

Exposure draft of Government amendments to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017: Key amendments addressing recommendations of the Joint Standing Committee Advisory Report

JSCEM Recommendation	How Government amendments address recommendation	Amendment number
<p>1. The Government reconsider introducing the term ‘political purpose’ into the <i>Electoral Act 1918</i>, having regard to potential confusions with the <i>Charities Act 2013</i> in which the term has a divergent meaning.</p> <p>2. 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.</p>	<p>1 &amp; 2. Amendments replace the definition of political expenditure with a new definition – electoral expenditure. The definition of electoral matter feeds into this new definition, and is based on intent to influence the way electors vote in a federal election, including by promoting or opposing parties, candidates, groups, or parliamentarians.</p> <p>The definitional change streamlines and simplifies the concepts in Part XX of the <i>Commonwealth Electoral Act 1918</i> (Electoral Act), while also ensuring non-political, issues based advocacy is not captured.</p> <p>The definition does not capture general issue-based advocacy. There are also clear carve-outs for communications with parliamentary committees, parliamentarians, other Commonwealth officials, political parties or candidates for federal elected office. Carve-outs also apply to private communications, news and editorial content, and for satirical, academic, educative, and artistic purposes.</p>	<p>3 (new item 1E) 11, 12 24 (new section 287AB: Meaning of <i>electoral expenditure</i>) 79</p>
<p>3. 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:</p> <ul style="list-style-type: none"> <li>- voluntary registration for all entities engaged in ‘political expenditure’;</li> <li>- mandatory registration for all entities engaged in activities that require disclosure of ‘political expenditure’ that reach a minimum ‘expenditure threshold’; and</li> <li>- disclosure obligations that are commensurate with levels of expenditure.</li> </ul> <p>The registration process for the Transparency Register should be simple and provide access to additional support for registrants to fulfil their reporting obligations.</p> <p>4. 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.</p>	<p>3. Registration processes are streamlined and simplified by the introduction of a single Transparency Register. The number of people and entities required to register is reduced through higher thresholds for political campaigners, and removal of registration requirements for third parties. However, any person or entity not required to register may choose to register voluntarily.</p> <p>Disclosure obligations are made more commensurate with levels of expenditure. Disclosure obligations are reduced for third parties, who will no longer be required to report non-financial particulars. Independent audit requirements are removed.</p> <p>4. The threshold for Political Campaigners is increased to cover those who incur electoral expenditure of \$500,000 or more in the current or past three financial years (or where they spend more than \$100,000 on electoral expenditure and electoral expenditure was at least two-thirds of revenue in the previous year).</p>	<p>3 (new item 1N) 17 (definition of <i>Transparency Register</i>) 32 37 63-65 70- 74</p> <p>186 173 &amp; 178</p> <p>32</p>
<p>6. 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.</p>	<p>6. New elements of the definition of associated entity are removed, and transitional arrangements introduced for automatic associated entity registration to reduce the regulatory burden experienced by associated entities during implementation.</p>	<p>44 82 (sub-items 3-5: Transitional registration of associated entities)</p>
<p>8. The Government give consideration to replacing the definition of ‘allowable donor’ with a definition of ‘non-allowable’ donors.</p> <p>9. The Government consider:</p> <ul style="list-style-type: none"> <li>- removing the potential requirement for statutory declarations for all gifts:</li> <li>- simplifying the process for entities to verify whether a donor is a non-allowable donor.</li> </ul>	<p>8. A definition of foreign donor is added to the bill. Whereas the Bill bans political campaigners from receiving gifts from foreigners <i>and</i> foreign bank accounts, the draft amendments only ban gifts from foreigners. While third parties are prohibited from financing electoral campaigning with foreign money, they no longer need to keep foreign funds for their other activities in separate bank accounts.</p> <p>9. The amendments removed the need for statutory declarations and simplify obligations with respect to foreign donations to:</p> <ol style="list-style-type: none"> <li>a) prohibit the giving and knowing receipt of all gifts from foreign donors, where the donor intends the gift to be used for electoral expenditure and apply penalties to donors who make prohibited gifts or false or misleading statements to recipients;</li> <li>b) require donors to affirm to Political Campaigners, political parties and candidates that they are not foreign for gifts between \$1,000 and the disclosure threshold (\$13,800 in 2018-19), for instance a check box on a donation form; and</li> <li>c) require all covered recipients to verify that donors are not foreign for gifts above the disclosure threshold (\$13,800) (a menu of alternative forms of proof is listed, to help recipients check a donor’s status).</li> </ol>	<p>24 Section 302K (omitted) Section 302F(1) (omitted)</p> <p>130</p> <p>119</p> <p>119 &amp; 124</p>

JSCEM Recommendation	How Government amendments address recommendation	Amendment number
<p>10. The Government consider removing the aggregation of donations received under the allowable amount, provided that appropriate anti-avoidance measures are implemented.</p> <p>11. 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'.</p>	<p>10 Aggregation of donations is removed and anti-avoidance rules are included in the amendments.</p> <p>11. Anti-avoidance rules address the movement of foreign funds between organisations. As part of the anti-avoidance rules the Commissioner can require an organisation that is part of a scheme to report as a political campaigner or associated entity, or can order that people stop a scheme or not participate in it. The rules also ensure that Commonwealth laws apply exclusively to amounts that are used or available for use in federal elections, so that foreign donations cannot be inappropriately shielded by ambiguity about the jurisdiction in which those funds were intended to be used. This integrity rule still ensures that donations given for state and territory elections are, appropriately, fully under the laws of those jurisdictions.</p> <p>As noted above, in response to recommendations 1 and 2, non-partisan issue advocacy is no longer captured.</p>	<p>78 &amp; 130</p> <p>78 &amp; 130</p> <p>114 &amp; 192</p>
<p>12. The Government consider establishing a minimum expenditure threshold before requiring substantiation for public funding claims.</p> <p>Subject to the above amendment, the Committee recommends that the proposals relating to public funding be agreed.</p>	<p>12. Amendments provide for the automatic payment of the first \$10,000 of public election funding to eligible claimants.</p>	<p>101</p>
<p>13. The Government consider reducing the proposed penalties in the Bill, and that penalties be proportionate to the type of breach displayed.</p>	<p>13. Penalties are reduced, and, where it is possible to determine the amount involved in a breach, linked to this amount. Per day penalties and imprisonment are removed. Apart from penalties that are made proportionate to the amount involved in a breach, the amendments reduce the maximum penalty for the most serious types of other breaches from 1,000 penalty units to 200 penalty units (reducing the highest penalty from \$210,000 to \$42,000).</p> <p>For third parties, obligations are transferred from the financial controller to the entity.</p>	<p>35-37 (section 287F penalties) 43 &amp; 44, 49 (section 287H penalties) 120-122 (section 302D penalties) 126-129 (section 302E penalties) 139, 141, 143, 150, 152, 153, 156, 162-164, 170, 177, 181, 182, 185, 188 (disclosure penalties)</p> <p>26</p>
<p>5. 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.</p> <p>7. The Government consider introducing administrative action to support consistent compliance with the provisions of the Electoral Act, as amended, by third party entities.</p> <p>14. 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.</p> <p>15. The Committee recommends that the Government appropriately resource both the Australian Electoral Commission (AEC) 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 <i>Electoral Act 1918</i>.</p>	<p>Several JSCEM recommendations are being addressed outside of these amendments. Recommendation 5, which relates to the review of political party registration, will be considered after the JSCEM hands down its final report on its inquiry into the 2016 federal election.</p> <p>Consistent with recommendations 7 and 15, the AEC was provided with funding of \$56.5 million through the 2017-18 MYEFO measure 'Electoral Integrity Reforms' to implement the Bill, allowing it to inform the public about the changes. To avoid any concern that the AEC might focus on previous non-compliance by third parties with disclosure obligations, the amendments forgive past failure to comply. This allows the AEC to focus on dealing with future compliance risks, including risks of foreign interference in federal elections.</p> <p>Recommendation 14 is being considered by the Government as part of wider reforms to deductible gift rules.</p>	<p>N/A</p> <p>221</p>