

# SUBMISSION TO THE INQUIRY INTO THE ELECTORAL LEGISLATION AMENDMENT (ELECTORAL FUNDING AND DISCLOSURE REFORM) BILL 2017

25 January 2018

## **Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017**

Universities Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters inquiry into the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*. Universities Australia is the peak body for Australia's 39 comprehensive universities, which educate more than a million students and undertake research to add to the stock of advanced knowledge that has been valued at more than \$160 billion.

Universities are mindful of the need to support an appropriate legislative framework to maintain national security and the integrity of the Australian polity, and note the Government's intention to prevent undue and illegitimate interference in Australia's democratic processes. However, Universities Australia has two principal concerns relating to the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*: firstly, that it impinges on academic freedom and has the potential to stifle the valuable contributions that university research makes to the Australian community, and secondly that it could compromise the ability of Australia's universities to develop a philanthropic culture in Australia.

Universities Australia is also concerned that the implementation of these proposed measures appears to be proceeding with undue haste and should be delayed until a more substantial consultation process is undertaken.

## Recommendations

### Universities Australia recommends that:

- 1) The Government delay proceeding with the passage of the Bill until a thorough consultation process has been completed;
- 2) The definition of 'political purposes' is amended to omit purpose (b), or that it is significantly amended to ensure that universities and academics are not discouraged from exercising their responsibility to advocate for the results of research to be incorporated into policy; and
- 3) The Bill's currently proposed exemption for activities that are '*solely for genuine academic purposes*' is expanded to include those that are *predominantly* academic or scholastic in nature. At a minimum, such a definition should include teaching and research activities, including the communication of research findings and expert opinion by any means.

## Impacts on academic freedom

Universities play a vital role in civil society as institutions that foster scholarship and the development of a plurality of ideas. Academics conduct research that adds social and economic value to the community, and provide a source of independent expertise. Governments frequently call on the expertise of academics to provide trusted advice on complex matters, and good policy development combines evidence from scholarly research with community values and expectations.

The freedom for academics to research, debate and analyse every facet of society is central to a thriving, innovative community. Social and economic progress is severely hindered without the ability of teachers, students and innovators to critically inquire, and to communicate the findings of their research. Universities Australia strongly supports the principles of academic freedom and remains ever-wary of the potential of regulation to inappropriately curtail legitimate scholarly practice, either through design or accident.

Universities Australia is concerned that the Bill, as introduced to Parliament, could unduly interfere with the legitimate activities of the academic community by inappropriately characterising them as 'political activities'. This could result in expenditure on these items being classed as political or campaigning expenditure. In particular, **item 7 of schedule 1** defines a 'political purpose' as:

*(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 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.*

Universities Australia is concerned that under these amendments, the definition of 'political purpose' is framed in an extremely broad fashion. The concept of an issue that '*is or is likely to be before electors at an election*' could be interpreted to relate to every facet of society, meaning that where academics and institutions engage on an issue of even the remotest relevance to the Australian polity, they could be captured by these laws. Although we understand that the *Electoral Legislation Amendment Act 2017* has already introduced a similar concept into the *Commonwealth Electoral Act 1918*, we remain concerned that the application of the new definition of political purposes could have a profound and damaging effect on the ability of researchers and experts to make contributions to beneficial policy development in Australia.

## The technical impacts of the proposed law

The Bill creates political campaigners and third-party campaigners. Determination of whether a university falls into either of those categories depends on the amount of expenditure that is classed as *political expenditure*. This will require universities to redesign their complex financial systems to include reporting on whether each piece of expenditure could be 'political', if it is not completely clear that normal activity is exempt. As university budgets encompass expenditure made by thousands of staff members, it is likely that if universities are inadvertently captured by this law they would easily pass the threshold to be classified a political campaigner.

If a university is found to be a 'political campaigner', then:

- An annual return must be filed with the Australian Electoral Commission, including details of senior staff and their affiliations, details of *all* income and expenditure exceeding \$10,000 (regardless of whether it is political or not), which must be accompanied by an auditor's report; and
- Further restrictions apply to donors, and it will need to be legally demonstrated that all donations of \$250 or more come from an allowable donor, or are quarantined in a separate bank account, and details of all donors provided to the AEC. It must be demonstrated that donations from 'non-allowable' sources are not spent on political expenditure.

The practical impacts of these changes are that if there is doubt as to what may be considered expenditure for political purposes, universities will be faced with the costs of a large administrative and compliance burden in ensuring they comply with the law. This is likely to run into the millions of dollars across the sector.

Australian universities expend resources on communicating the findings of their research, and in attempting to link those research findings with appropriate recipients. This is an approach that has explicitly been encouraged by successive governments over the past decade, and Australian universities are currently implementing the Australian Government's Engagement and Impact Assessment. This exercise specifically measures how well universities and researchers have *engaged* with end-users of their work (including companies, governments and other organisations), and the *impact* that the work has had on the community:

### Extract from the Australian Research Council's Engagement and Impact Assessment Guidelines:

#### 3.4.1 Preparing the impact studies

##### Content guidance

The description of the impact should be driven by explicit evidence, for example cost-benefit analysis, or *adoption of public policy that leads to changes in behaviour*.<sup>1</sup>

<sup>1</sup> Australian Research Council (2017), *Engagement and Impact 2018 Submission Guidelines*, Australian Government, Canberra, p.19,

In those instances where research is 'public interest', rather than commercial in nature, and points to some beneficial change in practice, policy or culture, the most appropriate engagement is with those who are in a position to implement changes to policy, practice or culture. This could be governments, individuals or the community at large. Universities and academics would be failing in their duty to the community, and to taxpayers and donors who fund their research, if they did not attempt to do this. Yet the proposed amendments contained in this Bill could see such activity inappropriately classed as political, which could see a university fall into the category of '*political campaigner*' and attract a raft of new compliance measures and restrictions. This would have the inevitable result of discouraging universities and academics from engaging with the community and policy-makers, which would be to the community's substantial detriment.

The intent of such issue-based policy advocacy is apolitical. Whilst academics may comment in their areas of expertise on matters which are politically controversial, universities are careful to safeguard their privileged position in society as trusted institutions and honest brokers, and are mindful of their obligations to manage perceived or real conflicts of interest. Universities commonly make clear that normal rules of academic and professional ethics are applicable where individuals and institutions exercise academic freedoms, which includes disclosures of relevant interests. It would be inappropriate for universities to be considered, either by design or accident, as 'political campaigners' or 'third-party campaigners', as they do not engage in political campaigning through their normal academic activities.

It would be preferable to define political campaigners in a way that would relate 'political purposes' more closely to the Government's apparent policy intent - preventing undue, illegitimate or foreign interference with the Australian polity. It could be more appropriate to define a political purpose as something more closely aligned to the current definition of electoral matters. For example, a more appropriate definition could define a political purpose as '*expression of views by any means for the substantial purpose of influencing the voting intentions of Australian voters*'. This would have the effect of capturing those who are actively campaigning, without inadvertently capturing those expressing expert views without political intention.

### **Academic advocacy for policy change saves lives**

University of Sydney academic, Emeritus Professor Simon Chapman has been integral to the decline in smoking, the way cigarettes are advertised, and substantial policy changes around cigarette advertising and consumption in Australia.

In the 1960s nearly two thirds of men and one third of women smoked. Both active and passive smoking increase the rates of some cancers, cardiovascular disease and respiratory disease, at great cost to the health system. The multi-billion dollar tobacco industry recognised the power of smoking and advertising restrictions to reduce consumption and make smoking socially unacceptable, and lobbied hard against regulation.

A globally recognised expert on tobacco control, Professor Chapman's expertise is sought internationally by government health organisations. He has served as an active member and consultant to the WHO, Australian government agencies, associations and non-profits. In 2005, Professor Simon's NHMRC project (analysing over 40 million pages of previously internal tobacco industry documents) was acknowledged by the Health Minister as one of the 10 outstanding projects funded in recent years by the NHMRC.

Along with books, government reports and peer-reviewed papers with over 10,000 citations, he believes that some of his most influential writing has been in his newspaper opinion pieces and radio and television interviews. Of his media advocacy he says "I have tried to translate epidemiologists' conclusions into discourses that gel with community concerns."

Tobacco advertising rules have been strengthened, and Australia's smoking rate has fallen rapidly. Most workplaces and public places are now smoke free. As Chapman states, "along with vaccine uptake, the fall in the road toll and arresting the HIV/AIDS epidemic, the fall in the smoking rate is one of the major public health achievements of the past 40 years."

Although we note that an exception is provided in the case for some academic activities, this exemption is too narrow to be effective. Expenditure on activity '*solely... for genuine academic purposes*' could far too easily be construed as being restricted to traditional scholarly outputs such as journal papers, monographs or conference presentations. Efforts by universities or academics to communicate the findings of their research more broadly to relevant parties – independent, expert, issue-based advocacy or engagement – might not be protected as being *solely* for academic purposes in a narrow interpretation. If the exemption applies only where the purpose of an activity is *solely* academic, this could easily mean that activities that are academic with incidental other purposes (which could add value to the academic activity) are discouraged by this legislation.

For example, if an academic created materials to assist a Parliamentary Committee inquiry (such as a video or other publication) and spent money doing so, they could have incurred political expenditure - as they have incurred *expenditure* to make a *public expression by any means on an issue that is, or is likely to be before electors at an election*. Although this individual expenditure would be relatively minor, the aggregate of all minor expenditures across even a small university would quickly exceed the threshold to be classed as a third-party or political campaigner, which might have significant implications for the academic or university.

### **The practical impact of these laws**

This Bill, which as the potential to introduce further regulation of academic activity, not only chips away at academic freedom, but introduces practical barriers to the participation of experts in the public discourse. Although the Bill does not technically forbid or prevent academics from engaging in policy, it makes it harder for researchers to do so. Similarly, although the Bill does not technically stop Australian universities from taking donations from overseas benefactors, it makes it more difficult to do so and removes any possibility of anonymous philanthropy.

The predictable and unfortunate consequence of imposing these further restrictions is that the efforts of universities and academics to see their research translated into practice that benefits the community will be considerably reduced, a state of affairs that would be directly at odds with community expectations and government policy.

The Bill would also lead to increased compliance costs at a time when universities need to concentrate their diminishing resources on their core activities of teaching, research and engagement..

We seek a strong, clear and unequivocal determination that academic activities are not considered to be activities for political purposes. This must include not only purely scholarly activities, but also outreach, engagement and non-partisan advocacy based upon the best available evidence and expert opinion.

### **Recommendation 2**

Universities Australia recommends that the definition of ‘political purposes’ is amended to omit purpose (b), or that it is significantly amended to ensure that universities and academics are not discouraged from exercising their responsibility to advocate for the results of research to be incorporated into policy.

### **Recommendation 3**

Universities Australia recommends that the Bill’s currently proposed exemption for activities that are ‘*solely for genuine academic purposes*’ is expanded to include those that are *predominantly* academic or scholastic in nature. At a minimum, such a definition should include teaching and research activities, including the communication of research findings and expert opinion by any means.

## Receiving gifts from overseas

Universities are also concerned that the proposed changes to electoral laws may unduly hinder the development of the growing university philanthropy effort. Should universities be classed as 'political campaigners' or 'third-party campaigners', there will be additional restrictions imposed on donations, and particularly donations from overseas sources. Whilst overseas donors generally do not donate to universities for political purposes, donors often seek to place their money where it will make the most impact to society. This can take many forms, but gifts to institutions and programs that develop the next generation of leaders (including political leaders), or to help implement the findings of research are common.

For example, The Atlantic Philanthropies, a United States-based organisation, has donated some USD\$368 million to Australian causes. This has included funding medical research in Australia, including the Queensland Institute of Medical Research building. Additionally, The Atlantic Philanthropies has funded important programs that seek to change culture to benefit Australia and the region, such as encouraging the development of Australian philanthropy and programs to help leaders tackle persistent social inequality amongst indigenous communities in Australia and the Pacific. Again, a broad interpretation of political purposes could see generous donations from overseas benefactors that seek to develop the Australian community in jeopardy.

Although we acknowledge that the Bill would not explicitly prohibit universities from taking donations from overseas donors, the significantly increased compliance burden on both donors and recipients would have the practical effect of making it much harder for universities to accept gifts from overseas benefactors.

As the Australian Government seeks to contain the amount of money it spends on higher education, universities will continue their efforts to develop a culture of philanthropy and post-graduation engagement to create new opportunities for students and research. This effort is in its infancy compared with some other countries, and Universities Australia warns that imposing additional restrictions on donations may jeopardise a promising future funding stream.

This is a problem that is easily avoided by ensuring that universities are not captured by the definition of 'political campaigners'. We reiterate our recommendation that the definitions of political activities, which underpin the classification of entities as political or third-party campaigners, be amended to ensure that universities will not be captured.