

THE AUSTRALIAN GREENS



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

25 January 2018

INTRODUCTION

Public confidence in our democratic institutions and our electoral process is at an all-time low. Recent political donation scandals have increased the public's appetite for wide-ranging reforms. The perception of corruption from foreign donations to political parties has led to near unanimous support for a ban.

Regrettably, the Turnbull government has attempted to use the support for a foreign donations ban as a cloak to drive through other changes. The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 contains a number of attacks on small parties, non-party campaigners and charities as it:

1. Limits and delegitimises advocacy of charities
2. Restricts political campaigning by and free speech of non-party entities
3. Introduces punitive and excessive compliance obligations
4. Reduces public funding and thus perversely increases reliance on private political donations, increasing the potential for and public perception of corruption

The government has been remarkably silent on these other changes in public debate. Given these other changes, this bill could not be characterised as an attempt at reform. It is a partisan attack on civil society groups perceived to be politically opposed to the government.

If the government is serious about banning foreign donations to political parties, they should present a bill which does that and the Australian Greens will support it. If the government is serious about meaningful reform of domestic political donations, it should present a bill which addresses that, or support bills currently before the parliament from the Australian Greens or the Australian Labor Party.

AUSTRALIAN GREENS POSITION

The Australian Greens have long advocated for reforms to electoral funding and for regulation which increases transparency and reduces the potentially corrupting influence of political donations. We have before the Senate a number of bills which would help restore some integrity to our democratic process and institutions:

1. National Integrity Commission Bill 2013
2. Commonwealth Electoral Amendment (Reducing Barriers for Minor Parties) Bill 2014
3. Commonwealth Electoral Amendment (Donations Reform) Bill 2014
4. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016

1. RESPONSE TO BILL - WHY BILL SHOULD BE REJECTED

Charities and organisations

In proposing this Bill, the Government has admitted that large donations have a corrupting influence on politics. Yet, in spite of this acknowledgement, it fails to put any limits on Australian corporate political donations.

Furthermore, it contains a number of provisions that place significant restrictions on the capacity of charities that undertake advocacy to receive donations, and how those donations are spent, thereby styming their ability to advocate for policy change.

The bill broadens the concept of “political expenditure” to include advocacy, and compels those organisations which spend some resources on advocacy to comply with onerous restrictions on receiving international philanthropy, as well as increased disclosure obligations. In some cases, organisations must keep records to prove that a donor is an “allowable donor” (broadly speaking an Australian citizen or resident), and keep any international funds separate to other funds. The requirement to verify that a donor is “allowable” through a statutory declaration will place a burden on both the recipient and the donor, and is likely to discourage donations.

The effect of these proposed changes will be corrosive to Australia’s democracy. An active and engaged civil society is essential to a strong and vibrant Australia. It advocates for important policy outcomes, whether that be on homelessness, funding for medical research, animal welfare or environmental degradation. Civil society promotes ideas, advocates on behalf of the marginalised, and levels the playing field between ordinary citizens and big corporate interest.

Under this Bill, civil society organisations may have to choose between international philanthropy (for example, from the Bill and Melinda Gates Foundation) and policy advocacy. Additionally, the Bill’s measures will ensure that resources are diverted to burdensome and costly administration, rather than issues directly relating to an organisation’s mission.

The Greens are also concerned that this Bill infringes on the constitutional protection of freedom of political communication. Constitutional law experts, including Professors George Williams and Anne Twomey, have said the Bill may be referred to the High Court because of its potential impact on the implied freedom of political communication.

It should be noted that these measures are entirely unnecessary: the Charities Act 2013 already prohibits charities from having a “purpose of promoting or opposing a political party or candidate”.

The Bill will also unfairly classify some organisations as an associated entity of a political party, even when that organisation is completely independent of the political party. This could create undeserved reputation damage to the organisation or cause it to refrain from exercising a legitimate voice in an election campaign. It defines an associated entity as an organisation that promotes or opposes the policies of one or more political parties in a way that benefits a political party. This definition does not take into account that it is reasonable

for independent organisations to support or oppose a party or candidate in a particular election because their policy is consistent with, or undermines, a crucial objective of the organisation.

Independent organisations should not have the label and obligations of an associated entity thrust upon them for engaging in an election campaign. It should be noted that currently third party election campaigners are required to make disclosures to the AEC similar to those made by political parties.

Election expenditure – impact on small parties

Voters are most engaged with, and best served by a political process in which they have the opportunity to participate in a wide spectrum of political debate. The diversity of political debate in Australia should be reflected in our candidates, parties and representatives. Measures that discourage or disadvantage non-major party participants risks narrowing the political debate and alienating voters

The Bill would –

- result in a narrow definition of what would qualify as election expenditure; and
- change electoral funding to political parties from an automatic payment of an amount for each vote received to one based on the amount of election expenditure incurred in the election period.

These changes will advantage the major parties, which would usually reach their maximum public funding entitlement with advertising expenditure. Minor parties and independents, on the other hand, with a small budget that rules out television advertising, for example, often spend campaign funds on employing a campaign manager, which is one of a number of genuine campaign expenses that are not covered by the definition of electoral expenditure.

The major parties almost always spend more in an election than their AEC entitlement. Minor parties who budget wisely and spend less than their election funding entitlement would no longer be able to use electoral funding to cover party administrative costs and other campaigns. This will increase pressure on minor parties and independents to chase large political donations, which is undesirable because of the corrupting influence that they have.

Minor parties under the proposed funding system will be comparatively worse off than the Liberal/National and Labor parties.

Recommendation

1.1 The Bill should be rejected.

2. FRAMEWORK FOR REFORM

The Greens believe that undue influence and perceived or actual corruption arise from unchecked private funding of election campaigns. This view is widely held by the general public and supported by previous statements of the Prime Minister and other senior members of his party.

We maintain our view that the current laws on political donations are unfair and counterproductive to the democratic process.

It is telling that the government's Bill does not seek to even make modest improvements to the transparency of donations to political parties.

Recommendations

2.1 A ban on donations from for profit organisations, or a very low donation cap on such donations.

2.2 A low cap on the amount of money individuals and not-for-profit organisations can donate each year to a political party or candidates, excluding bequests and MPs' tithes to their party.

2.3 Modest caps on election expenditure by political parties and candidates.

2.4 In relation to third party campaigners there should be a cap on their election campaign expenditure and caps on political donations to them.

2.5 Require all donations of \$1000 and above to be disclosed on an easy to search, public website in close to real time.

3. INTERIM STEPS TOWARDS FULL REFORM

While the Australian Greens support comprehensive reforms to the electoral funding system that would achieve uniform national standards on caps and bans we recognise that this will require considerable negotiations between state and federal governments. We support a number of interim steps that would increase transparency and public trust in the electoral funding system.

Common funding rules for Commonwealth, State and territory elections

Electoral funding rules vary enormously between the Commonwealth and the various states and territories. This is a serious issue when it comes to placing caps on political donations and the disclosure of donations. Efforts at a state level to regulate money in politics have been undermined by the ability of donors to instead funnel money into party federal election bank accounts which are not under the jurisdiction of state election funding laws.

Recommendation

3.1 The federal government to hold discussions between states and the Commonwealth in regard to: political donation disclosure thresholds; time periods for disclosures; the definitions of donations and other incomes that should be disclosed; and donation limits with a view to developing uniform laws across all jurisdictions within two years.

Detailed disclosure of electoral expenditure

Political parties are currently required to disclose an overall amount of expenditure by the party in their annual return to the Australian Electoral Commission, yet there is no

requirement for details on what items parties are spending their campaign funds. More information will assist the assessment of appropriate levels of expenditure caps and ensure that any misuse of electoral funding can be identified.

Recommendation

3.2. Political parties be required to disclose how much was spent during the election period on each type of expenditure, such as wages, polling, advertising and printing.

Donation disclosure and transparency

Transparency of the political process was set back enormously when the disclosure threshold was raised to \$10,000 indexed to the Consumer Price Index. A much lower threshold is needed and the loopholes that allow donation splitting between related political parties removed. These measures will help restore public confidence in the political process.

In 2017-18 the disclosure threshold had risen to \$13,500. This means donors whose contribution to a political party or candidate is under this amount avoid proper scrutiny. This high threshold means a donor could potentially donate well over \$1 million to a political party without ever being identified in party disclosures to the AEC. The donor could donate to many of the party's candidates and to various state party branches, with each amount being under the threshold.

Recommendation

3.3. Reduce the threshold for the disclosure of political donations to \$1,000 with no indexation and all related political parties to be treated as one body for the purpose of the disclosure level.

3.4. Establish a system for prompt, comprehensive public disclosure of political donations and money received of \$1,000 or more on a public searchable website in close to real time.

Ban on certain sectors

While the Greens support a ban on donations from all for profit bodies we recognise that this will not be immediately achieved without constitutional reform. Bringing in a ban on sectors that have been found likely to have a corrupting influence on the political process or are perceived to have such an influence is another way to take meaningful steps to cleaning up political donations.

Recommendation

3.5. Ban political donations from developers, banks, mining companies and tobacco, alcohol, defence, gambling and pharmaceutical industries.