



SUBMISSION TO THE JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS

**ELECTORAL LEGISLATION AMENDMENT
(ELECTORAL FUNDING AND DISCLOSURE
REFORM) BILL 2017**

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ABOUT AAMRI

The Association of Australian Medical Research Institutes (AAMRI) is the peak body representing medical research institutes (MRIs) across Australia. Our 48 member institutes are leaders in health and medical research, working on an extensive range of human health issues, from preventative health and chronic disease, to mental health, Indigenous health and improved health services. MRIs are registered health promotion charities with the Australian Charities and Not-for-profits Commission. They undertake and promote the use of medical research findings to reduce disease burden, and improve the health and well being of the community.

Summary

The purpose of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth) is to provide better regulation for those involved in political finance. However, the way the Bill has been drafted will mean its reach will go much further than regulating political finance. Unless amendments are made to the Bill charities (including medical research institutes) will find it much more difficult to both engage in the broader health policy development process, as well as developing health promotion materials.

There are several key terms within the Bill that are either inadequately defined, or not defined at all, making it difficult to determine the extent and scope of the Bill. Attending to these definitions is essential in terms of ensuring ongoing compliance. As the Bill stands, a wide range of charities participating in the policy development process will be reclassified as political actors. This will lead to a combination of some charities exiting the policy development process all together, and for others, significantly increased red-tape, as well as a potential negative impact on domestic donations. For health promotion charities specifically, the Bill will undermine health promotion activities which seek to put the findings of medical research into practice.

Proposed amendments

To overcome these issues, AAMRI suggests that two specific amendments be made to the Bill. These amendments will ensure the Bill does not lead to reduced community involvement in policy development processes, or inadvertently impact on health promotion activities.

An exception to the list of activities defined as having a political purpose should be extended to:

1. **health promotion activities, and**
2. **the public expression of views by a registered charity in accordance with its charitable objectives.**¹

Scope of the Bill

The purpose of the Bill is to provide better oversight for those involved in political finance², but the way the Bill has been drafted will lead to many charities being negatively impacted as they will be labelled as political campaigners. The Bill will require all organisations undertaking 'political campaigning' in the context of a federal election, and spending over certain threshold amounts, to register as political campaigners or third-party campaigners, and then to make certain disclosures to the Australian Electoral Commission. While this might seem a reasonable requirement designed to ensure transparency in the political process, the loose definitions of key terms, and in some cases the absence of definitions within the Bill, will unfairly categorise a range of everyday policy development and promotion activities (including health promotion activities) as political campaigning.

¹ These exceptions should be added to Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), new s 287(1)

² Explanatory Memorandum, Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), 5

The most pressing definitions that need attention are those of political expenditure, political purpose and public expression. These definitions when used together within the Bill unreasonably define a wide range of apolitical policy development activity as political campaigning.

Political campaigning is defined in the Bill as '*expenditure incurred for one or more political purposes*', with the definition of political purpose being stated as:

“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).”³

The effect of the definitions of political campaigning and public expression is that any organisation spending over the disclosure threshold and publicly expressing a view on an issue likely to be before electors in an election (positive, negative or neutral), will need to register as a Political Campaigner or a Third-Party Campaigner. The absence of a specified timeframe within the definition ensures the definition could be applied at any time, and not just during a formal election campaign. For health promotion charities, such as medical research institutes, this can include a wide range of policy development and health promotion activities being unreasonably labelled as political campaigning (see below for examples relating to health promotion activities).

Contributing to the broad scope of the Bill is the absence of a definition of 'public expression'. As it is left undefined it must be taken in its literal sense to mean any expression in public. Given that the definition of 'political purpose' refers to '*the public expression by any means of views*' it must be assumed this includes any expression made in a statement, report, book, website, social media post, speech or lecture, to which the broader public has access. These loose definitions could easily capture a range of apolitical policy development activities where charities make such 'public expressions' on a wide range of issues, including those 'likely to be before electors in an election'. For example, this would include apolitical, non-party or candidate specific activities, related to the charity's mission, such as:

1. Making a submission to a parliamentary inquiry.
2. Responding to a Government policy discussion paper.
3. Producing reports highlighting issues and outlining potential policy responses.
4. Publishing media releases that comment on policy options and decisions that affect the recipients of the charity's aid.

These activities are apolitical, and charities are already expressly prohibited from supporting political parties or candidates under existing legislation.

While the definitions of political campaigning and political purpose, and the absence of a definition of public expression are problematic, many organisations might mistakenly assume that they do not fall within the scope of the Bill. This is because they might assume their expenditure on the 'public expressions', such as those listed above, is below the disclosure thresholds. The absence of guidance within the Bill (but also in the existing Act) as to what types of expenditure needs to be declared makes this an unreliable assumption, potentially leading to breaches of the Act. There is no guidance as to

³ Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), new s 287(1)

whether all expenditure incurred in the process of developing a public expression should count towards the disclosure threshold, or whether it is just the final public expression itself.

The result of this ambiguity is that it is unclear whether items such as expenditure on staff salaries, legal advice, consultants, and travel expenses incurred in working towards making a public expression count towards a disclosure threshold. Alternatively, it could be that just the cost of publishing the final public expression output is counted, such as the printed material, venue hire, television advertising, or website hosting, etc. This is a significant issue as it greatly impacts upon the scope of the Bill, as well as the number of organisations that will reach the expenditure threshold and will need to register as a Third-Party Campaigner or a Political Campaigner. The absence of guidance in this area, when combined with potential 10-year prison sentences for those that breach the legislation, will result in a cautious approach being taken whereby all and any expenditure that could possibly be linked to a public expression will need to be disclosed.

The wide-ranging application of this Bill could potentially lead to a legislative overreach beyond the original intention of the Bill. The Explanatory Memorandum makes clear that the Bill is to better regulate those involved in political finance. Instead, the Bill will re-categorise a wide range of apolitical charities as political actors and apply a new level of regulation to them. This regulation will inhibit their ability to participate in the policy development process or increase regulatory red-tape on charities.

Health promotion activities

Of specific concern to AAMRI is the potential impact the Bill will have on health promotion activities. Health promotion activities undertaken by charities are apolitical and are undertaken in the national interest. The purpose of these activities is to inform the public about the latest medical research evidence, thereby helping people make informed decisions about their health. There are several health promotion activities that could potentially be categorised as *'an issue that is, or is likely to be, before electors in an election'*. This can occur should any federal politician or candidate in an election express a public position on the efficacy or value of these health promotion activities. Examples of such health promotion areas where politicians or candidates in an election have held competing views has included:

1. Tobacco control and the regulation of e-cigarettes
2. Immunisation as an effective disease control measure
3. Ways to combat obesity and its impact on health outcomes
4. Fluoridating water to improve dental health outcomes
5. Safe consumption of alcohol
6. Effective ways to reduce sexually transmitted diseases
7. The reduction in use of controlled and illicit substances
8. The impact of climate change on human health

Providing timely, accurate and up to date information, backed by medical research, on each of these areas is an essential part of improving health outcomes. A wide range of charities (including medical research institutes) develop a range of health promotion materials in these areas. Within the last three years each of the above health promotion areas has been the subject of debate by politicians and candidates in an election, and different candidates have taken different views as to what policy should be implemented. Once such comments have been made, particularly where there is disagreement between candidates, any public expression on these areas is then deemed as having a political

purpose. This would then see such 'public expressions' fall within the scope of the proposed legislation.

Health promotion charities undertake their activities through a variety of mechanisms, including developing websites, apps, reports, leaflets, books and other tools. The content of such outputs often outlines the latest medical research findings, as well as evidence based ways to improve health outcomes. This can include discussion of potential policy responses needed to improve health outcomes (e.g. plain packaging for tobacco products; how to increase immunisation in the population; and ways to reduce obesity).

Whether it is a leaflet, a book, an app, or a website, each of these health promotion outputs is 'a public expression', and based on issues raised in previous elections, each would be a public expression on an issue likely to be before electors in an election. The expenditure incurred through health promotion activities easily exceeds the disclosure threshold amounts for registration, as the development of national health promotion tools can be expensive.

The existing academic exemption should ensure that the research that sits behind health promotion activities remains an exempt activity. However, this exemption should be extended to the promotion of the findings of medical research.

Recommendation 1

An exception to the list of activities defined as having a political purpose should be extended to health promotion activities.

Reduced participation in public policy development

Contributing to public policy development is a core function of many charities and is recognised within the *Charities Act 2013 (Cth)* as a legitimate activity that can contribute towards a charity's core mission. Charities, including medical research institutes, assist in the development of public policy by contributing their advice, expertise and resources. This can include developing submissions to parliamentary inquiries and government consultations, producing topical reports, and participating in discussions in public forums.

This Bill will make this type of participation in the policy process far more difficult. Many charities will be reluctant to enter any policy debate where there is even a slight chance that the issues being discussed might become a 'public expression on an issue before electors in an election'. **Many charities will simply choose to exit the public policy development process as the prospect of being labelled a Political Campaigner or a Third-Party Campaigner is incompatible with their mission, or because they are afraid of falling foul of legislation that can result in 10 year prison sentences.**

As the *Charities Act 2013 (Cth)* already prohibits charities from being political and taking political positions, an exemption should be made for charities making public expressions in areas related to their charitable objectives.

Recommendation 2

An exception to the list of activities defined as having a political purpose should be extended to the public expression of views by a registered charity in accordance with its charitable objectives.

Negative implications for MRIs that need to register as Political Campaigners or as Third Party Campaigners

For charities, such as MRIs, falling within the scope of the Bill and being labelled as a Political Campaigner or a Third Party Campaigner is problematic for two reasons: an increased regulatory burden and potential negative impact on the reputation of health promotion charities.

Increased regulatory burden

The regulatory requirements of those organisations that need to register as Political Campaigners or Third-Party Campaigners are onerous and will lead to health promotion charities having to redirect resources away from their core activities. Given the loose definitions within the Bill significant oversight will be needed in terms of calculating political expenditure. For those registering as Political Campaigners the requirements to manage international donations separately through a different bank account add a new level of operational complexity.

Reputation of health promotion charities

Being labelled as a 'Political Campaigner' will have a negative reputational impact on health promotion charities, including medical research institutes. These charities are apolitical, and they exist to promote good health outcomes. Attaching this label to them will confuse donors and could impact on domestic philanthropic donations as donors become wary of being associated with a 'Political Campaigner'.

Conclusion

Charities, such as medical research institutes, make important contributions to the policy development process. An important part of their mission is to inform the community about their work, and for medical research institutes, this means undertaking health promotion activities that inform people about healthy living. This Bill will categorise those charities undertaking this kind of work as 'political campaigners', a category that has both negative connotations (from a donor perspective), and negative implications (in terms of impacting on the benefits of health promotion activities, as well as increasing regulatory red-tape).

To overcome these issues an exception to the list of activities defined as having a political purpose should be extended to:

- 1. health promotion activities, and**
- 2. the public expression of views by a registered charity in accordance with its charitable objectives.**

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