



18 January 2018

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

The Australian Environmental Grantmakers Network (AEGN) is pleased to provide a submission on the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* (the Bill), which was introduced into the Parliament on 7 December 2017.

About the AEGN and the environment

Established in 2008, the AEGN is a membership based network of trusts, foundations and individual donors who work together to grow the amount and effectiveness of environmental grantmaking. Our members are philanthropists who can donate at least \$25,000 annually and who share in the AEGN's mission to protect Australia's environment. We currently have 116 members.

The AEGN works with members to ensure they are informed and knowledgeable about environmental issues and how to use their philanthropic funding to create positive change. We provide forums to inspire giving and ensure funders can give effectively and collaborate together. One of the AEGN's purposes is to increase the level of philanthropic funding to environmental issues both from within Australia and from overseas.

The AEGN has an annual conference, regular events with expert speakers, a website, clearing house for members to put up projects to share in funding, tools and publications and lots of other initiatives. Our current direction is to rapidly grow environmental grantmaking with a goal of raising an extra \$50m in the next 5 years.

Highlights of the AEGN's work in 2016-17 include:

- The Transitioning Coal Communities tour which took AEGN members to the Latrobe and Hunter Valleys, to learn more about how philanthropy can support communities to transition their local economies. This tour was accompanied by Justin Maxson, CEO of the US based Mary Reynolds Babcock Foundation and community-based economic development expert.

- Funded by the US based Christensen Fund, the Indigenous Land and Sea Management project aimed to increase funding of important indigenous nature and culture programs through research, project selection and promotion of worthy initiatives.
- Development of the world's first Divest Invest Guide for Philanthropy, providing a step by step guide, tools, networks and background research to support funders who intend to direct the corpus of their foundation towards supporting their environmental goals.

General views on the Bill

The AEGN supports improved regulation of foreign donations for political parties. However, we are concerned about the very wide ranging implications of the Bill on environmental charities, philanthropic funders and Australia's system of democracy. Our understanding is that the policy intentions behind the Bill are to prevent unwanted foreign interference in elections and to prevent undue foreign influence over elected representatives. While this is a worthy intention – one which AEGN members would undoubtedly support - the Bill as drafted focuses instead upon ordinary advocacy activities which charities undertake and our member's fund, and which is an important dimension of their work. The Bill is targeting charities without demonstrating a harm which needs to be responded to. The following section outlines some of our key concerns about the Bill in more detail.

The importance of environmental advocacy

AEGN members achieve their philanthropic goals through supporting the work of environmental charities. Collectively they fund a wide range of activities to protect and enhance the environment, of which advocacy is a very important and effective activity. Advocacy is a legitimate, highly effective and crucial purpose of Australia's charities.

Some of the major environmental endowments which Australians enjoy – such as national parks, wetlands and clean rivers, clean air laws, better access to solar energy - have been the result of policies and legislation enacted by governments in response to the advocacy of citizens and environmental groups. Philanthropic funding has played a role in many environmental campaigns; so too has funding from the general public.

Australia's plants, animals, landscapes and natural beauty have survived and endured due to environmental charities actively working for the protection of the natural environment. The policy-making process benefits from a plurality of voices and vigorous debate – these are critical ingredients in Australia's democracy and they have been vital in protecting Australia's natural environment. With Australia's environment in decline, as documented by the 2016 State of the Environment Report and many scientific studies, advocacy for the environment is more important now than ever.

Charitable advocacy should not be conflated with partisan political advocacy

The advocacy role of charities was upheld by the High Court in *Aid/Watch v Tax Commissioner*¹, which found that freedom of political communication is integral to the constitutional system of

¹ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 (1 December 2010)

Australia. Under the Charities Act 2013, a charity can undertake advocacy to advance its charitable purpose. Those purposes include advancing the natural environment:

- protecting, preserving, caring for and educating the community about the natural environment
- preserving native flora and fauna
- rescuing or caring for native animals, and
- preserving or rehabilitating habitats.

Charities cannot have a **purpose** of advancing a particular political party or candidate or campaigning against a particular party or candidate and are not able to be active participants in campaigns to support political parties or candidates seeking office. They are allowed to promote or oppose a change to laws, government policies or programs, consistent with their charitable purpose.

Charities have been regulated differently from other actors in the election process because they are fundamentally different. They might seek to influence the direction of policy, and the decisions made by elected and appointed government officials, but they do not seek to obtain state power.

Under the Bill, the legitimate role of charities as advocates for their charitable purpose is fundamentally changed, with charities that advocate recast as political entities engaged in the electoral process.

This relates to the definition of political purpose in the Bill² which includes s287(1)(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*”. This is extremely broad wording and extends the reach of the electoral laws well beyond party political advocacy, which is not a charitable activity, into policy advocacy, which is a charitable activity. “Political expenditure” under the Bill is not limited to expenditure in an election period, capturing advocacy activities year-round.

Whether or not a charity becomes subject to the requirements of the electoral laws depends upon their level of “political expenditure”. The Bill creates new classes of actors (Political Campaigners and Third Party Campaigners) which are required to register with the Electoral Commission and comply with stringent requirements, such as setting up additional bank accounts and appointing a Financial Controller. The expenditure threshold is low (\$13,500 for a Third Party Campaigner), so many charities will become subject to the electoral laws, including trusts and foundations. The Bill proposes highly punitive measures for organisations found to be in breach.

² We note that the activities under the definition of political purpose in the Bill replicates those passed in the Electoral and Other Legislation Amendment Act 2017, passed in September 2017.

As a result, the Bill conflates charitable advocacy with partisan political advocacy, recasting charities which advocate as political entities. Our members that support environmental charities which engage in public comment, policy assessment and other standard advocacy activities will be framed under the Bill as partisan political actors and aligned with political parties.

We contend that public comment, policy assessment and advocacy work for charitable purposes is critical to Australia's democracy – it is not carried out by charities as '*political campaigning*'. If this Bill becomes legislation, funders of charities will be faced with the choice of supporting advocacy to fulfil their missions and being subject to the electoral laws or abandoning this pathway to supporting Australia's natural environment. We envisage many will choose the latter, to avoid the additional red tape and the possibility of criminal sanctions if they breach the regulations, even unintentionally. This will have damaging implications for our democracy and our natural environment as well informed and thoughtful voices may no longer be heard via currently legitimate contributions such as responding to relevant Parliamentary, Senate or Treasury enquiries.

Impact on environmental grantmakers

If the Bill is passed, we envisage that philanthropic support for the campaigns that sustain Australia's biodiversity, waterways, soils, forests and wetlands and action on climate change will diminish.

Philanthropic trusts and foundations with a clear and unambiguous charitable intent and mission will become subject to electoral laws, either through foundations being classified as Political Campaigners or Third Party Campaigners, or because charities will be required to provide their donors' personal information to the Electoral Commission.

This would be in deep conflict with the Charities Act 2013 and provisions that legitimise funding for advocacy for charitable purposes.

Through catch-all '*political purposes*' definitions the Bill effectively categorises support by philanthropy to advance the natural environment or to support action on climate change as having a party political purpose.

Many donors engage in philanthropy precisely because they do not want to engage in party politics – they want to act for and enlarge the common good, not fuel partisan advantage. They wish to contribute to good long term policy for Australia outside political cycles.

And this goes to the purpose of Australia's electoral laws. Those laws should be about the integrity of voting processes and the principal actors involved in those processes – the AEC, political parties, media and advertisers and citizens seeking to make clear, authentic choices about the candidates putting themselves forward for elected office.

Those laws should not seek to interpret charitable work as party political activity, especially when existing legislation clearly outlines the boundaries between charitable work and partisan advocacy.

Impact on overseas philanthropy

Australia is wealthy in environmental assets and has numerous World Heritage sites (including the Great Barrier Reef) which are of international importance. Australia has the privilege of hosting these sites, but also the responsibility to protect and manage them for the world community. Australia also has a relatively small population and a less developed philanthropic tradition than other countries such as the US and the UK. There are some highly regarded overseas based philanthropic organisations which recognise this disparity through making funding available to Australian charities.

The AEGN welcomes support for Australia's environment from all funders and encourages funders from overseas to invest in Australia's environment. Our members inform us that international philanthropy plays an extremely important role: international donors, often alongside Australian philanthropy, are willing to invest in new approaches to conservation, providing a unique opportunity to test, trial and scale new approaches, which can then be exported to the world. Policy advocacy is an important component of this process, for it is through advocacy that the word is spread about effective ways of resolving environmental problems. At the same time they bring to Australia the benefit of experience gleaned in other countries, increasing philanthropic effectiveness and avoiding unnecessary waste of scarce philanthropic resources.

The Bill creates significant hurdles to the receipt of overseas philanthropy for environmental work which, when done well, usually involves at least some advocacy. Organisations which depend upon overseas philanthropy for their work will be less likely to advocate. Philanthropic funders will find Australia less attractive as a destination for their funding.

If this Bill is passed, Australia will send a signal to the rest of the world that we are closed to international philanthropy.

Conclusion

In conclusion, we recommend that the Bill be substantially reconsidered and redrafted. It should focus solely on the foreign donations dimensions of party political funding arising out of previous concerns expressed by the JCSEM and not confuse charitable work with political activity.

Yours sincerely,

Jill Reichstein
Chair