



25 January 2018

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600
E: em@aph.gov.au

Go8 Submission to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

The Group of Eight (Go8) welcomes the opportunity to provide input in to the Committee's consideration of this Bill. Please note this submission represents the views of the Go8 network; member universities may also make their own, more detailed submissions.

The Go8 represents Australia's eight leading research-intensive universities. As a collective, we:¹

- Are consistently the highest ranked Australian universities across the major international ranking systems (Academic Ranking of World Universities; the Times Higher Education World University Rankings; and the QS World University Rankings);
- Educate around one in three international students who choose to study onshore in Australia;
- Account for more than half of all Australian papers with international collaboration; and
- Attract industry funding for research that is twice that of the rest of the sector combined.

As such, the Go8 and our member universities play multifaceted and significant roles in Australia's international reputation both within the Indo-Pacific region and globally. As noted in the recently released *Foreign Policy White Paper*, "Our world is now more interconnected and interdependent than at any other time... In the decade ahead, Australia will need to be competitive and agile to take advantage of the opportunities that will come from dynamic Asian economies and technological and scientific advances".²

This makes it imperative that Australia has a robust and effective legislative framework in which our strong democratic society is protected, while enabling key sectors to operate within the reality of a 21st global economic context.

¹ Go8 *Facts of Distinction*, https://go8.edu.au/sites/default/files/docs/page/facts-of-distinction_web.pdf

² *Foreign Policy White Paper*, p1



The Go8 supports the need for Government to ensure adequate safeguards for our national political and democratic processes.

However, this need is too important to allow hastily-compiled legislation to cause unintended damage to Australia's high performing higher education and research sector. If this Bill is allowed to progress in its current form it could severely limit Australian academics in their capacity to carry out essential and mandated activities, or even provide expert advice in the public domain in response to legitimate public interest.

We also cannot allow rushed drafting processes to fundamentally restrict the rights of *all* Australians – including those employed by Australian universities - to legitimately participate in the democratic process.

The Go8 therefore recommends:

- That the Committee recommend that the Government delay the introduction of this legislation to allow the proper and essential consultation processes to occur.
- That the Committee recommend the expansion of the exemption for “academic” purposes in line with the definition provided in this submission.
- That the Committee recommend that the definition of “public expenditure” in this Bill be amended in line with that used in the Commonwealth Electoral Act 1918, to provide consistency across the legislative framework.

The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (hereafter referred to as the “Bill”) is intended to “reduce perceived and actual foreign influence on Australian political actors by restricting the ability of foreign money to finance domestic election campaigns”.³ It does so by establishing a public register for “key non-party political actors”, and seeking to regulate the activities of those actors.

The Go8 accepts and supports the need for the Government to ensure adequate measures and protections to safeguard national political and democratic purposes.

However, it is also critical that, in seeking to apply these protections, the legislation does not inadvertently damage the capacity of Australian universities and academics – as well as people from other parts of society - to engage in the kind of vigorous public debate that provides the foundations of a robust democracy. As the representatives of Australia's leading research-intensive universities, the Go8 will focus our submission on the impact on the university and research sectors. However, the impacts that we outline here are likely to have a much broader impact on sectors beyond our own.

³ http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1117_ems_0906baca-bedd-4bca-9d6d-aadec02953f4/upload_pdf/655383em%20Edit.pdf;fileType=application%2Fpdf



The Go8 recognises that maintaining an appropriate balance between these competing concerns is no easy matter. On the contrary, it is likely to necessitate careful crafting of the legislation to ensure that key political processes and routine industry activities are not inadvertently harmed, to the detriment of both Australian society and the economy.

We are therefore concerned at the apparently rushed nature of this package of Bills, which appears to have been created without extensive or even appropriate consultation.

We also note with some concern that yet again we are being asked to consider significant policy changes without the careful and considered processes necessary to prevent inadvertent damage to unintended industries or areas of Australian society.

In April 2017, the unexpected announcement of changes to Temporary Work (Skilled) Visas (subclass 457), subsequently described as a “scorched earth policy”⁴ by the *Australian Financial Review*, caused widespread and public outcries from organisations as diverse as the Business Council of Australia,⁵ technology entrepreneurs,⁶ and Australian universities. This could easily have been avoided had the Government employed standard consultation processes during its development.

The purpose behind the Electoral Legislation Amendment Bill, and the associated Bills contained in this package, are too important to allow them to cause unnecessary, damaging and divisive impacts on our society. We especially cannot allow this to happen due to a simple lack of process.

The Go8 therefore urges the Committee to recommend that the Government delay the introduction of this Bill to allow the proper and essential processes to occur, including adequate consultation, to ensure the creation of a strong, coherent, nuanced, targeted and effective Bill.

Recommendation: that the Committee recommend that the Government delay the introduction of this legislation to allow the proper and essential consultation processes to occur.

Given the rushed nature of the legislation, it is unsurprising that there are elements in this Bill which, if allowed to remain in their present form, are likely to result in extensive – if inadvertent – consequences for the legitimate activities of many Australian industries, including those that are legislatively mandated or actively encouraged by Government initiatives.

The Bill seeks to impose limits around activities undertaken for a “political purpose”,⁷ which it defines as including acts such as the public expression of views on an issue that is, or could be, before electors during an election (whether or not a writ has been issued), or the carrying out of research related to an election or voting intentions.

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

⁴ <http://www.afr.com/leadership/innovation/malcolm-turnbull-overreaches-on-457-visas-and-risks-his-longterm-legacy-20170420-gvp1bf>

⁵ <http://www.afr.com/business/business-council-of-australia-attacks-new-visa-system-as-ceos-shafted-20170420-gvokd6>

⁶ <http://www.afr.com/news/politics/national/tech-sector-splits-on-visa-changes-after-457-dumped-20170419-gvnurd>

⁷ http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1117_first-senate/toc_pdf/1728620.pdf;fileType=application%2Fpdf



example, Australian higher education providers are legislatively 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”.⁸ 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.

Furthermore, if the university at which the academic is employed provides funds to enable travel to attend the parliamentary inquiry, and the evidence given is deemed to invite the ‘public expression of views’ on the issue, then it is our understanding this would qualify as “political expenditure” under this Bill. It is not unlikely that a university unwilling to be classed as a “political campaigner” could be cautious about supporting its academics in giving evidence before parliamentary inquiries. This could, therefore, have the severe if unintended consequence of limiting the expert opinions necessary for parliamentary committees or reviews to conduct evidence-based decision making.

Organisations that attract international donations and draw on academic expertise to promote and encourage democratic debate may also be captured by this Bill. Examples include the Menzies Research Centre, as well as the newly announced Ramsay Centre for Western Civilisation, endorsed by former prime minister John Howard, which is intended to operate in partnership with universities.⁹

Research activities will also be impacted. The two major Government research funding bodies, the Australian Research Council (ARC) and National Health and Medical Research Council (NHMRC), both require grant recipients to disseminate their research findings as a condition of funding.¹⁰ As stated by the NHMRC:¹¹

⁸ https://www.legislation.gov.au/Details/F2015L01639/Html/Text#_Toc428368878

⁹ <http://www.theaustralian.com.au/higher-education/howard-and-beazley-unite-to-launch-ramsay-centre/news-story/6a315302337647d3a91df268116f032e>

¹⁰ <http://www.arc.gov.au/arc-open-access-policy>

¹¹ <https://www.nhmrc.gov.au/grants-funding/policy/nhmrcs-policy-dissemination-research-findings>. Emphasis (in bold) added.



The Australian Government makes a major investment in research to support its essential role in improving the wellbeing of society. To maximise the benefits from research, publications resulting from research activities **must be disseminated as broadly as possible** to allow access by other researchers **and the wider community.**

ARC Discovery Projects to be funded in 2018 will span research areas such as environmental change, cybersecurity, health and resources.¹² When compared against a list of key issues as nominated by voters during the 2016 federal election, including health care, the environment and the economy, it becomes apparent how easily the proposed Bill could inadvertently impose on the required operations of academics and researchers.¹³

Philanthropy may also become a casualty. Australia's strong international education export sector means that many of our successful alumni live and work overseas, and some of them wish to give back to the institutions and society that fostered their development. However, the disclosure regime as outlined in this Bill may act as a significant deterrent to this kind of generosity. The broad scope of "political purpose" could make it difficult for universities to ensure that any foreign donations received are not used for purposes captured under the Bill. The net effect is that universities may have to request statutory declarations from all donors to establish which ones are 'allowable', which is likely to deter people from making donations and perhaps even insult successful alumni who will be required to declare their citizenship status before a donation can be accepted.

The Go8 welcomes the fact that "academic" purposes have been acknowledged as offering an allowable exemption in the current version of the Bill.¹⁴ However, the inclusion of the word "solely" in this clause is problematic, as many legitimate academic activities may be conducted for multiple purposes. The Government's Engagement and Impact (EI) assessment, due to commence in 2018, actively encourages universities to demonstrate how the results of their research have resulted in real impact, including "adoption of public policy".¹⁵ Researchers able to demonstrate compliance with the EI framework, may therefore find themselves non-compliant in relation to the "sole" academic purpose requirement under the proposed Bill.

Furthermore, given that "academic" is not further defined, it is also not currently clear which activities will be allowable under this Bill. The current wording of the exemption will also fail to capture non-academic staff undertaking legitimate duties on behalf of their employer university, such as providing support for research teams, assisting to organise or run an academic conference, and so on. Indeed, the situation could easily arise whereby staff working on the same research or other project become subject to different requirements under this Bill based on the designation of "academic" or "non academic" in their workplace contract.

In our view, the Bill would benefit from an expanded definition in relation to academic activities, to include:

"the bona fide publication or communication of:
(a) research;

¹² <http://www.arc.gov.au/selection-report-discovery-projects-2018%20>

¹³ <http://www.abc.net.au/news/2016-05-13/vote-compass-issues-by-state-territory/7412718>

¹⁴ http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1117_first-senate/toc_pdf/1728620.pdf;fileType=application%2Fpdf

¹⁵ http://www.arc.gov.au/sites/default/files/filedepot/Public/EI/EI_2018_Submission_Guidelines.pdf



- (b) *an opinion;*
- (c) *a comment; or*
- (d) *other activities;*

in the context of a discipline in which the author has recognised expertise, or where the activity is undertaken in the fulfilment of a legitimate university purpose.

We also recommend that the definition of “political expenditure” as proposed in this Bill be amended to be consistent with the definition used in the *Commonwealth Electoral Act 1918*, including the practice of treating “Other expenditure (for example, on administration or travel) [as] not political expenditure for reporting purposes”.¹⁶ This will help to provide consistency across the legislative framework, as well as ensuring that only expenditure that is genuinely used for political purposes is captured.

The Go8 does not believe that it is the intention of the legislation to prohibit institutions from conducting legitimate activities to the benefit of Australian society. We therefore urge the Committee to ensure that the legislation is amended to protect, rather than unintentionally harm, the democratic principles which have helped establish Australia as a successful and prosperous nation.

Recommendation: The Go8 urges the Committee to recommend the expansion of the exemption for “academic” purposes in line with the definition provided in this submission.

Recommendation: The Go8 recommends that the definition of “political expenditure” in the Bill be amended in line with the definition used in the *Commonwealth Electoral Act 1918*, to provide consistency across the legislative framework.

Yours sincerely

VICKI THOMSON
CHIEF EXECUTIVE

¹⁶ http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/third-parties/index.htm