’s Second Interim Report on the inquiry into the conduct of the 2016 federal election: Foreign Donations tabled in March 2017. In this report the Committee recommended that:

1 donation reform be in accordance with Australia’s sovereign interests;

2 donation reform be consistent with the principles of:
   – transparency;
   – clarity;

– consistency; and
– compliance.

3 there be a prohibition on donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties;

4 the Committee continue to examine the extension of a foreign donations ban extending to all other political actors, including the issue of ‘channelling’; and

5 there be stricter penalties for non-compliance incorporated in the Commonwealth Electoral Act 1918.6

1.8 Foreign donations as a subset of the broader issue of donations cannot be examined in isolation of the broader consideration of donations legislation. Consequently, the Committee considered the Bill in the context of its previous and present work on transparency, consistency, clarity and compliance.

1.9 The Committee notes that it will be making further comment on the wider issue of the political donations regime in its next report on the conduct of the 2016 federal election.

1.10 JSCEM, over many years, has commented on the issue of political funding. In particular, the Committee’s 2011 Report on the funding of political parties and election campaigns contains an extensive discussion on political and election funding.7

Interaction with other legislation

1.11 The Bill interacts with the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 (the EFI Bill). Specifically the EFI Bill references definitions established by the Bill, namely:

- disclosure amount; and

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Principles and purpose

1.12 The Committee has adopted four principles as fundamental to a trusted system for political donations, being:

- **Transparency** via visible and timely disclosure of donations and donors;
- **Clarity** about what is required and by whom;
- **Consistency** of regulations, so that they capture all participants and support a level playing field; and
- **Compliance** through enforceable regulations with minimal, practicable compliance burdens.

1.13 In its consideration of the wider issue of donations reform, the Committee has heard calls for the following principles to be embedded in the system:

- improved transparency of and accountability;
- a level playing field;
- fairness and equity;
- the preservation of the exercise of free speech;
- reduction in perceptions of undue influence; and
- reduction in the risk of corruption.

1.14 The Committee considered the Bill in the context of its previous and current work on political donations and the four principles outlined above. It also considered the following questions:

- Will it effectively restrict foreign donations and increase transparency?
- Is compliance achievable?

1.15 The purpose of the Bill, as stated by the Minister in his second reading speech and in the media, is to address potential foreign influence on Australian elections.

1.16 To do this, electoral legislation must regularly ensure to remain aligned with the changing nature of election campaigns in Australia. Political campaigners – organisations that either exist solely, or have significant expenditure, for political campaigns – have emerged as significant players in Australia’s political landscape. Their issues-based advocacy can influence electoral outcomes, but are not currently subject to the same financial transparency that political parties are subject to.

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1.17 Similarly, third party campaigners – organisations or groups that spend money on political campaigns for the purposes of influencing voters – are increasingly prominent.

1.18 The fact the current campaign environment has evolved was reflected in evidence provided to the inquiry. Campaigning has now moved beyond the traditional election period where the writs are issued and now occurs 365 days a year. Dr Martin Drum observed:

We now live with the reality that campaigning happens 24 hours a day, 365 days of the year… Continuous campaigning also makes the regulation of third-party campaigners more important. That’s because campaigners now seek to achieve political outcomes that are outside of set electoral periods.\(^9\)

1.19 It will be impossible to remove the influence of foreign money from Australian politics without increasing the transparency measures of all political actors.

1.20 The Committee has carefully considered the evidence received and weighed the concerns of submitters with the need for a transparent, trustworthy, electoral system.

1.21 The core principle proposed by the Bill, being transparency, is uncontested in submissions received by the Committee. However, the Committee recognises that there are concerns about the clarity and the compliance burden of some proposed measures.

1.22 The recommendations made by the Committee aim to address these concerns to ensure the Bill can align with these principles.

1.23 Further, the Committee considers that simplicity is a core principle that should guide all proposed amendments to the Electoral Act. The Act should be a supporting framework for maximising participation in our democracy, in positive terms, and where amendments are necessary, they should be made in the simplest terms possible.

1.24 The Act is a complex framework developed in the 1980s that is in effect being regularly retrofitted to modern election campaigning practices which can lead to greater drafting complexity.

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1.25 Ultimately, voters deserve to know where any money seeking to influence their vote comes from – whether that be from foreign sources, corporate or business interests or the charitable sector.

1.26 The recommendations made in this report seek to simplify the amendments to the Electoral Act with a view to encouraging greater participation in our democracy and improving trust and confidence in Australian politics.

**Similar Bills**

1.27 Both the Australian Labor Party\(^\text{10}\) (the Labor Bill) and the Australian Greens\(^\text{11}\) (the Greens Bill) have bills before the Senate addressing donations reform, including bans on foreign donations. As detailed below, the Labor Bill and the Greens Bill are broadly the same, differing primarily on the establishment of public funding regime provisions and disclosure and return timeframes.

1.28 They are both broadly consistent with the Bill before the Committee (for the purposes of this section referred to as the Government Bill), namely:

- the limitation of public funding to demonstrated electoral expenditure;
- strengthening of penalty provisions (albeit with lesser penalties than that proposed in the Government Bill);
- banning foreign donations, including donations made from foreign bank accounts;
- the treatment of unlawful gifts.

1.29 Sharing some features with the Government’s Bill, the Labor Bill and the Greens Bill restrict foreign donations to political parties and candidates, including in some situations to third parties that incur reportable political expenditure.

1.30 The Government Bill allows donations of up to a cumulative $250 before donor information is sought. Both the Labor Bill and the Greens Bill limit anonymous donations to $50.

1.31 Where the Government Bill defines ‘allowable donors’, the Labor Bill and the Greens Bill define ‘Australian property’ and ‘foreign property’. Recipients may only accept gifts of Australian property. Both the Labor and

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\(^{11}\) Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016, Presented by Senator Rhiannon, 2 March 2016.
Greens Bills prohibit the transfer of foreign property to another person for the purposes of making the property appear to be Australian property for the purposes of a donation.

**Australian Labor Party**

1.32 The Labor Bill would:

- reduce the disclosure threshold to $1,000 (non-indexed);
- for the purposes of the $1,000 threshold and disclosure of gifts, treat related political parties as one entity;
- provide for returns to be made within 20 weeks of the end of the reporting period;
- make unlawful the receipt of a gift of foreign property by political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive a gift of foreign property including charities; (‘foreign property’ means money credited to an account, cash, or property other than money that is located outside Australia; property that is transferred to Australia for the purposes of making a gift is taken to be foreign property.)
- prohibit the receipt of anonymous gifts by registered political parties, candidates and members of a Senate group, and in some circumstances, associated entities;
  – anonymous gifts are permitted if the gift is less than $50 and received at a general public activity or a private event, the details of which are recorded.
- limit public election funding to declared expenditure, or the sum payable on first preference votes where the 4% threshold is satisfied, whichever is lesser;
  – insert a new definition of ‘electoral expenditure’ that may be the subject of a claim for public election funding;
  – establish a process for claims to be made.
- provide for the recovery of unlawful gifts;
- unlawful gifts must be returned within 6 weeks or their value paid to the Commonwealth.
- introduce new offences and penalties related to the new measures and increase the penalties for existing offence provisions;
  – maximum penalty proposed is imprisonment for 2 years or 240 penalty units or both.
Australian Greens

1.33 The Greens Bill would:

- reduce the disclosure threshold to $1,000 (non-indexed);
- require all gifts to be disclosed within 8 weeks;
- require returns from those who have incurred political expenditure to provide returns within 8 weeks of 31 December and 30 June each year;
- prevent ‘donation splitting’ but treat related political parties (including state branches) as one entity for the purposes of the disclosure threshold;
- make unlawful the receipt of a gift of foreign property by political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities, and people incurring political expenditure to receive a gift of foreign property including charities; ‘foreign property’ means money credited to an account, cash, or property other than money that is located outside Australia – property that is transferred to Australia for the purposes of making a gift is taken to be foreign property.
- extend the ban on anonymous gifts to all gifts except those that are $50 or less, and those received at a ‘general public activity’ or a ‘private event’, the details of which are recorded;
- provide for the recovery of unlawful gifts;
  - unlawful gifts must be returned within 6 weeks or their value paid to the Commonwealth.
- introduce new offences and penalties related to the new measures and increase the penalties for existing offence provisions;
  - maximum penalty proposed is imprisonment for 2 years or 240 penalty units or both.
- insert a new definition of ‘electoral expenditure’ that may be the subject of a claim for public election funding.

Regulation of all political actors

1.34 This Bill would apply to all actors engaging in political campaigning – including political parties, charities and not-for-profits, corporate entities and individuals.

1.35 There is a broad consensus amongst political and civil society groups on the need to remove actual, and the potential for, foreign influence in our electoral system. However, the means by which to achieve this, and to whom the regulatory framework should apply, has been robustly debated.
1.36 A number of witnesses advocated the need for uniform regulation of political activity and disclosure requirements. Dr Martin Drum observed:

In simple terms, there does need to be a level playing field—people who are seeking to spend a substantial amount of money to influence public opinion should disclose their funding sources whether they are members of political parties or other organisations.12

1.37 Prof. George Williams observed:

I think that if you simply have a regime focusing upon political parties or others the money will flow to other sources, and the scheme will be evaded. I think that the rules should apply irrespective of the status of the organisation, whether it be a charity or other body, and, indeed, the most effective systems recognise the need for that.13

1.38 Dr Colleen Lewis, Director of the Accountability Round Table, observed:

There's also a need for complete disclosure by everyone. That's political parties, candidates, associated entities and third-party entities. There is really no reason, if people are advocating for greater democracy, that they wouldn’t be prepared to then make these things known.14

1.39 Mr Malcolm Baalman observed:

if your objective is to prevent a foreign entity—which is going to be difficult for us to identity and police—from donating into the Australian political climate, if you ban it from donating to one defined class of entity but not others, the money will flow and you’ll come back three years later and go, 'Now we have to address that it's flowing to these other organisations.'

1.40 Mr Baalman further noted that:

if we start seeing more entities of the GetUp class in the country, which I think is probably a good thing in principle, and we don't bring them inside the transparency system, we will find that the donations move from the political parties and the associated entities and start flowing to those vehicles, much as

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13 Prof. George Williams, Private Capacity, Committee Hansard, 2 February 2018, Sydney, p. 11. Evidence given to the 2016 Election inquiry.

14 Dr Colleen Lewis, Director, the Accountability Round Table, Committee Hansard, 1 February 2018, Melbourne, p. 7. Evidence given to the 2016 Election inquiry.
the PACs and super PACs have happened in America, and we’ll be chasing our tails for decades trying to bring them back in.15

1.41 In particular, the charities and not-for-profits sector argued for its exemption from significant provisions contained in the Bill, despite the evolution of issue-based advocacy into election campaigns.

1.42 A number of submitters expressed concern for the potential of foreign influence in Australian elections by charities and not for profits, and this is currently unregulated. In response to a question on the possibility of charities using foreign money to engage in political advocacy, Commissioner of the Australian Charities and Not-for-profits Commission (ACNC), Dr Gary Johns confirmed:

That’s right. There is nothing in our act which would prevent that activity.16

1.43 Furthermore, following a question on whether or not charities seek to influence voters during an election, Dr Johns said:

They do.17

1.44 The Committee received 102 submissions from the charity sector, together with a large number from individuals involved in the sector, which expressed concern that the regulatory burden in the proposed legislation would have a ‘chilling’ effect on their advocacy. The views of the charity sector are included in the report.

1.45 The Committee notes that charities are already subject to provisions in the Commonwealth Electoral Act 1918. These provisions require charities to authorise any broadcast of electoral material, and to make annual returns relating to political expenditure above the disclosure threshold ($13,500).

1.46 The ACNC provides advice on what is considered advocacy, what is considered political campaigning, and what is allowed under the Charities Act 2013.18

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17 Dr Gary John, ACNC Commissioner, Committee Hansard, 16 February 2018, Canberra, p. 26.

18 ACNC, 16 April 2016, ‘Charities, elections and advocacy’.
1.47 The Australian Electoral Commission (AEC) also provides guidance on submitting an annual return on all political expenditure over the donation threshold (currently $13,500). These are currently referred to as ‘third party’ returns. The Bill formalises this definition and clarifies who is covered by these provisions.

1.48 Consistent evidence has been provided to the Committee including from peak charity and philanthropic groups that many charities are unaware of their legal current obligations under the Electoral Act – obligations that have been in place since before the establishment of the ACNC.

1.49 The Committee heard a range of evidence from leaders of charities and not-for-profits that their campaigns seek to influence policy and in some cases elections. For example, Mr Marc Purcell, Chief Executive Officer of the Australian Council for International Development (ACFID) stated:

We seek to raise public awareness and get better public policy because we believe in a democracy, yes.

1.50 In regard to ACFID’s Campaign for Australian Aid, Mr Purcell informed the Committee:

We were trying to influence voters through the campaign all the time during an election period. … What I know is that we have policy calls and we ask major parties if they will meet those policy calls or not. The campaign does that, ACFID does that and any number of peak bodies do that. We will put some indication of whether the parties are going to raise aid or not and, if they are, whether they support a target or not. In using smiley faces—I remember that we were very careful when having that discussion we did not want to get into a position of ranking parties or anything like that. What we wanted to show was whether parties were going to meet our policy calls or not, and we wanted to do that in a simple, easily communicable way.

1.51 Mr David Crosbie, Chief Executive Officer of the Community Council for Australia stated in response to charities seeking policy and political outcomes during an election period:

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21 Mr Marc Purcell, CEO, the Australian Council for International Development, Committee Hansard, 31 January 2018, p. 16 - 17. Evidence given to the 2016 Election inquiry.
I think they seek a policy outcome, definitely, and I don’t see them as separate.22

1.52 Mr Craig Wilkins, Chief Executive Officer of the Conservation Council of South Australia acknowledged election time is important for advocacy:

As part of our advocacy, as part of our mission, we see our role as highlighting issues and convincing the citizens of our state to hold a view that we share around the environmental and social future. So, absolutely, we see the essential role of advocacy is to inform and influence people in our state to care about the future of the environment.

1.53 Mr Wilkins further informed the Committee:

The election is a very important time, in terms of our political debate. It certainly sharpens minds. If we can advocate for a change in policy, a position, that advances our mission, then we feel like we are doing our job.23

1.54 Throughout the inquiry, it has been of concern to the Committee that possibly many thousands of charities are unaware of their current obligations under the Electoral Act.

1.55 It is apparent from a number of submissions received by the Committee that there is a degree of confusion amongst the charities sector about the impact of the proposed Bill on their activities, specifically whether a charity will be able to continue to receive foreign monies for its charitable purpose other than for political expenditure. This is not the case, the Bill specifically excludes charities from the prohibition on soliciting foreign funds, as long as these funds are not used for domestic political purposes.

1.56 The Bill’s proposals will not impact the majority of the some 55,000 charities operating in Australia. Those charities that currently have no requirement to provide third party returns under existing provisions of the Electoral Act will not be affected by the proposed amendments.

Conduct of inquiry

1.57 The Bill was referred on 6 December 2017 and the Committee called for submissions on 13 December 2017. A total of 203 submissions were received and are available on the Committee’s website.24

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22 Mr David Crosbie, CEO, the Community Council for Australia, Committee Hansard, 31 January 2018, Canberra, p. 48. Evidence given to the 2016 Election inquiry.

23 Mr Craig Wilkins, CEO, the Conservation Council of South Australia, Committee Hansard, 19 February 2018, Adelaide, p. 1. Evidence given to the 2016 Election inquiry.
The Committee held four public hearings in relation to the Bill. Matters relating to the bill were also discussed at public hearings held in relation to the conduct of the 2016 federal election in January and February 2018. Transcripts of hearings for both inquiries are also available on the Committee’s website.

Structure of the report

Chapter 2 discusses the changes proposed for registration transparency, including the establishment of registers for all political actors, recognising new forms of political activism and the need to level the playing field.

Chapter 3 discusses the changes to financial transparency, public funding and foreign donations.

Chapter 4 concludes the report with a short discussion of the penalty regime proposed by the Bill.

See: <www.aph.gov.au/em>
2. Political expenditure and registration

2.1 The Bill proposes a range of measures intended to improve the transparency of significant political actors. The changes recognise that actors, in addition to those currently defined in the Electoral Act, are exercising increasing influence on elections and seek to reflect the nature of modern campaigning.

2.2 The Bill introduces new definitions and new or expanded requirements to register as a:

- political campaigner;
- third party campaigner; or
- associated entity.

2.3 These definitions do not apply to a political entities already covered under the Act or a member of the House of Representatives or the Senate.

2.4 This Chapter outlines the evidence put to the inquiry on each of these definitions.

Political purpose

2.5 The Bill introduces the term *political expenditure*, which is defined as expenditure for *political purpose*.

*political purpose* means any of the following purposes:

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);

c. the communicating of any electoral matter (not being matter referred to in paragraph (a) or (b)) for which particulars are required to be notified under section 321D;

d. the broadcast of political matter (not being matter referred to 34 in paragraph (c)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992;

e. the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors;

except if:

f. the sole or predominant purpose of the expression of the views, or the communication, broadcast or research, is the reporting of news, the presenting of current affairs or any editorial content in news media; or

g. the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.

2.6 Evidence received focussed almost exclusively on concerns with sub-clause b and sub-clause g. The intention of sub-clause b is to recognise that modern political campaigning takes place beyond the period in which the writs have been issued and is now continuous.

Evidence received

2.7 The breadth of the term ‘political purpose’ raised concerns from a number of submitters, primarily for registered charities who are concerned the definition may capture non-political activities.

2.8 The Law Council of Australia submitted that:

The definition of ‘political purpose’ has a fundamental drafting issue as paragraphs (a) to (e) are not purposes but are activities. For example, the activity of cooking can be either charitable or not, depending on the purpose for which the activity is undertaken. If the cooking activity is undertaken for a private or commercial purpose it would not be charitable but if the cooking activity was undertaken for a charitable purpose (such as feeding the homeless), it would be charitable. The definition does not address the purpose of conducting the activities listed.
For charities, these activities are done in pursuit of their charitable purposes and generally not done with the purpose of ‘actively seeking to influence the outcome of elections’ as referred as the intention of the reforms in paragraph 2 of the Explanatory Memorandum.¹

2.9 Prof. Tham also raised concerns about the precision of the definition:

This definition is both too broad and imprecise for two related reasons. It is, firstly, based on the purposes of the expenditure, which can often raise complicated questions as to the motivations underlying the spending. Secondly, ‘for’ (in the definition of ‘political expenditure’) admits of various degrees of connection with the activities stipulated in the definition of ‘political purpose’. This raises complicated questions of a different kind: Is rent for buildings that house organisations that engage in public campaigning ‘political expenditure’? What about general organizational support such as human resource services?²

2.10 The Institute of Public Affairs noted concerns about the subjectivity of the definition stating:

This is an extremely wide and poorly-drafted definition. The range of matters it could cover is essentially unlimited, given that issues that are ‘before electors’ at an election is wholly subjective and dependent on the concerns and priorities of the voters themselves. Voters cast their votes at federal elections for all manner of reasons; every issue imaginable is ‘before voters’ at every election.³

2.11 Prof. Twomey raised concerns with the lack of clarity of ‘political purpose’, stating:

What if, at the time you made the expenditure, you had no realistic idea that what you were spending it on might become an issue before an election but it does later become an issue before an election? Here I will give a personal example. I’ve just written a book on the reserve powers. Given that the government at the moment holds a very slim majority, it’s not completely inconceivable that there may be some crisis involving the exercise or possible exercise of reserve powers before the next election. My book could therefore be a public expression of views on a matter before the people at an election. I didn’t know that at the time that I wrote the book, but potentially it is. How does the legislation apply to make that assessment of when likelihood is to be

¹ Law Council of Australia, Submission 46, p. 8.
² Prof. Joo-Cheong Tham, Submission 12, p. 19.
³ Institute of Public Affairs, Submission 137, p. 13.
assessed or relevant? We just don’t know from the legislation. It is so extraordinarily badly drafted that it could, frankly, apply to anything.4

2.12 Charities were concerned about the breadth of sub-clause b and its potential application more broadly to public advocacy work. The submission by the Benevolent Society is representative of these concerns.

We believe the definition of ‘political purpose’ is problematic because:

a. it is too vague to be meaningful and enforceable. There is no metric to assess, or time frame to determine, what ‘likely to be, before electors in an election’ means. In effect, it could cover comments or views on any issue at all as there is no way to determine what is likely to become an electoral issue in the future. For instance, there may be issues that charities have advocated for in the past, that may have not been picked up by political parties. The fact that they might focus on such issues in the future may render such charities a political campaigner at such times, which would be unfair. Furthermore, the term is so vague that almost anything that a charity says or does publicly could be captured. Acts such as preparing a submission to a public inquiry, or participating in a public hearing, or even corresponding with a Member of Parliament could be captured by the clause, meaning that many charities would then be captured by the provisions of the proposed Bill and be required to comply with its administrative imposts. Or, conversely, charities may be too worried about potential capture within the scope of the Bill that they deliberately reduce their public commentary and output in fear of falling within its purview. Neither is a desirable outcome.

b. The use of the terms ‘political purpose’ and ‘political expenditure’ in Subsection 287 (1) of the Bill, is confusing as it conflates campaigning and advocacy undertaken by political parties for political purposes with allowable advocacy activities by charities in line with the Charities Act and the ACNC.5

2.13 The ACNC submitted that:

Under this broad definition of political purpose, it is likely that some charities would have a political purpose. Under the Charities Act, a charity can undertake advocacy and campaigning on relevant issues as a legitimate way of furthering its charitable purpose. In the lead-up to the 2016 Federal Election, the ACNC issued public guidance to assist charities in understanding their

4 Prof. Anne Twomey, Private Capacity, Committee Hansard, 16 February 2018, Canberra, p. 2.
5 The Benevolent Society, Submission 136, pp. 5-6.
obligations under the Charities Act in relation to political campaigning and advocacy. This guidance was previously provided to the Joint Standing Committee.

These differences between the Charities Act and the amended CEA may affect a charity’s ability to undertake some forms of advocacy and may decrease the amount of advocacy work undertaken by charities that are unable to meet the proposed regulatory burden and the risk of non-compliance as set out in the new regime.⁶

2.14 Despite this, the Committee heard evidence from Mr Krystian Seibert, Insight and Advocacy Manager at Philanthropy Australia, that:

When looking at the list of organisations that have submitted returns, there are many organisations on that list, and I won’t name them, because I don’t want to dob them in, who I know undertake public expression of views on an issue in an election and have not submitted a return.⁷

2.15 The Committee also heard concerns from the ACNC many charities were not complying with their strict liability obligations under the Electoral Act. In response to a question on these concerns Dr Gary Johns stated:

I am concerned that there are a number. I can’t know the number; we don’t gather that information. But we do know that many charities are very active in advocacy. So, to the extent that they spend sufficient money to trigger the Electoral Act, there could be any number that come on board. I think the issue for the sector is that, for the first time, they will have to start counting the dollars; where do they come from? And, when they accumulate to a certain trigger level, they will have to register. It does have significant implications for tracking the money. Now that to me could apply to quite a number of charities.⁸

2.16 The Community Council for Australia also addressed concerns that charities were not compliant with the Electoral Act with Chief Executive Officer Mr David Crosbie observing:

I think the current law is clearly not adequate or not addressing what it purports to address in terms of the broad definition of political expenditure. The definition of political expenditure in this bill, which is spelt out to include any public advocacy on an issue that might become an election issue over a

⁶ ACNC, Submission 31, pp. 3-4.
⁷ Mr Krystian Seibert, Insight and Advocacy Manager, Philanthropy Australia, Committee Hansard, 31 January 2018, Canberra, p. 25. Evidence given to the 2016 Election inquiry.
⁸ Dr Gary John, ACNC Commissioner, Committee Hansard, 16 February 2018, Canberra, p. 27.
period of four years, means that I can't think of a single charity that I work with that wouldn't be a political campaigner.9

2.17 Mr Crosbie further noted that: ‘There are thousands of charities not complying,’ and said:

I’ve talked to World Vision in the last hour about their return. Their return does not cover all their political expenditure.10

2.18 In response to evidence provided by organisations unaware of compliance requirements Mr. Paul Pirani, Chief Legal Officer for the Australian Electoral Commission (AEC), observed:

I was a little bit disturbed when I was hearing the evidence earlier today that these organisations were saying they were unaware that they currently may have disclosure and reporting obligations under the Commonwealth Electoral Act. We’ve had a look at the website for the Australian Charities and Non-for-Profits Commission, and that website clearly has information available to all the 54,000 charitable organisations that are on the register that clearly links to their obligations under the Commonwealth Electoral Act.

There are two key obligations. It’s not just the ones for funding and disclosure. If they’re out there making public expressions of view on matters that are going to be before electors, they have disclosure obligations on their electoral advertising. Those laws apply 365 days—every day of the year—and not just during an election campaign.11

2.19 The definition provides an exemption for ‘genuine satirical, academic or artistic purposes’. Academic institutions and arts groups submitted that the exemptions are ‘too narrowly drafted’. Arts groups argued that the Bill would restrict artistic freedom. Academics argued the Bill would prevent meaningful engagement with government and Parliament.12 For example, university sector peak body, the Group of Eight submitted:

This definition is extraordinarily broad in scope, potentially capturing a range of common and legitimate activities routinely performed by universities and academics during the course of their required activities. For example,

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9 Mr David Crosbie, CEO, the Community Council for Australia, Committee Hansard, 31 January 2018, Canberra, p. 51. Evidence given to the 2016 Election inquiry.

10 Mr David Crosbie, CEO, the Community Council for Australia, Committee Hansard, 31 January 2018, Canberra, p. 55. Evidence given to the 2016 Election inquiry.

11 Mr Paul Pirani, Chief Legal Officer, AEC, Committee Hansard, 31 January 2018, Canberra, p. 2.

12 Australian Lawyers for Human Rights, Submission 65, p. 5.
Australian higher education providers are legislative mandated, via the *Higher Education Standards Framework (Threshold Standards) 2015*, to have a ‘clearly articulated higher education purpose that includes a commitment to and support for free intellectual inquiry in its academic endeavours’. The pursuit of this free intellectual inquiry will inevitably involve public expression on a range of issues, including those with the potential to be before electors during an election. Examples of activities conducted for genuine academic purposes could include publication of articles or opinion pieces in journals, in mainstream media, or on websites such as *The Conversation*, and participation in radio interviews or public debates. Furthermore, it is inevitable that these activities will overlap with issues likely to arise during an election for the very reason that both elections and academic commentaries tend to be focused on key areas of public concern.

Academics also routinely respond to requests for information from Government or Governmental departments, many of which are released into the public domain and are therefore potentially captured by this Bill. Examples include:

- The public release of consultation papers submitted to Government as part of routine consultation processes; or
- Appearing before a parliamentary inquiry.

Again, any issues significant enough to have become subject to a parliamentary inquiry or departmental consultation process have a strong potential to become election issues at a later date.\(^\text{13}\)

2.20 Arts organisations raised concerns that because works of art may commonly ‘express views or to communicate and inspire public debate or insight on issues of social importance’ … ‘determining where an artist’s artistic intent ends and political or social intent begins is not clear cut. Introducing a law that requires such a distinction is inappropriate.’\(^\text{14}\)

2.21 In response to these concerns the AEC submitted that in order for an issue to be considered “before electors at an election”:

- there must be a temporal nexus between:
  1. the actual views that have been publically expressed; and
  2. an issue in an ‘upcoming election’; and

\(^{13}\) Group of Eight Australia, *Submission 7*, pp. [4-5].

\(^{14}\) Australian Major Performing Arts Group, *Submission 128*, p. 3.
2.22 The AEC further submitted that the approach it has taken in interpreting s314AEB\textsuperscript{16} is as follows:

1. Section 314AEB is interpreted in a way that confines its operation to situations where the “primary or dominant purpose” of the particular expenditure is one of the categories of purposes listed in subsection 314AEB(1);

2. Incidental expenditure or expenditure for a variety of purposes of which only a minor aspect falls within one of specified purposes will not be required to be included;

3. The “expression of views” does not cover the presentation of merely factual information;

4. There is also a distinction between an “issue before electors in an election” and other “public issues”. Merely because a person raises an issue in the public domain does not result in that being an “issue before electors in an election”;

5. In the absence of an actual election being called, to determine whether or not a matter is likely to be before electors involves an assessment of how topical the issue is and the difference, if any, between the policy platforms of each party;

6. An assessment is required to ascertain the subjective public expression of the relevant issue;

7. The nearer in time the “public expression” to the possible date for the holding of an election (e.g. the three-year term of the House of Representatives under section 28 of the Constitution), the more likely that it will meet the subjective intention of placing an “issue before electors in an election.”

2.23 The AEC also gave evidence that, under the existing Act, the ‘dominant and subjective purpose of the public expression of views in this scenario would result in it not giving rise to a disclosure obligation.’

**Definition of electoral expenditure**

2.24 It was put to the Committee that difficulties with this section could be assisted by defining the subject matter of the expenditure.\textsuperscript{17} For example the

\textsuperscript{15} AEC, Submission 147.2, p. 3.

\textsuperscript{16} Annual returns relating to political expenditure.

\textsuperscript{17} Prof. Joo-Cheong Tham, Submission 12, p. 19.
Election Funding, Expenditure and Disclosures Act 1981 No. 78 (NSW) defines ‘electoral expenditure’ and ‘electoral communication expenditure’ as follows:

87 Meaning of “electoral expenditure” and “electoral communication expenditure”

1 For the purposes of this Act, electoral expenditure is expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.

2 For the purposes of this Act, electoral communication expenditure is electoral expenditure of any of the following kinds:

   c. expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material,
   
   d. expenditure on the production and distribution of election material,
   
   e. expenditure on the Internet, telecommunications, stationery and postage,
   
   f. expenditure incurred in employing staff engaged in election campaigns,
   
   g. expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member),

   e1. expenditure on travel and travel accommodation for candidates and staff engaged in electoral campaigning,

   e2. expenditure on research associated with election campaigns (other than in-house research),

   h. such other expenditure as may be prescribed by the regulations as electoral communication expenditure,

but is not electoral expenditure of the following kinds:

(g), (h) (Repealed)

   i. expenditure incurred in raising funds for an election or in auditing campaign accounts,

   j. such other expenditure as may be prescribed by the regulations as not being electoral communication expenditure.

3 Electoral expenditure (and electoral communication expenditure) does not include:
a. expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament, or

b. expenditure on factual advertising of:
   i. meetings to be held for the purpose of selecting persons for nomination as candidates for election, or
   ii. meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties, or
   iii. any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties.

4 Electoral expenditure (and electoral communication expenditure) does not include expenditure incurred by an entity or other person (not being a registered party, elected member, group or candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.  

Committee comment

2.25 The Committee notes submitters’ concerns about the definition of ‘political purpose’ in sub-clause b.

2.26 The Committee notes that a significant degree of this concern may be based on a lack of understanding of the current provisions of the Act.

2.27 The Committee has concluded that the introduction of the definition of ‘political purpose’ should be reconsidered and the definition of ‘political expenditure’ can be tightened to reduce subjective interpretation, particularly in light of the AEC’s evidence that it will continue to take into account the intent and subjective purpose of the activity when considering whether it had ‘political purpose’.

2.28 The definition of ‘political expenditure’ needs to specify intent to:
   - recognise that there is a distinction between advocacy to government and political campaigning with an intent to influence voters; and
   - reduce the subjectivity from interpretation of activity under this section.

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18 Election Funding, Expenditure and Disclosures Act 1981 No. 78 (NSW), s. 87.
2.29 Under a more precise definition of ‘political expenditure’, non-partisan issue advocacy of the type commonly engaged in by many charities and not-for-profits would not be considered.

2.30 It would also clarify that educative, artistic, satirical or journalistic activities that are not intended to influence voting behaviour at an upcoming election are not captured under proposed subsection 287(1). It will also exclude academic opinions and information published and provided to parliamentary committees.

2.31 Further, the definition of ‘political expenditure’ needs to more explicitly define the type of expenditure that is undertaken to influence voting intentions. This will also assist applications for public funding under the proposed new arrangements.19

2.32 This definition should balance the need for objective rules, removing subjectivity from decision-making, with ensuring the regulatory framework can be responsive to changing campaign methodology.

Recommendation 1

2.33 The Committee recommends the Government reconsider introducing the term ‘political purpose’ into the Electoral Act 1918, having regard to potential confusions with the Charities Act 2013 in which the term has a divergent meaning.

Recommendation 2

2.34 The Committee recommends that the Government consider amending the definition of ‘political expenditure’ to define the type of expenditure which constitutes expenditure undertaken to influence voters to take specific action as voters, so as not to capture non-political issue advocacy.

Political and third-party campaigners

2.35 The Bill proposes requirements to register as a political campaigner or a third party campaigner.20 Registration is triggered by political expenditure.

2.36 Registration as a political campaigner is required if a person or entity has political expenditure of:

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19 Discussed in Chapter 3.

20 Proposed s287F-G.
- $100,000 or more over the previous 3 financial years;
- $50,000 or more during that financial year and 50% of the person or entity’s allowable amount.\(^\text{21}\)

2.37 Registration as a third party campaigner is required if a person or entity is not already registered as a political campaigner and has political expenditure during the financial year of:
- more than the ‘disclosure threshold’.\(^\text{22}\)

2.38 Registered charities and organisations are able to receive gifts from foreign sources as long as no domestic political expenditure is made from the account in which the foreign gift has been deposited.\(^\text{23}\)

**Evidence received**

2.39 Prof Joo-Cheong Tham supported the proposed registration scheme, for the transparency it offered to the voting public:

I broadly support this proposal. As I noted in the Sustainable Framework report, registration schemes have two purposes: they enable the regulatory authorities to more effectively administer the legislation as they identify the entities and individuals that would be subject to such laws. Secondly, by being made public, registers provide information to the general public, in particular voters, as to who are the main participants in elections. This may lead to more informed voting decisions, a consequence that protects the integrity of representative government through more effective electoral accountability.\(^\text{24}\)

2.40 GetUp has submitted financial information to the Committee in the context of another inquiry and, while opposing some measures of the Bill, also stated:

Certainly, as you’ve correctly outlined, we have done so in the interest of greater transparency and to show that GetUp! supports legislative changes that would bring about greater transparency across the political spectrum for all of those who are engaged to a very significant extent in engaging in federal election campaigns or trying to change the outcome within parliament. To that end, we welcome transparency measures that would apply across the board,

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\(^{21}\) Any amount received by the person or entity, or to which they have access, during the financial year except gifts from non-allowable donors and loans.

\(^{22}\) New definition. Currently $13,500, indexed.

\(^{23}\) Proposed s302F.

\(^{24}\) Prof. Joo-Cheong Tham, *Submission 12*, pp. 16-17.
that would apply to GetUp!, that would entail us providing the sort of financial information we’ve provided to this committee.  

2.41 Submitters also called for the Bill to recognise what the key differences that they believe are between political parties and third-party campaigners.

2.42 A group of professors from the University of Sydney and the Australian National University submitted that:

it is also clear that while third party campaigners, political campaigners and associated entities must be registered, they accrue no benefits from this status. This stands in stark contrast to the situation of political parties, for whom registration is not mandatory, and brings significant benefits, including public funding of their election campaigns. This begs the question that if both parties and other political actors subject to the same (if not stricter) disclosure and registration requirement, why are political actors not correspondingly resourced? While we are not suggesting that political actors (associated entities, political campaigners, and third party campaigners) should receive public funding for their electoral expenditure, it is important to note that these groups face significant compliance costs in meeting their regulatory obligations (beyond those of political parties) and should therefore be resourced or compensated for it.

2.43 They also submitted that:

the rationale for distinguishing between political campaigner and third party campaigner is not at all clear. The registration burdens differ in very few respects, so we would argue that if the two categories are to be kept in the legislation then more clarification is required. Consideration also needs to be given to the fact that the legislation will inevitably produce different administrative burdens and uncertainties for different political actors, according to their resources, mandate and activities.

2.44 Concerns were also put to the Committee about the registration thresholds requiring a prospective assessment of future expenditure:

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25 Paul Oosting, National Director, GetUp, Committee Hansard, 31 January 2018, Canberra, p. 36. Evidence given to the 2016 Election inquiry.

26 See for example, Australian Council for International Development, Submission 123; Human Rights Law Council, Submission 142; Synod of Victoria and Tasmania, Uniting Church, Submission 130.

27 Associate Prof. Anika Guaja, Prof. Darren Halpin, Prof. Ariadne Vromen, Submission 11, p. 5.

28 Associate Prof. Anika Guaja, Prof. Darren Halpin, Prof. Ariadne Vromen, Submission 11, p. 5.
what we’re currently required to do is retrospective. We have to report by 17 November as to what we did in the previous financial year, so we have the benefit of hindsight; we can look back and say, ‘In the last financial year we talked about all of the things that Helen just talked about, and they did become issues in an election.’ Then we know. But what this legislation requires us to do is to have a crystal ball that says: we’re now talking about tax and the garment industry and other things. Once we hit $13,500 we have to register, and if we don’t there is a civil penalty attached to that. We have to register, as detailed in the explanatory memorandum, in advance of hitting that level, and if we hit $100,000 there are even more serious penalties that attach. So it substantially shifts.29

2.45 A number of submitters proposed the threshold for registration be increased. Prof. Tham argued that there is a conceptual error with a reliance on the ‘disclosure threshold’ as a regulatory threshold. He further argued that a $100,000 threshold is more consistent with the Minister’s statements on ‘significant political expenditure’. He noted that raising the threshold would not ameliorate existing obligations under the Act regarding authorisation requirements for electoral advertising.30

2.46 Prof. Tham also argued that the threshold for political campaigners is set too low given the regulatory burden the Bill imposes. He stated:

Given that varying organisational character of ‘political campaigners’ and that they are to regulated in a similar way to political parties, the level of their expenditure should be comparable to established political parties with parliamentary representation.31

Committee comment

2.47 The Committee agrees with the intent of the Bill to improve transparency by registration of political campaigners, actors and organisations seeking to influence voters. This recognises the influence of these organisations in elections and modern campaigning.

2.48 The Committee notes concerns of some submitters doubting the case to differentiate between a political campaigner and a third-party campaigner.

29 Dr Nicole Bieske, Humanitarian Advocacy Lead, Oxfam Australia, Committee Hansard, 1 February 2018, p. 20. Evidence given to the 2016 Election inquiry.
30 Prof. Joo-Cheong Tham, Submission 12, p. 16.
31 Prof. Joo-Cheong Tham, Submission 12, p. 18.
In line with the principle of introducing greater **simplicity** into the Act, the Committee is proposing that, instead of the proposed ‘campaigner’ registration categories, a single general transparency register be established for all entities expending more than the disclosure threshold on activities undertaken to change voter intention as defined under an amended definition of ‘political purpose’.

The Committee is of the view that a single register will place less compliance burden on entities wanting to engage in democratic campaigning. A benefit of registration will be of greater support in understanding and meeting reporting obligations. It will also offer benefits to voters by providing a consolidated list of entities involved in political campaigning.

The categories of ‘third-party campaigners’ and ‘political campaigners’ should be retained to set the thresholds at which increased reporting obligations are imposed.

All entities undertaking political activities (excluding political parties which are separately regulated) may register but mandatory registration and reporting obligations are only triggered when expenditure exceeds the disclosure threshold (currently $13,500, indexed).

The registration process for the transparency register should be simple, preferably online, requiring no more than the registered organisation/business name and the public officer’s name and contact details.

Both the AEC and the ACNC should provide organisations with information on compliance obligations under the Electoral Act when they expend or plan to expend an amount more than the disclosure threshold.

Although the current disclosure threshold will be a trigger for registration, it is the Committee’s view that, given its common usage, the term ‘disclosure threshold’ should not be used as a defining term for registration schemes under the Electoral Act or the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, and a different term, such as ‘expenditure threshold’ should be used in its place.
Recommendation 3

2.56 The Committee recommends that instead of the categories of ‘third party campaigner’ and ‘political campaigner’ being established as registration thresholds, the Government consider establishing a publically available ‘Transparency Register’ be established that provides:

- voluntary registration for all entities engaged in ‘political expenditure’;

- mandatory registration for all entities engaged in activities that require disclosure of ‘political expenditure’ that reach a minimum ‘expenditure threshold’; and

- disclosure obligations that are commensurate with levels of expenditure.

The registration process for the Transparency Register should be simple and provide access to additional support for registrants to fulfil their reporting obligations.

2.57 The Committee notes concerns about the registration threshold for third party campaigners being too low. However, the Act presently requires third party returns for expenditure at this level and, as such, it does not agree with these concerns.\(^{32}\)

2.58 The Committee further notes that campaigners such as GetUp expressed support for the transparency this measure would insert into the system.

2.59 However, in proposing a general ‘transparency register’, there will need to be an associated establishment of expenditure thresholds that will trigger increased reporting obligations. These should take into consideration expenditure by existing political campaigners and be set at a level that could reasonably be considered to have a significant impact on voter behaviour.

2.60 Reporting obligations should be proportionate to expenditure levels, so those third-party campaigners with lower expenditure levels, including one-off campaigns, are not subject to the same obligations as political campaigners with significant expenditure and greater influence on electoral outcomes.

\(^{32}\) s314AEB.
Recommendation 4

2.61 The Committee recommends that the Government consider setting expenditure thresholds for triggering increased reporting obligations under the proposed Transparency Register be set at a level that could reasonably be expected to have a significant impact on voter behaviour and that these obligations be proportionate to levels of expenditure.

Registration of political parties

2.62 Information regarding all registered and deregistered political parties is publically available through the AEC. The establishment of the proposed ‘Transparency Register’ will provide a level playing field between all political actors by making similar information available to voters.

2.63 However, in the interests of transparency, and ensuring that the list of registered parties accurately reflects those parties actively contesting an election, the Committee considers it reasonable that, prior to each election, all political parties be required to reaffirm their registration or be subject to automatic deregistration.

2.64 Given that Australia does not have fixed federal election dates, the Committee considers that this process should take place in the six months prior to the earliest possible date for a half-Senate election.

Recommendation 5

2.65 The Committee recommends that the Government consider establishing a process that requires, prior to each election, all political parties to reaffirm their registration or be subject to automatic deregistration.

Associated entities

2.66 The Act currently contains a requirement to register as an ‘associated entity’ of an entity if it:

- is controlled by one or more political parties;
- operates wholly or significantly to the benefit of one or more political parties;
- is a financial member or has voting rights in a political party.\(^{33}\)

\(^{33}\) s287(1)(a-f).
2.67 Associated entities have specific financial disclosure obligations. The regime is intended to ensure that political parties are not able to hide donations through proxy organisations that are, for all real purposes, de-facto extensions of a political party.

2.68 The Bill proposes an extension of the definition of ‘associated entity’. Under the Bill, an entity is taken to operate wholly, or to a significant extent, for the benefit of registered political parties if:

- the entity, or an officer acting in his or her actual or apparent authority, has stated (in any form and whether publically or privately) that the entity is to operate:
  - to the benefit of one or more registered political parties or a candidate;
  - to the detriment of one or more registered political parties or a candidate in a way that benefits a registered political party;
- the entity’s expenditure during a financial year is wholly or predominately political expenditure to:
  - promote one or more registered political parties and/or policies or a candidate;
  - oppose one or more registered political parties and/or policies or a candidate in a way that benefits one or more other registered political parties.\(^{34}\)

2.69 The Explanatory Memorandum outlines the conditions in which proposed s287(5) should be interpreted, namely that it:

applies to statements by the entity, or an officer of the entity acting in his or her actual or apparent authority. What constitutes a statement for the purposes of this paragraph should be broadly interpreted. Statements may include oral, visual, graphic, written, digital electronic and pictorial communications, and could be communicated in a public, professional or private setting. Statements by officers not authorised by the entity to determine the desired outcome of its operations would not cause the entity to be required to register as an associated entity.\(^{35}\)

2.70 Penalties apply for a failure to register. There is no means to appeal a determination of ‘association’ by either the concerned entity or a political party. Given that registration can be determined on non-public information there may be scope for malicious registration.

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\(^{34}\) Proposed s287H(5) (a-b).

\(^{35}\) Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, Explanatory Memorandum, p. 20.
Evidence received

2.71 Two concerns were raised about the proposed expansion of the definition of an associated entity:

- the broad nature of the definition could create political relationships contrary to the will of the entity or the will of the political party;
- the uncertain, and potentially subjective, interpretation of ‘intent’.

2.72 Many submitters argued that the broadened definition of ‘associated entity’ would associate entities with parties that they have no relationship with and in fact may be opposed to politically. Prof. Twomey submitted:

Under the definition of an associated entity, an entity can be an associated entity of a party even if it has no relationship with that party, other than the fact that it opposes some of the opponents of those parties – s 287H. This could lead to peculiar outcomes. For example, an anti-fracking body which campaigns against any candidate that supports fracking, may be regarded as being an ‘associated entity’ of candidates that oppose fracking, and thus their registered political parties, even though in other electorates it opposes candidates from the same parties, who may take a different position on fracking. Similarly, a group that supported an Australian republic could target and oppose in an election those candidates who oppose Australia becoming a republic, even though they may come from quite different registered political parties. It might well be that some entities would have to be registered as ‘associated entities’ of all major political parties simultaneously. If this is not intended, some consideration may need to be given to redrafting the definitions.36

2.73 Australian Lawyers for Human Rights submitted:

The concept of an associated entity is misconceived and far too broad. It does not take into account the complexities of political discourse, nor the nature of the diverse and non-linear ways in which public speech operates. The expression of a particular viewpoint in common with a candidate or registered political party is taken as indicating political alignment in all respects, which may well not be the case.37

2.74 GetUp was stronger in its criticism of the proposed provisions stating:

The revised definition would lead to fairly ludicrous results. For example, if this Bill applied to GetUp’s campaign activities in the 2016 Federal Election in the electorate of Mayo alone, it would potentially make GetUp an associated

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36 Prof. Anne Twomey, Submission 3, p. 8.

entity of the Nick Xenophon Team, the Labor Party, Family First, the Greens and the Liberal Democrats. And if applied to GetUp’s campaign for a diverted profits tax to combat corporate tax cheating, for example, it would also potentially make GetUp an associated entity of the Liberal Party.38

2.75 Prof. Luke Beck questioned whether the provision would result in any transparency increases:

The principal difference is that the Australian Electoral Commission register would note that an entity is associated with a particular political party. I am not sure that, for example, GetUp! being listed as associated with the Labor Party or the Business Council of Australia being listed as associated with the Liberal Party contributes anything to disclosure and transparency. Everyone already knows that GetUp! is a progressive organisation and that the Business Council of Australia is a conservative organisation.39

2.76 Some submissions also noted that an association may be inferred without an intent to benefit. Philanthropy Australia noted:

These provisions cast a wide net and make many presumptions about intent, purpose, benefit and impact that will be extremely difficult for charities and philanthropic organisations to interpret and navigate.

Charities may have policy positions which align with some of the policy positions of one or more political parties, or with none. Under the proposed expansion of the definition of associated entity, charities and potentially philanthropic organisations which support their advocacy activities may be deemed to be associated entities.40

Committee comment

2.77 The Committee notes concerns regarding the proposed expanded requirement to register as an ‘associated entity’ and the range of groups it will capture.

2.78 The broad nature of the proposed provision including statements made by officials in a public or private capacity also raises a number of regulatory concerns including how the AEC would be able to verify statements made in private. There is also potential for malicious registration under the provision that could act to the detriment of all political actors.

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38 GetUp, Submission 129, p. 7.
40 Philanthropy Australia, Submission 139, p. 8.
2.79 The Committee considers that the recommended establishment of a ‘Transparency Register’ will insert a high degree of transparency into the electoral system and assist entities that are currently not complying with the Electoral Act. A registration requirement would also alert the AEC to any entities that should be, but are not, registered under existing associated entity provisions. Therefore, the Committee considers that there would be no benefit in extending the ‘associated entity’ definition.

Recommendation 6

2.80 The Committee recommends that the Government reconsider the definition of ‘associated entity’ proposed in the Bill, and instead consider retaining the definition of ‘associated entity’ currently in the Electoral Act.

Obligations under the Electoral Act

2.81 As noted in Chapter 1, the Committee is concerned about evidence put to it about charities being unaware of their obligations under the Electoral Act.

2.82 Australian charities are regulated under the Charities Act 2013 which is overseen by the ACNC. This Act defines the charitable purposes under which charities are to operate and sets out grounds for disqualification from charitable status. Under the Charities Act, disqualifying purpose means:

a. the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
   Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.
   Note: Activities are not contrary to public policy merely because they are contrary to government policy.

b. the purpose of promoting or opposing a political party or a candidate for political office.
   Example: Paragraph (b) does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).
   Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a

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41 s287(1).
2.83 The ACNC provides more detailed advice on its website on the interpretation of this Act as it relates to elections, advocacy and campaigning. The ACNC’s website advises, among other things, that:

a charity can campaign if it is satisfied that:

- what it is doing is advancing its charitable purpose
- its governing document (e.g. its constitution or rules) does not prevent the activity
- it does not have a purpose of advancing a particular political party or candidate or campaigning against a particular party or candidate
- it does not have a purpose of engaging in or promoting activities that are unlawful, and
- it does not have a purpose of engaging in or promoting activities that are contrary to public policy (i.e., the rule of law, our constitutional system, the safety of the public or national security).

2.84 The Committee heard evidence that there is a lack of awareness among charities of their legislative obligations, which are strict liability, under the Electoral Act concerning their campaign expenditure. Further, the Committee notes that the ACNC takes a broad interpretation of ‘disqualifying purpose’ under the Charities Act which is out-of-step with AEC interpretation of the Electoral Act.

2.85 The Committee notes that the High Court has found that ‘by raising issues and engaging in debate in the public sphere, charities make a substantial contribution to the democratic processes on which our constitutional system of government depends.’ A number of submissions raised concerns that the Bill was contradictory to this ruling.

2.86 The tightening of the ‘political expenditure’ definition as recommended above, should provide surety to the charities sector that their general advocacy work – provided that it does not aim to influence voter intentions – will not be impacted by the Bill.

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42 Charities Act 2013, s. 11.


44 Law Council of Australia, Submission 46, p. 6. See also for example, Uniting Church, Synod of Victoria and Tasmania, Submission 130; Anglicare Australia, Submission 33.
Recommendation 7

2.87 The Committee recommends that the Government consider introducing administrative action to support consistent compliance with the provisions of the Electoral Act, as amended, by third party entities.
3. Greater financial transparency and disclosure

3.1 The Bill proposes a range of measures to improve the financial transparency of the electoral system and the funding of political actors in Australia. This includes:

- removing foreign interference in the domestic political landscape;
- requiring greater financial transparency from all participants with significant political expenditure; and preventing political actors from profiteering and achieving private gain by standing candidates for election.

3.2 The Bill also proposes ‘anti-avoidance measures so that funnelling foreign donations through an intermediary, setting up a shell company in Australia or splitting donations to avoid thresholds are banned.’\(^1\)

Foreign Donations

3.3 The Bill intends to restrict foreign donations influencing the political process in Australia. The Bill does this by requiring all donations that are greater than $250 and used for ‘political expenditure’ (discussed in Chapter 2) to come from ‘allowable donors’.\(^2\)

3.4 ‘Allowable donors’ are defined as:

a. an individual who is:
   i. an elector; or

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\(^1\) Senator the Hon. Mathias Cormann, 7 December 2017, Senate Hansard, p. 10102.

\(^2\) Proposed s287AA.
ii. an Australian citizen; or
iii. an Australian resident*

b. an entity that is:
   i. incorporated in Australia; or
   ii. the entity’s head office or principal place of activity is in Australia.

*The Minister may determine that an Australian resident is not an allowable donor by legislative instrument.

3.5 The following entities are not allowable donors:
   - a body politic of a foreign country; or
   - a body politic of a part of a foreign country; or
   - a foreign public enterprise.

3.6 In addition, donations cannot be given from foreign bank accounts or made while in a foreign country.3

3.7 Recipients are required to obtain ‘appropriate donor information’ to verify that a gift donor is an allowable donor for all gifts of a value of $250 (the allowable amount) or over. This includes the cumulative value of gifts over a financial year.4 Verification is to be obtained by statutory declaration unless declared otherwise by regulation.5

3.8 If a charity receives a donation over $250 that is not from an allowable donor, it cannot be kept in any bank account that is used for ‘political expenditure’.6

Evidence received

3.9 In the evidence received to this inquiry, matters were raised regarding:
   - the definition of ‘allowable donor’;
   - the compliance burden proposed the means to obtain ‘appropriate donor information’;
   - the ‘allowable amount’ threshold; and
   - the restrictions on foreign bank accounts.

3 Proposed s302K.
4 Proposed s302L.
5 Proposed s302P.
6 Proposed s302F.
Ban on donations from foreign governments

3.10 Many submitters supported measures to remove the capacity for foreign influence on Australian elections. The Australian Council of Trade Unions submitted:

the argument for banning donations from foreign governments and government-owned or controlled entities to political parties and candidates seems unassailable. These donations are the clearest case of foreign interference in domestic political affairs and represent an unacceptable risk to national sovereignty and the integrity of the Australian electoral system. A similar objection can be taken to donations emanating from overseas bank accounts.

The issue of foreign political donations becomes more complicated when the donor has no connection to a foreign political power (or their commercial offshoots) but nor do they have any obvious or direct connection to the Australian body politic. This could include private citizens of another country and large foreign commercial enterprises. However, the line can be difficult to draw, particularly given the complex international ownership and operational structures of multi-national corporations.7

3.11 Perpetual Trustee Company, a manager of charitable trusts, similarly supported the intent of the restriction on foreign influence:

Perpetual is supportive of any regulatory reform that seeks to protect Australia’s democracy by preventing unwanted foreign interference in our elections and influence over those elected representatives who’s role it is to represent the interests of our nation.8

3.12 On suggestions to exempt charities from a ban on foreign donations, Prof. George Williams stated:

It's like water: water will find a way. It's very clear in the US and a range of countries, including Australia, that you can't exempt one part, or that's simply where the money will flow to.9

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7 Australian Council of Trade Unions, Submission 102, p. 6.
8 Perpetual Trustee Company Ltd, Submission 126, p. 1.
Allowable donor

3.13 The definition of ‘allowable donor’ raised three main issues:

- the definition is too broad;
- the requirements can be easily circumvented; and
- it potentially breaches the Constitution.

3.14 Submitters argued that the definition of allowable donor was too broad, and included donors that would not normally be considered as a foreign influence. The Human Rights Law Centre argued that ‘allowable donor’ status should be extended to all Australian residents:

Great caution should be exercised before passing legislation that, under the guise of addressing an imprecise threat of “undue or improper foreign influence”, deems that many residents of Australia have no legitimate connection to government or policy in Australia, and no legitimate role to play in participating in public debate or donating to the vast range of civil society organisations that participate in public life. This is a very dangerous road for the Parliament of this country to embark on. Residents of Australia who are not (or not yet) citizens play many valuable roles and are as entitled to enjoy rights to freedom of expression and freedom of association as those who hold Australian citizenship, even if they are not entitled to vote or stand for office.10

3.15 Prof. Joo-Cheong Tham outlined all three concerns:

- They are not justified on the basis of publicised cases of donors with alleged links to the Chinese Communist Party government;
- The justification based on ‘meaningful connection to Australia’ is based on an excessively narrow understanding of such connection and in some respects, constitutionally suspect;
- The complexity and onerousness of these restrictions will place a disproportionate compliance burden (especially on smaller organisations) posing constitutional risks;
- There are doubts as to the compatibility of these restrictions with implied freedom of political communication; and
- The problems relating to ‘foreign’ political donations are better addressed through general measures such as caps on political donations and election spending.11

10 Human Rights Law Centre, Submission 142, p. 12.
11 Prof. Joo-Cheong Tham, Submission 12, p. 27.
Appropriate donor information

3.16 There was concern about the proposed requirement to verify donor information by statutory declaration. The majority of submitters contended that this provision is ‘unworkable’.

3.17 The verification requirement applies to cumulative donations of $250 within a year. Submitters stated that this would impose a significant administrative burden on fundraisers, requiring statutory declarations from individuals who donate as little as $4.80 per week. It would also require political candidates to keep records of every small donation in case an individual reaches the $250 threshold in a year.

3.18 The ACNC outlined the possible impact on charities of these provisions:

> With the new requirement for donations to come only from allowable donors, and for donors to complete a statutory declaration stating they are allowable, it is likely that there will be less funds available for charities to undertake advocacy work. This is because of the administrative overhead in maintaining separate accounts or calculating allowable amounts, ensuring statutory declarations are kept, and ensuring that all activity relating to a ‘political purpose’ is contained in projects separate to other work to minimise the risk of cross-contamination of funds.12

3.19 The Law Council of Australia submitted:

> These requirements will significantly increase the costs of fundraising and place unreasonable compliance burdens on charities. It is submitted that the over-regulation of charities limits the ability of citizens to exercise their rights of association through charitable organisations. Such over-regulation has a tendency to impinge upon the rights protected by Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR).13

3.20 GetUp submitted:

> Statutory declarations are typically used for court proceedings and other legal processes. For organisations and minor parties that rely on small donations, particularly online donations, expecting them to obtain a statutory declaration from hundreds or even thousands of regular small donors is absurd. This will have a major negative impact on the revenue of grassroots-funded civil society

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12 ACNC, Submission 31, p. 7.

13 Law Council of Australia, Submission 46, p. 10.
groups caught by the provision, as well as significantly impacting smaller political parties.14

3.21 Arnold Bloch Leibler also submitted that the requirement to collect and disclose donor information:

would undermine fundraising efforts and lead to disclosure of entirely apolitical donors who in our experience generally place very high value on the protection of their privacy. Under the Bill their personal details will be severely compromised, despite adding very little if anything to the capacity of members of the public to determine whether there exists any undue or inappropriate influence in Australia’s electoral system.

Maintaining and respecting donor privacy is fundamental to the ongoing viability and health of the charity sector. Donors invariably seek anonymity or privacy to avoid public attention, limit recognition of their personal wealth or out of a concern that their personal support for a charitable purpose does not align with separate business interests or public facing roles.

The apparent justification for compromising donor privacy is especially questionable when a donor makes an unconditional gift to a charity that pursues a wide range of activities for the public benefit, a small portion of which includes advocacy or public commentary.15

3.22 Although there is provision in the Bill for regulations to be made for information to be collected other than by statutory declaration, Philanthropy Australia submitted that ‘reliance should not be placed on the making of regulations given the alternative is unworkable.’16

**Allowable amount**

3.23 The Bill prohibits donations from non-allowable donors over a cumulative $250. Charities may receive donations from non-allowable donors but must keep them in a separate bank account that is not used for ‘political expenditure’. This provision raised concerns about a dual accounting and administrative burden. The St Vincent de Paul Society submission summarised the concerns expressed to the inquiry by all charities:

For most charities the vast majority of donations come from what would be deemed allowable donors. However, a small number of donations are likely to

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14 GetUp, Submission 129, p. 4.
15 Arnold Bloch Leibler, Submission 106, p. 4.
16 Philanthropy Australia, Submission 139, p. 3.
come from non-citizens or residents of other countries who are appreciative of the work done for them or their families. Separate accounts would need to be set up for this small number of donors and kept separate from other general revenue accounts. No funds from these separate accounts could be used for the broadly defined political expenditure.

Further costs and the extreme difficulty of implementation

These donations from overseas donors would need to be placed in a separate account. As well as placing donations for non-allowable donors in separate accounts, charities that are defined as political campaigners will be required to keep records to show that all other donations of $250 in a year were in fact from allowable donors. This means ensuring and recording that all such donors, if individuals, are Australian citizens, electors or Australian residents, and are not a class of resident that the Minister has deemed not to be an allowable donor. For donations from companies, this will mean ensuring and recording that they are incorporated in Australia, and for non-incorporated bodies, ensuring and recording that their head office or principle place of business is in Australia. This is a significant bureaucratic impost on charities that will add to administrative costs. This seems ironic for a government that has committed itself to reducing “unnecessary or inefficient regulation imposed on individuals, businesses and community organisations by at least $1 billion a year”.17

Committee comment

3.24 The Committee notes that a number of submissions called for wider reform to the transparency of political donations in Australia. This matter will be addressed in the Committee’s next interim report on the 2016 federal election inquiry.

Allowable donor

3.25 The Committee notes the comments made by constitutional law experts about defining an ‘allowable donor’, and the potential for challenge in the courts on the grounds of infringing the implied freedom of political communication. The Committee agrees with the principle that everyone should be able to participate in the political process—including through donations—unless they are specifically excluded.

17 St Vincent de Paul Society, Submission 16, pp. 4-5.
3.26 The Committee believes that the Government should consider defining ‘non-allowable’ persons and/or property, rather than defining the ‘allowable donors’. For example, both the similar bills currently before the Parliament propose a prohibition on ‘foreign property’, including property transferred to Australia for the purpose of making a donation.

3.27 The Committee is of the view that the Government should consider a definition that contains the presumption that all donors are allowable donors unless they fall into a non-allowable donor category.

3.28 Non-allowable donors would be those individuals that are not Australian citizens or residents, and entities that are not incorporated or have their principal place of business in Australia. The Minister should retain the right to determine non-allowable donors by legislative instrument. A verification process will still be required, as further discussed below.

3.29 It is appropriate that political donations are explicitly prohibited from the following:

- a body politic of a foreign country; or
- a body politic of a part of a foreign country;
- a foreign public enterprise; and
- non-resident citizens of a foreign country

**Recommendation 8**

3.30 The Committee recommends that the Government give consideration to replacing the definition of ‘allowable donor’ with a definition of ‘non-allowable’ donors.

**Use of statutory declarations and ‘allowable amount’**

3.31 The Committee agrees that the use of a statutory declaration to verify a donor’s identity in all instances is not appropriate. Obtaining a statutory declaration can be time consuming and costly for both donors and recipients and introduces unnecessary red tape into the electoral system.

3.32 While the Bill does include a provision that this may be changed by the Minister by regulation, the provision as it stands was of particular concern to submitters.18

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18 Proposed s302P.
3.33 A requirement to formalise this does not reflect the nature of Australian elections and fundraising done at a grassroots level. It also does not reflect the nature of digital fundraising.

3.34 The Committee is of the view that statutory declarations should only be required if the recipient has doubts as to the donors identity. Otherwise, the onus should be on the donor to self-declare they are an allowable donor. Penalties should be introduced into the Act for a donor who makes a false declaration.

3.35 In addition, the aggregation of donations received under the allowable amount of $250 could impose a significant compliance burden on recipients. A donor who wishes to split a sizable donation into $250 amounts would be easily identified by the recipient. Therefore, with appropriate anti-avoidance measures in place, the aggregation of donations to $250 does not appear warranted.

Recommendation 9

3.36 The Committee recommends that the Government consider:

- removing the potential requirement for statutory declarations for all gifts;
- simplifying the process for entities to verify whether a donor is a non-allowable donor.

Recommendation 10

3.37 The Committee recommends that the Government consider removing the aggregation of donations received under the allowable amount, provided that appropriate anti-avoidance measures are implemented.

Foreign bank accounts

3.38 The evidence generally supported the proposed restrictions on donations from foreign governments.19

3.39 However, there were concerns about proposed restrictions on gifts from foreign bank accounts. Prof. Tham submitted that:

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the prohibition should not apply when the gift recipient has adduced evidence to the satisfaction of the Australian Electoral Commission that the named donor is the true source of the funds. This measure will allow the risk of laundering to be effectively addressed while allowing political organisations to still receive foreign-sourced donations.²⁰

3.40 Charities raised concerns that this provision may impact international philanthropy, given that advocacy funded by this philanthropy may be captured under the new definition of ‘political purpose’²¹. Global Health Alliance Melbourne submitted:

We believe that the advocacy, lobbying and health promotion related to advances and discoveries in these areas could be judged as “political activity”, noting that much of the work done in this area by our members is funded by non-Australian entities such as the WHO, UN agencies, the Bill and Melinda Gates Foundation, foreign philanthropists, the Wellcome Trust and many more.²²

3.41 It was also submitted that the blanket restriction on foreign bank accounts may limit innovative fundraising methods such as cloud-based fundraising platforms. These platforms may be hosted internationally, even if individual donors are within Australia.²³

Committee comment

3.42 The Committee agrees with the weight of evidence that the restriction on donations by foreign governments and entities is appropriate and this reflects its third interim report on this issue.

3.43 The Committee notes concerns put by submitters about restrictions placed on foreign banks accounts and that this may restrict foreign philanthropy.

3.44 However, the Committee also notes that the Bill specifically allows for registered charities to seek and use gifts from foreign donors as long as the funds are not used for domestic political purposes.

3.45 The Committee considers that its recommendation in Chapter 2 to amend the definition of ‘political expenditure’ will address many of these concerns.

²¹ Discussed in Chapter 2.
²² Global Health Alliance, Submission 107, p. 3.
²³ Roger Woodward, Submission 70, p. [3].
3.46 However, the Committee notes that while the Bill prohibits the receipt of funds from non-allowable donors for the purposes of distributing those funds to a political entity or political campaigner\textsuperscript{24}, it does not address the further distribution of those funds.

3.47 For example, if entities A, B and C are allowable donors and:

- foreign funds are donated to Entity A\textsuperscript{25}
- Entity A donates to Entity B
- Entity B donates to Entity C
- Entities A and B do not undertake political campaigning but Entity C does.

3.48 In this scenario all entities are acting within the law as Entity B does not have political expenditure and is an allowable donor.\textsuperscript{26} However, foreign funds are ultimately being utilised for political purposes.

3.49 A provision is required to provide transparency to the secondary distribution of funds through third parties.

\textbf{Recommendation 11}

3.50 The Committee recommends the Government consider providing a legislative mechanism to give greater transparency of foreign funds that are moved through multiple organisations, whether they be charities, not for profits, industry associations or businesses, and to prohibit the use of such funds by way of political expenditure; noting the need to reach agreement on defining ‘political expenditure’ and noting the Australian Greens’ concerns that non-partisan issue based advocacy not be included in the definition of ‘political expenditure’.

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\textsuperscript{24} Proposed s320H-J.

\textsuperscript{25} Entity A cannot then immediately pass the donation to Entity B, but is not prevented from making a donation of a different form to Entity B.

\textsuperscript{26} However if the funds had gone directly from Entity A to Entity C, Entity C could not use the funds for political purposes.
Nomination of financial controllers and annual returns

3.51 Under s292E of the Bill political campaigners, third party campaigners and associated entities\(^{27}\) must nominate a financial controller.

3.52 Financial controllers are liable for breaches of proposed s302E and s302F\(^{28}\) which carry penalties of 10 years in prison and/or 600 to 1,000 penalty units (currently $126,000 to $210,000).

3.53 Registered third parties, political campaigners and associated entities must also submit annual returns\(^{29}\) including:

- total amounts received and paid and outstanding amounts and debts in the financial year;
- senior staff and any membership of political parties those staff hold; and
- any discretionary benefits received by, or on behalf of, the entity from the Commonwealth, State or Territory which includes grants, contract or other benefits.\(^{30}\)

3.54 Registered political parties and political campaigners are also required to provide auditor’s reports in accordance with proposed s314ABA.

Evidence received

Appointment of financial controllers

3.55 Two concerns were raised about financial controllers:

- the requirement to appoint a financial controller; and
- the extent of the financial controller’s potential personal liability.

3.56 Arnold Bloch Leibler submitted:

For example, any changes to financial controller details must be updated within 60 days. Failure to update details with the AEC, including financial controller information, attracts a civil penalty of 60 penalty units ($12,600). This duplicates charities’ existing obligations to update responsible person details with the ACNC and attracts a significant fine that would trigger breach of ACNC regulations and thus threaten ongoing charity registration.

\(^{27}\) Discussed in Chapter 3.

\(^{28}\) Donations to third party charities and political campaigners.

\(^{29}\) Proposed s314AB and s314AEB.

\(^{30}\) Proposed s314AEA(1).
Unlike the existing Electoral Act civil penalty provisions, many of the new offence and civil penalty provisions in the Bill impose liability directly on the individual “financial controller” rather than the third party entity. The potential for personal fines and a prison term is likely to act as a major deterrent to accountants and other skilled persons taking on the position of secretary or treasurer of a NFP or registered charity, particularly in light of the rule of law concerns outlined above.

Unlike the position of agent of a political party, such positions are often assumed on a voluntary basis. It is critical that the sector can continue to attract skilled persons to take on these important positions on the Boards of NFPs and charities.31

3.57 The ACNC and a range of other charity submissions supported these concerns.32

3.58 The Law Council of Australia also submitted that:

It is inappropriate for obligations and significant penalties (including imprisonment in some cases) to be imposed on anyone who is not in fact responsible for controlling finance nor has visibility over donations and gifts and how they are applied.33

### Annual returns

3.59 Under the current Electoral Act, people or organisations (other than political parties) are required to submit annual returns if they incur political expenditure above the disclosure threshold. In 2016-17, 34 organisations made these returns.34

3.60 The Bill continues the same requirement to submit annual returns to organisations incurring political expenditure above the disclosure threshold.

3.61 Organisations that reach a significant expenditure level will have to submit the same detailed annual returns as political parties.35

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31 Arnold Bloch Leibler, Submission 106, pp. 7-8.
32 ACNC, Submission 31; Catholic Archdiocese of Sydney, Submission 127; Philanthropy Australia, Submission 139; Oxfam Australia, Submission 89.
33 Law Council of Australia, Submission 46, p. 10.
35 Proposed s314AB.
3.62 It was submitted that the requirement to provide annual returns would be a compliance burden for smaller entities, and in conflict with the requirements of the Charities Act. The ACNC submitted:

The Bill also requires submission of an auditor’s report at the same time the annual return is provided to the AEC. Under the proposed section 314ABA, the auditor’s report must state whether the return satisfies the requirements of the CEA. Currently, only large registered charities (those with annual revenue of $1 million or greater) must submit an auditor’s report to the ACNC.

A medium sized charity (that with an annual revenue that is $250,000 or greater but less than $1 million) can have its financial report reviewed rather than audited. A medium sized charity under the ACNC Act could be a ‘political campaigner’ according to the definition in the Bill and therefore be subject to far greater reporting requirements than those that currently exist, and be required to submit an auditor’s report. Not only is this an increased reporting burden, but it also brings an increased cost to charities. This would apply to both medium and large charities that would fall within the definition of ‘political campaigner’ under the Bill.36

3.63 The primary concern of submitters is the additional requirement to include the details of senior staff in annual returns. Prof. Anne Twomey raised concerns about the appropriateness of this requirement. She submitted:

‘Senior staff’ is defined in s 287(1) as meaning an entity’s directors, or if it does not have directors, any person who makes or participates in making decisions that affect the whole or a substantial part of the operations of the entity. It is unclear why it is necessary to identify senior staff engaged by political campaigners and third party campaigners and declare any membership of any registered political party (see, eg, s 314AB). The Explanatory Memorandum contends that while there is an impact upon the privacy of senior staff, this is justifiable on the basis that it promotes transparency of the electoral system. However, forcing individuals to publicly declare their political affiliations opens them up to the kind of discrimination and vilification that is normally prohibited in human rights instruments. (See, eg, Commonwealth legislation dealing with discrimination in employment on the ground of political opinion: Australian Human Rights Commission Act 1986; and Fair Work Act 2009, s 153, 195 and 351.) …

It is also likely, as noted above, to affect many of the major corporations in Australia. If they are political campaigners they will all have to declare whether their senior staff, such as their directors, belong to any political parties. Should the board of Qantas or the boards of Australia’s banks and

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36 ACNC, Submission 30, p. 5.
mining corporations be forced to reveal their political affiliations? They might regard this as unnecessarily intrusive and unlikely to achieve the declared aims of the bill.37

3.64 Oxfam further submitted that while the provision does not prevent senior staff, including directors and board members, being members of political parties, the practical effect of the clause will be to do so:

While this does not directly prevent individuals from being members of registered political parties, it will indirectly do so. ‘Senior staff’ may feel compelled to renounce their membership in the interests of ensuring that the entity does not appear to be politically aligned.38

**Committee comment**

**Financial controllers**

3.65 Registered charities and not-for-profits must comply with ACNC governance standards which require that responsible persons ensure that the financial affairs of the charity are managed responsibly.39 The Bill proposes an additional level of financial responsibility, does not exclude an individual who is already responsible for the financial affairs of the charity for taking this role.

3.66 However, the Committee takes seriously the concerns of the charity sector that recruiting suitable personnel may pose some difficulties. This is further discussed in Chapter 4.

**Disclosure of senior staff affiliations**

3.67 The Committee notes the concerns about reporting the political affiliations of senior staff.

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38 Oxfam Australia, *Submission 89*, p. 10.

Public funding

3.68 Public funding is an important feature of Australian elections. It was first introduced in 1983 to ‘level the playing field’ and to ‘reduce the potential for both real and perceived undue influence and corruption.’

3.69 The Bill limits public funding to demonstrated electoral spending. Currently, public funding is a per-vote funding amount for candidates that receive at least 4 per cent of the first preference vote (the public funding rate amount).

3.70 When introduced, public funding was based on this formula but capped at the amount of election expenditure. In 1995 this was amended to become an entitlement based on the number of votes received.

3.71 There has been public concern following recent state and Federal elections about parties and candidates ‘profiteering’ from election funding ‘windfalls’ by receiving significantly more public funding than actual expenditure.

3.72 While only four parties reported that they had spent less money in 2015-2016 returns than they had received in public funding, of those four parties, three have representation in the Federal Parliament.

3.73 The Bill proposes amendments that would return public funding to the lesser of:

- the public funding rate amount; and
- the amount of electoral expenditure occurred in the election period that has been claimed and accepted by the Electoral Commission.

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41 Which is subject to indexation.

42 Electoral Act, s294.


45 Pauline Hanson’s One Nation ($1.45 million), Nick Xenophon Team ($540,000), and Derryn Hinch’s Justice Party ($490,000) (Bullet Train for Australia also received $15,000). Parliamentary Library analysis, *Bills Digest No. 81, 2017-18*, 20 February 2017, Appendix A.
3.74 The Bill also proposes a process by which claims for election funding will be made and paid through the Electoral Commission.46

3.75 In his second reading speech, the Minister stated:

Public election funding is payable in relation to any candidate who received more than four percent of the total first preference votes cast in an election. While this qualification requirement remains unchanged, the bill will limit public election funding to demonstrated electoral spending, which will prevent political actors from profiteering and achieving private gain by standing candidates.47

3.76 There was little focus on these provisions in submissions to the inquiry. However, Prof. Anne Twomey submitted:

This is a great improvement, as it will prevent profiteering from the public funding scheme, which in the past has drawn the public funding scheme into disrepute.48

Committee comment

3.77 The Committee reaffirms its support for public funding as an important part of the Australian electoral system. However, the Committee is concerned that the current funding system is not commensurate with community expectations.

3.78 This Committee’s predecessor’s report that led to reform of the Senate voting system discusses public concern about ‘gaming’ the voting system to ‘harvest’ votes, resulting in Senate results that were not necessarily reflective of the will of voters. That Committee’s recommendations were aimed at providing assurance to the public that candidates were genuine, and restore confidence in the voting system.49

3.79 Similarly, standing for election in Australia should not be a money-making exercise and the community perception that it can be undermines the integrity of the public funding system and the community confidence in the electoral system as a whole.

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46 Proposed subdivisions C–D.
47 Senator the Hon Matthias Cormann, Minister for Finance, Senate Hansard, 7 December 2017, p. 10098.
48 Prof. Anne Twomey, Submission 2, p. 7.
49 JSCEM, May 2014 (44th Parliament), Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices.
3.80 The Committee supports the proposed changes to the public funding system. However, the Committee notes that proposed ss293-295 introduce a level of complexity into the Bill, in comparison to the simplicity of existing s294 regarding the general entitlement to funds. If possible, these sections should be redrafted and simplified.

3.81 However, the Committee is also of the view that a minimum expenditure threshold should be established before requiring substantiation. Substantiation should only be required for the amount between the threshold and for the total value of the claim.

3.82 This would ensure the least regulatory burden for new and first-time candidates and micro parties whilst ensuring the integrity of the public funding process.

**Recommendation 12**

3.83 The Committee recommends that the Government consider establishing a minimum expenditure threshold before requiring substantiation for public funding claims.

3.84 Subject to the above amendment, the Committee recommends that the proposals relating to public funding be agreed.
4. Compliance and administrative matters

4.1 The Bill modernises the enforcement and compliance regime for political finance regulation and expands the penalty regime in the Act.

4.2 The Bill also increases the responsibilities of the Australian Electoral Commission (AEC).

Penalty regime

4.3 The Bill proposes the following criminal and civil penalties:

- contravention of sections regarding donations to registered political parties, candidates, Senate groups and political campaigners – criminal penalty of 10 years imprisonment or 600 penalty units\(^1\) or both or civil penalty of 1,000 penalty units;\(^2\)
- contraventions of sections regarding donations to third party campaigners and certain political campaigners –criminal penalty of 10 years imprisonment or 600 penalty units, or both, or civil penalty of 1,000 penalty units;\(^3\)
- registered charities and organisations using the same account in which foreign donations are received for domestic political expenditure – criminal penalty of 10 years imprisonment or 600 penalty units, or both, or civil penalty of 1,000 penalty units;\(^4\)

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\(^{1}\) A penalty unit is currently $210.
\(^{2}\) Proposed s302D.
\(^{3}\) Proposed s302E.
\(^{4}\) Proposed s302F.
soliciting gifts from non-allowable donors – criminal penalty of 5 years imprisonment or 300 penalty units, or civil penalty of 500 penalty units;5
– registered charities and organisations can solicit foreign gifts as long as they are not used for political purposes.

receipt of gifts from non-allowable donors in order to transfer the gifts – criminal penalty of 5 years imprisonment or 300 penalty units, or both, or civil penalty of 500 penalty units;6

formation of a body corporate specifically for the purposes of making an unlawful gift – criminal penalty of 5 years imprisonment or 300 penalty units, or both, or civil penalty of 500 penalty units;7

receipt of donations from foreign banks accounts or made while in a foreign country – criminal penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units;8

receipt of donations of at least $250 without appropriate donor information – criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units.9

4.4 There are exceptions where a recipient has sought appropriate donor information and where gifts are made in a private capacity (i.e. personal holiday gifts).10

4.5 In addition to penalties for the receipt of unlawful gifts, the Bill proposes that any unlawful gifts become a debt owed to the Commonwealth.11

Evidence received

4.6 The AEC confirmed that the proposed penalties would be the strongest in the Act.12 Prof. Tham welcomed the proposed increased penalties, submitting that low penalties are a ‘significant shortcoming of current

5 Proposed s302G.
6 Proposed s302H.
7 Proposed s302J.
8 Proposed s302K.
9 Proposed s302L.
10 Proposed ss302N-P.
11 Proposed s302Q.
12 Mr Paul Pirani, Chief Legal Officer, AEC, Committee Hansard, 31 January 2018, Canberra, p. 7.
federal election funding laws.’ He stated that the proposed penalties ‘clearly strengthen the deterrence effect of the penalties, thereby promoting compliance.’

4.7 Nonetheless, there was concern about the seemingly ‘disproportionate’ nature of the penalties. It was submitted that the penalties may prove to be a business risk to the charity sector. Charities may find it difficult to recruit suitably qualified volunteers or staff to take on roles with such high potential liability.

4.8 One proposed solution would be to cap the maximum penalty at twice the amount of political expenditure occurred in the financial year the offence was committed. This would have a deterrent effect while ensuring the penalty is proportionate.

Committee comment

4.9 The Committee acknowledges the evidence regarding the proposed penalty regime and concerns about the disproportionality of penalties.

4.10 The AEC informed the Committee that there is guidance for legislative drafters in relation to setting the appropriate level of penalty. The Committee notes that the Parliamentary Joint Committee on Human Rights has raised several issues in this regard for further ministerial response.

4.11 The Committee is firmly of the view that penalties should act as a deterrent and would be reluctant to diminish this deterrent effect.

4.12 Nonetheless, the Committee believes penalties should be reduced to a level more commensurate with the type of breach displayed by an entity, for example being that organisations breaching the conditions of their DGR status should have their status revoked.

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13 Prof. Joo-Cheong Tham, Submission 12, p. 21.
14 Oxfam Australia, Submission 89, p. 10
15 See for example: ACNC, Submission 31, p. 1; Carolyn Allen, Submission 94; The Benevolent Society, Submission 136, p. 4.
16 Prof. Joo-Cheong Tham, Submission 12, p. 21.
17 Mr Paul Pirani, Chief Legal Officer, AEC, Committee Hansard, 31 January 2018, Canberra, p. 7.
4.13 As noted in Chapter 1, the Committee has been concerned about the apparent widespread failure by charities to understand existing reporting obligations under the Electoral Act.

4.14 The Committee also notes that the Bill imposes serious penalties for registration non-compliance utilising a threshold that is both retrospective and prospective. Organisations may have to undertake some administrative work in order to determine their registration category.

4.15 Therefore, the Committee is of the view that there should be a 12 month delay to the commencement of the proposed offence clauses in order to allow all political actors to meet their registration requirements without fear of prosecution.

4.16 At the same time both the AEC and the ACNC should undertake a comprehensive campaign to educate all stakeholders on the new requirements.

Recommendation 13

4.17 The Committee recommends that the Government consider reducing the proposed penalties in the Bill, and that penalties be proportionate to the type of breach displayed.

Recommendation 14

4.18 The Committee recommends that the Government consider:

- an appropriate legislative mechanism whereby organisations which hold Deductible Gift Recipient (DGR) status which donate funds to another organisation in breach of their DGR obligations forfeit the right to DGR status; and

- that any legislation include a mechanism to allow for a warning before removal of DGR status.

Recommendation 15

4.19 The Committee recommends that the Government appropriately resource both the Australian Electoral Commission and the Australian Charities and Not-for-profits Commission to undertake a comprehensive education campaign for business, for industry associations, and for the charity sector on their obligations under the Electoral Act 1918.
Committee comment on AEC resourcing

4.20 The Explanatory Memorandum states that the implementation costs are estimated to be $70 million over the forward estimates. The AEC noted that in order to implement the proposed arrangements it would require resources for:

- new and improved IT systems;
- workforce capability and training; and
- an awareness campaign.¹⁹

4.21 The proposals contained in this Bill will place significant additional responsibility on the AEC and the Committee calls on the Government to ensure that the AEC is adequately resourced to undertake these functions, without detracting from its existing responsibilities.

Senator Linda Reynolds CSC
Chair
9 April 2018

¹⁹ Mr Tom Rogers, Electoral Commissioner, AEC, Committee Hansard, 31 January 2018, Canberra, pp. 6-7.
A. Submissions

1. Mr Daniel Hirschfeld
2. Dr John Price
3. Prof Anne Twomey
   • 3.1 Supplementary
4. Australian Environmental Grantmakers Network
5. Dr Liz Elliott
6. Ms Valerie Joy
7. The Group of Eight
8. Charles Sturt University
9. Baptist Care Australia
10. Ms Julie Howard
11. Dr Anika Gauja
12. Professor Joo-Cheong Tham
   • 12.1 Supplementary
13. Ms Rhoda Dorrell
14. WaterAid
15. Dr Nicholas Scott
16. St Vincent de Paul Society National Council
17. Mr Siegfried Manietta
18. Ms Janet Scott
19 Mr John Gale
20 TEAR Australia
21 The Ian Potter Foundation
22 Name Withheld
23 Consumer Action Law Centre
24 Pro Bono Australia
25 Mr Roger Dawson
26 Ms Marilyn Robertson
27 Alliance for Gambling Reform
28 CASS Group
29 Mrs Elizabeth Roberts
30 Convict Trail Project Inc
31 Australian Charities and Not-for-profits Commission
32 Australian Federation of AIDS Organisations
33 Anglicare Australia
34 Name Withheld
35 Senator Eric Abetz
36 Mr John Gregan
37 Mr Thomas Driftwood
38 Name Withheld
39 Mr David Russell
40 Mr Larry Vincent
41 Mr John Pinniger
42 Mr Brad Chilcott
43 Mr Wayne Perkins
44 Mr Peter Sainsbury
45 CBM Australia
46 Law Council of Australia
47 Australian Greens
Australian Fair Trade and Investment Network
Plan International Australia
Association of Australian Medical Research Institutes
Ms Bronwyn Yates
Justice for Children Australia
Mackellar Action Group
Young Liberal Movement of Australia
The Salvation Army
Mr Dick Rowe
Amnesty International Australia
Cerebral Palsy Alliance
National Disability Services
WA Council of Social Service
Conservation Council SA
Professor Graeme Orr
Victorian Alcohol and Drug Association
Ms Michelle Zwagerman
Australian Lawyers for Human Rights
Public Health Association of Australia
Australian Council of Social Service (ACOSS)
  67.1 Supplementary
World Vision Australia
Friends of the Earth
Mr Roger Woodward
CHOICE
Good Shepherd Australia New Zealand
Ms Stephanie Stewart
Oaktree
Ms June Lunsmann
Ms Morag Leith
Ms Debbie Phipps
Civil Liberties Australia
Mr Michael Rynn
Associate Professor Luke Beck
UN Women National Committee Australia
Research Australia
International Nepal Fellowship Australia (INF/A)
Dr Peter Melser
Australian Services Union
UnitingCare Australia
Name Withheld
Australian Red Cross
Oxfam
Reichstein Foundation and other philanthropies
WWF-Australia
RSPCA Australia
Suicide Prevention Australia
Ms Carolyn Allen
Council of Australian University Librarians
Chartered Accountants Australia and New Zealand
MSF Australia
Victorian Women’s Trust
Foodbank Australia Ltd
CARE Australia
350 Australia
Australian Council of Trade Unions
Ms Claire Bettington
International Women’s Development Agency
ActionAid Australia
Arnold Bloch Leibler
Global Health Alliance Melbourne
Ms Sue Holmes
Greenpeace Australia Pacific
The University of Melbourne
RESULTS International (Australia) Inc.
Queensland Law Society
Universities Australia
Transparency International Australia
Australian Conservation Foundation
Yourtown
Union Aid Abroad–APHEDA
Australian Paralympic Committee
The Community Housing Industry Association (CHIA)
St Vincent’s Health Australia
Brotherhood of St Laurence
Public Interest Advocacy Centre
Australian Council for International Development
  123.1 Supplementary
Justice Connect
Ms Mia Bromley
Perpetual Trustee Company Limited
Catholic Archdiocese of Sydney
Arts Law Centre of Australia
  128.1 Supplementary
GetUp
Uniting Church-Synod of Victoria and Tasmania
  130.1 Supplementary
131 Pew Charitable Trusts
132 Human Rights Watch
133 Australian Major Performing Arts Group
134 Ms Christine Franks
135 Name Withheld
136 The Benevolent Society
137 Institute of Public Affairs
138 Miss Lise Blackgrove
139 Philanthropy Australia
   139.1 Supplementary
140 Joint Councils for Civil Liberties of Australia
141 Community Council for Australia
   141.1 Supplementary
142 Human Rights Law Centre
   142.1 Supplementary
143 Volunteering Australia
144 Mr Mark Zanker
145 ChildFund Australia
146 Australian Taxpayers’ Alliance & My Choice
147 Australian Electoral Commission
   147.1 Supplementary
   147.2 Supplementary
148 Mission Australia
149 Pax Christi Victoria
150 Chamber of Arts and Culture WA
151 Eytan Lenko
152 Dr John Collee
153 Ms Lynn Misurka
154 Mr Thomas Delaney
Mr John Jones
Mr Geoffrey Wright
Ms Jessica Durham
Jill St John
Australian Marine Conservation Society
The Australian Religious Response to Climate Change (ARRCC)
Mr Derek Garson
Mrs Dale Dumpleton
National Association for the Visual Arts
Mr Peter Burke
Mr John Irvin
Science & Technology Australia
Community Industry Group
Total Environment Centre
The Thoracic Society of Australia and New Zealand
Australian Human Rights Commission
Universities Australia
The Centre for Independent Studies
Cohealth Ltd
CREATE Foundation
Ms Shelley Cooper, Mr Geoff Weir, Mr Robert Henderson, Mr Erik Olbrei and Ms Martina Fechner
Jesuit Refugee Service Australia
Australian Youth Climate Coalition
Ms Deborah Pergolotti
Mr Malcolm Baalman
Change.org
Mr Gerald Holder
Refugee Advice and Casework Service (Aust) Inc
Mr Brian Clark
Confidential
Ms Rosemary Harris
Cancer Council Australia
National Union of Workers
Australian Chronic Disease Prevention Alliance
Ms Pamela Harris
Mr Joseph Castley
Lush Fresh Handmade Cosmetics
Senator Brian Burston
Reconciliation Australia
Social Ventures Australia
Investor Group on Climate Change
National Association of Community Legal Centres
National Council of Women Australia
Mr Mike Haesler
B. Public hearings

Wednesday, 31 January 2018
Parliament House Canberra, Committee Room 2S3

Australian Electoral Commission

- Mr Tom Rogers, Electoral Commissioner
- Mr Paul Pirani, Chief Legal Officer

Friday, 2 February 2018
Parliament of New South Wales
Jubilee Room
Sydney

Human Rights Law Centre

- Mr Hugh de Kretser, Executive Director
- Dr Aruna Sathanapally, Director of Legal Advocacy
- Miss Angela Chen, Secondee Lawyer

Wednesday, 14 February 2018
Parliament House Canberra, Committee Room 1R2

- Professor Joo-Cheng Tham, Private capacity
Friday, 16 February 2018

Parliament House Canberra, Committee Room 2S1

- Professor Anne Twomey, Private capacity

*Australian Council of Social Service*

- Dr Cassandra Goldie, Chief Executive Officer

*Australian Council of Social Service*

- Mr John Mikelsons, Senior Policy and Advocacy Officer

*Institute of Public Affairs*

- Mr Simon Breheny, Director of Policy
- Mr Gideon Rozner, Research Fellow

*Australian Charities and Not-for-profits Commission*

- Dr Gary Johns, Commissioner

*Law Council of Australia*

- Dr Natasha Molt, Deputy Director of Policy Division
- Mr Konrad De Kerloy, Treasurer
- Ms Alice Macdougall, Member, Not-for-Profit Legal Practice and Charities Group, Legal Practice Section

*Universities Australia*

- Ms Catriona Jackson, Deputy Chief Executive Officer

*Association of Australian Medical Research Institutes*

- Professor Tony Cunningham, President
- Professor Vlado Perkovic, Board Member

*Australian Electoral Commission*

- Mr Tom Rogers, Electoral Commissioner
- Mr Paul Pirani, Chief Legal Officer

Evidence was also taken on the Bill during hearings held for the 2016 Federal Election inquiry.
Introduction

1.1 This Minority Report has been written to highlight that while the Committee was able to agree on a number of key recommendations differences remain on the critical issue of the role of non-government organisations and charities in engaging in issue based advocacy.

1.2 While the Australian Greens support a ban on foreign donations we remain concerned that one of the Majority Report’s recommendations effectively leaves the door open to limiting the activities of civil society.

1.3 The Majority Report does not endorse the Bill in its current form.

1.4 Significantly the Majority Report recommends that a legislative framework should cover industry associations and businesses and not just charities and not for profits.

1.5 The Turnbull government has asserted that the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill will achieve a ban on foreign donations. However, the Bill does not achieve that. An examination of the Bill shows that it is a partisan attack on groups perceived to be politically opposed to the government.

1.6 Submissions to the inquiry, evidence from witnesses and subsequent public commentary have added weight to this argument. In summary this Bill:

- Fails to achieve its ostensible purpose of preventing foreign interference,
- Fails to reduce the corrupting influence of political donations,
- Discourages charities and other civil society organisations from engaging in advocacy, and
- Disadvantages smaller political actors relative to larger ones.
1.7 We reiterate that the Australian Greens have long argued for serious reform of electoral funding and disclosure. We are prepared to work with any party to reduce the influence of big money in politics. A number of our bills which would help restore integrity to our democratic process and institutions are currently before the Senate:

1. National Integrity Commission Bill 2013
2. Commonwealth Electoral Amendment (Reducing Barriers for Minor Parties) Bill 2014
3. Commonwealth Electoral Amendment (Donations Reform) Bill 2014
4. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016

1.8 Recent scandals have increased the public’s appetite for reform. It is deeply disappointing that the government has attempted to exploit that appetite by using the ‘foreign donations ban’ to cloak an attack on its political enemies.

1.9 In the sections that follow I examine the short comings in this Bill and set out a framework for reform.

Foreign donations

1.10 The Australian Greens support a ban on donations from foreign entities. Our Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016 seeks to do just that, as part of a wider range of reforms for political donations from domestic sources. A ban on foreign donations is no substitute for placing caps on all donations and expenditure.

1.11 The government has argued that this Bill will reduce foreign interference in Australia by banning foreign donations. However, the legislation leaves the door wide open for millions of dollars from foreign sources to be donated to political parties and candidates.

1.12 Professor Twomey gave evidence that the bill does not achieve its stated purpose:

Firstly, it doesn’t achieve its purpose, which is to prevent or obstruct foreign interference in parliamentary elections. Foreign nationals can still, under this bill, make enormous and influential donations to political parties if it is done through a permanent resident or a foreign owned corporation or subsidiary that is incorporated in Australia.1

1 Prof Anne Twomey, Committee Hansard, 16 February 2018, p. 1.
1.13 GetUp noted that the Bill would not have prevented the very donations which apparently precipitated the government to introduce this legislation:

The Bill is ostensibly a response to a series of recent scandals surrounding foreign funding of politicians and political parties – and the potential for undue foreign influence thus created. Yet these scandals would not have played out any differently if the Bill were enacted into law. The “foreign donors” namechecked in the media – Chau Chak Wing and Huang Xiang Mo – both hold or held Australian citizenship or residency at the time the donations were made and therefore would be allowable donors under the provisions of the Bill.2

Effect on civil society

1.14 The Bill contains a number of provisions that place significant restrictions on the capacity of charities and other groups that undertake advocacy to receive donations, and how those donations are spent, thereby stymying their ability to advocate for policy change.

1.15 The bill broadens the concept of “political expenditure” to include advocacy, and compels those organisations which spend some resources on advocacy to comply with onerous restrictions on receiving international philanthropy, including increased disclosure obligations. Some organisations must keep records to prove that a donor is an “allowable donor” (broadly speaking an Australian citizen or resident), and keep any international funds separate to other funds. The requirement to verify that a donor is “allowable” through a statutory declaration will place a burden on both the recipient and the donor, and is likely to discourage donations.

1.16 The effect of these proposed changes will be corrosive to Australia’s democracy. An active and engaged civil society is essential to a strong and vibrant Australia. Civil society advocates for important policy outcomes, whether that be on homelessness, funding for medical research, animal welfare or environmental protection. Civil society promotes ideas, advocates on behalf of the marginalised, and levels the playing field between ordinary citizens and big corporate interests.

1.17 Under this Bill, civil society organisations may have to choose between international philanthropy (for example, from the Bill and Melinda Gates Foundation) and policy advocacy. Additionally, the Bill’s measures will

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2 GetUp, Submission 129, p. 3.
require resources to be diverted to burdensome and costly administration, rather than issues relating to an organisation’s mission.

1.18 The Greens are also concerned that this Bill infringes on the constitutional protection of political communication. Constitutional law experts, including Professors George Williams and Anne Twomey, have said the Bill may be referred to the High Court because of its potential impact on the implied freedom of political communication.

1.19 It should be noted that many of the measures in the proposed legislation are entirely unnecessary. The Charities Act 2013 already prohibits charities from having a “purpose of promoting or opposing a political party or candidate”.

1.20 The Bill will also unfairly classify some organisations as an associated entity of a political party, even when that organisation is completely independent of the political party. This could create undeserved reputational damage to the organisation or cause it to refrain from exercising a legitimate voice in an election campaign. It defines an associated entity as an organisation that promotes or opposes the policies of one or more political parties in a way that benefits a political party. This definition does not take into account that it is reasonable for independent organisations to support or oppose a party or candidate in a particular election because their policy is consistent with, or undermines, a crucial objective of the organisation.

1.21 Independent organisations should not have the label and obligations of an associated entity thrust upon them for engaging in an election campaign. It should be noted that currently third party election campaigners are required to make disclosures to the AEC similar to those made by political parties.

1.22 A number of submissions highlighted the inappropriate scope of the changes and the effect they would have on legitimate advocacy work.

1.23 St Vincent de Paul argued that the Bill could curtail community groups contributing to parliamentary inquiries:

If this Bill is passed, groups in the future will have to consider whether their contribution to a Parliamentary inquiry will take them over the threshold of being deemed a political campaigner. This may ultimately lead to a reduced number of submissions being made to Parliamentary inquiries, which will in turn reduce the quality of democratic debate and the capacity for informed decision making.³

³ St Vincent de Paul, Submission 16, p. 8.
1.24 Anglicare Australia argued that the Bill would reduce the capacity and willingness for community groups to participate in public debate:

The Bill is anti-democratic and authoritarian. It is seemingly designed to intimidate common citizens and community representatives, discourage them from using their knowledge and work to inform and influence public policy, and limit their participation in the robust debate of the public sphere. This would make political activity less inclusive; preserving it instead for increasingly unpopular political parties, the staff they employ, and the well-funded lobby groups, industry advocates and associated entities who they regularly – though not always publicly – work alongside.4

1.25 The Australian Council of Social Services argued that the prohibition on using international funding for advocacy may disproportionately affect certain groups:

Further, migrant communities and organisation may be disproportionately impacted by this ban. Advocacy is an important part of the work of these organisations, and international philanthropy and donations from non-permanent residents are an important feature of their funding.5

1.26 World Vision Australia argued that the global nature of many issues and debates, and the existing regulation of charities, allowed international philanthropy to make an important contribution in Australia:

WVA considers it important to distinguish international philanthropy given to charities for lawful advocacy on public policy issues, as separate from foreign donations to political parties and politicians campaigning for office. Charities have completely different access to and influence over the political process, as compared with political parties.

In our view, many issues require a trans-national response and it is appropriate for global philanthropy to play a role in that. We believe that Australia’s open and democratic system of government should encourage and foster public engagement and participation.6

1.27 Oxfam Australia noted that the compliance obligations and potential penalties may discourage groups from advocacy:

The regulatory and compliance burden of registering as a political actor is significant and unworkable so charities may limit their advocacy to ensure

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4 Anglicare Australia, Submission 33, p. 4.
5 Australian Council of Social Service, Submission 67, p. 3.
6 World Vision Australia, Submission 67, p. 3.
that they are not required to register. Further, the effective prohibition on receipt of overseas donations for ‘third parties’ and ‘political campaigners’ will mean that registered entities will not accept overseas donations for important research if there is a risk that the issue to be researched could be an issue in a future election. If entities do wish to undertake such funded research, then they will need to curb their advocacy which would make it difficult for the research to contribute to policy development and legislation. Even if the research were able to go ahead, the proposed legislation would certainly limit public discussion and debate of research outcomes and recommendations for fear of transgressing the $13,500 disclosure threshold.7

Election expenditure – impact on small parties

1.28 Voters are most engaged with, and best served by a political process in which they have the opportunity to participate in a wide spectrum of political debate. The diversity of political debate in Australia should be reflected in our candidates, parties and representatives. Measures that discourage or disadvantage non-major party participants risks narrowing the political debate and alienating voters.

1.29 Additional grounds on which the Bill should be rejected is that it would change electoral funding to political parties from an automatic payment of an amount for each vote received to one based on the amount of election expenditure incurred in the election period. This would mean that minor parties under the proposed funding system will be comparatively worse off than the Liberal/National and Labor parties.

1.30 These changes would advantage the major parties, which usually reach their maximum public funding entitlement with advertising expenditure. Minor parties and independents, on the other hand, with a small budget that rules out television advertising, for example, often spend campaign funds on employing a campaign manager, which is one of a number of genuine campaign expenses that are not covered by the definition of electoral expenditure.

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7 Oxfam Australia, Submission 68, p. 3.
Recommendations

1. Future of the Bill

Recommendation

1.1 The Bill should be withdrawn.

1.2 A consultation process should commence with a view to drafting a new Bill and Regulatory Impact Statement which:
   – Prohibits political donations from foreign entities.
   – Reduces the potentially corrupting influence of political donations from domestic entities.

2. Response to the Majority Report

The Majority Report in Recommendation 11 did not support the Greens amendment to not include non-partisan issue based advocacy in the definition of political expenditure.

Recommendation

2.1 That the definition of political expenditure not include any aspects of issues based advocacy.

3. Framework for electoral funding reform

The Greens believe that undue influence and perceived or actual corruption arises from unchecked private funding of election campaigns. This view is widely held by the general public and supported by previous statements by the Prime Minister and other senior members of his party.

We maintain our view that the current laws on political donations are unfair and counterproductive to the democratic process.

It is telling that the government’s Bill does not seek to even make modest improvements to the transparency of donations to political parties.

Recommendations

3.1 A ban on donations from for profit organisations, or a very low donation cap on such donations.

3.2 A low cap on the amount of money individuals and not-for-profit organisations can donate each year to a political party or candidates, excluding bequests and MPs’ tithes to their party.
3.3 Modest caps on election expenditure by political parties, candidates and associated entities.

3.4 In relation to third parties the government should undertake wide consultation to help determine a fair system of regulations for all groupings – charities, not for profits, industry associations and businesses.

3.5 Require all donations of $1000 and above to be disclosed on an easy to search, public website in close to real time.

4. Common funding rules for Commonwealth, State and territory elections

Electoral funding rules vary enormously between the Commonwealth and the various states and territories. This is a serious issue when it comes to placing caps on political donations and the disclosure of donations. Efforts at a state level to regulate money in politics have been undermined by the ability of donors to instead funnel money into party federal election bank accounts which are not under the jurisdiction of state election funding laws.

Recommendation

4.1 The federal government to hold discussions between states and the Commonwealth in regard to: political donation disclosure thresholds; time periods for disclosures; the definitions of donations and other incomes that should be disclosed; and donation limits with a view to developing uniform electoral funding laws across all jurisdictions within two years.

5. Interim steps towards full reform

While the Australian Greens support comprehensive reforms to the electoral funding system that would achieve uniform national standards on political donations and election expenditure we recognise that this will require considerable negotiations between state and federal governments. We support a number of interim steps that would increase transparency and public trust in the electoral funding system.

Detailed disclosure of electoral expenditure

Political parties are currently required to disclose an overall amount of expenditure by the party in their annual return to the Australian Electoral Commission, yet there is no requirement for details on what items parties are spending their campaign funds. More information will assist the assessment of appropriate levels of expenditure caps and ensure that any misuse of electoral funding can be identified.
Recommendation

5.1 Political parties be required to disclose how much was spent during the election period on each type of expenditure, such as wages, communications, polling, advertising and printing.

Donation disclosure and transparency

Transparency of the political process was set back enormously when the disclosure threshold was raised to $10,000 indexed to the Consumer Price Index. A much lower threshold is needed and the loopholes that allow donation splitting between related political parties removed. These measures will help restore public confidence in the political process.

In 2017-18 the disclosure threshold had risen to $13,500. This means donors whose contribution to a political party or candidate is under this amount avoid proper scrutiny. This high threshold means a donor could potentially donate well over $1 million to a political party without ever being identified in party disclosures to the AEC. The donor could donate to many of the party’s candidates and to various state party branches, with each amount being under the threshold.

Recommendation

5.2 Reduce the threshold for the disclosure of political donations to $1,000 with no indexation and all related political parties to be treated as one body for the purpose of the disclosure level.

5.3 Establish a system for continuous, real time, comprehensive on-line public disclosure of political donations received by political parties, candidates and associated entities on a public searchable website.

Ban on certain sectors

While the Greens support a ban on donations from all for profit bodies we recognise that this will not be immediately achieved without constitutional reform. Bringing in a ban on sectors that have been linked to having a corrupting influence on the political process or are perceived to have such an influence is another way to take meaningful steps to cleaning up political donations.

Recommendation

5.4 Ban political donations from developers, banks, mining companies and the tobacco, alcohol, gambling, defence and pharmaceutical industries.
6. Compliance

A stronger compliance regime is needed to help rebuild public trust in our democratic system. The Australian Electoral Commission has infrequently pursued those who break the rules. Giving the AEC greater regulatory powers needs to be part of any set of electoral funding reforms.

Recommendation

6.1 Increase the AEC’s regulatory powers over political donations, election funding and expenditure, and for these regulatory powers to include sanctions and penalties for breaches.

Senator Lee Rhiannon
Greens Senator for New South Wales