



St Vincent de Paul Society

NATIONAL COUNCIL

good works

Submission to the Joint Standing Committee
on Electoral Matters

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

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Introduction

The aim of the *Electoral Funding and Disclosure Reform Bill 2017* (the Bill), according to the explanatory memorandum, is to help maintain the integrity, real and perceived, of Australia's electoral system by making provisions for new political actors.¹ However, this Bill will adversely affect major charities and other community not for profit (NFP) organisations, who have always endeavoured to influence the political process in favour of the most vulnerable. While it will not stop the St Vincent de Paul Society from speaking out on matters of justice, it will make it more difficult to do so because of the burdensome and unrealistic reporting conditions contained in the Bill.

Charities in Australia are not new political actors. Their important role in the political process has long been recognised. In 2001, the Report of the Inquiry into the Definition of Charities and Related Organisations, when commenting on political activity of charities, noted that:

Their (charities) independence from government or any particular political grouping is an important feature of their ability to serve their beneficiaries and to contribute more broadly to the public good. Independence allows charities to identify groups needing support and to make decisions about the best way to provide assistance to them 'without fear or favour'.²

There are already sensible rules governing the activities of charities in the political space, such as not endorsing particular candidates or parties. The new rules in this Bill, under the guise of protecting from foreign influence, only add an unnecessary administrative burden to charities. Most major Australian charities receive either very little or no donations from overseas donors. However all major charities, if they regularly comment on issues of concern to their beneficiaries, will be required to register as a 'political campaigner' and consequently prove that all donations over \$250 were not from a person or entity that has been deemed a non-allowable donor.

Organisations, such as the St Vincent de Paul Society, that campaign on issues of poverty are nearly always critical of certain policies of the government of the day. This is because our front-line charity work makes us sensitive to issues of justice that need to be addressed. As such, there is always a temptation for governments to curtail the voice of charities. We believe that this is one of the disguised agendas at play in this Bill. In this submission, we will urge the Parliament to reject this Bill in its entirety as being ill-conceived and a threat to robust and informed debate, a cornerstone of our electoral system.

Who we are

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 64,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of people each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, women and children fleeing violence from men, and people experiencing poverty.

Why this Bill will affect most major charities in Australia

Under this Bill, most major charities would be required to register as a political campaigner.

This is because an organisation is required to register as a political campaigner if during the current or any of the previous three years its 'political expenditure' was \$100,000 or more. Political expenditure is then defined very broadly and includes:

The public expression of any 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).

Hence, whenever a charity comments on issues such as homelessness, low levels of allowances and pensions, low wages, refugees and asylum seekers, electricity and a host of other subjects, the costs associated with making these comments would be deemed political expenditure.

While the St Vincent de Paul Society has a relatively high profile on social justice issues, the cost of the Society's advocacy is relatively modest. However, the cost is more than \$100,000 and, hence, if the Bill is passed into law, the Society will be required to register as a political campaigner.

The administrative effect on charities if they are required to register as a 'political campaigner'

Charities will be required to keep records to show whether donations of more than \$250 were from what the Bill calls allowable donors or from non-allowable donors. This will add significantly to the administrative costs of charities.

The definition of 'allowable' is quite complex. Generally, for an individual this means that they are an elector, or an Australian citizen, or an Australian permanent resident, unless the Minister decides that the resident is not an allowable donor (287 AA). For an entity to be defined as an allowable donor under the Bill, they must be incorporated in Australia, or if not incorporated, then their head office or principal place of business must be in Australia.

For most charities the vast majority of donations come from what would be deemed allowable donors. However, a small number of donations are likely to come from non-citizens or residents of other countries who are appreciative of the work done for them or their families. Separate accounts would need to be set up for this small number of donors and kept separate from other general revenue accounts. No funds from these separate accounts could be used for the broadly defined political expenditure.

Case example 1

Mr X came to Australia ten years ago, fleeing the war in Sri Lanka. When he arrived in Australia he was destitute, and he was greatly assisted by the St Vincent de Paul Society in Western Australia. He and his family have always been extremely grateful for the help they received at the time of their greatest need. His extended family in Sri Lanka who have become relatively prosperous following the war's end, regularly make a donation of \$250 to the annual Christmas appeal.

Under the proposed legislation, the St Vincent de Paul Society will need to direct this donation to a separate account.

Case example 2

Ms Y is an Australian citizen and the CEO of the Australian branch of a multi-national company. She regularly participates in the Vinnies CEO Sleepout to help the homeless. She encourages CEOs of her company in London, New York and Zurich to each donate \$250 for her effort. She in turn donates to their charitable works when they occur.

These donations from overseas donors would need to be placed in a separate account

Further costs and the extreme difficulty of implementation

As well as placing donations for non-allowable donors in separate accounts, charities that are defined as political campaigners will be required to keep records to show that all other donations of \$250 in a year were in fact from allowable donors. This means ensuring and recording that all such donors, if individuals, are Australian citizens, electors or Australian residents, and are not a class of resident that the Minister has deemed not to be an allowable donor. For donations from companies, this will mean ensuring and recording that they are incorporated in Australia, and for non-incorporated bodies, ensuring and recording that their head office or principle place of business is in Australia. This is a significant bureaucratic impost on charities that will add to administrative costs. This seems ironic for a government that has committed itself to reducing “unnecessary or inefficient regulation imposed on individuals, businesses and community organisations by at least \$1 billion a year”.³

For the Society, donations from individuals can be made via several different streams:

- the national website, though channelled via one of the states or territories;
- the Vinnies CEO Sleepout website, though channelled via one of the states or territories;
- local Vinnies shops;
- through the post or via direct debit.

Compliance with this Bill will require a check of each donor who donates over \$250 in a financial year. For those who donate via a website, this will require a filter that establishes whether a donor is a citizen, an elector or an eligible resident. It is difficult to see how this could be practically done, as a simple tick box for the donor to fill out would seem to be insufficient to definitively establish a donor’s status. It is also likely to be seen as intrusive by donors and may discourage donations.

Furthermore, to ensure the status of all relevant donors is checked, the Society would have to keep a tally of donations received by each individual donor over a year, in order to establish if the total amount of multiple smaller contributions added to \$250 or more. The check on the allowable status of the donor would have to be done retrospectively. A similar problem arises for keeping track of donors who donate via postal mail or direct debit.

All charities work with limited resources, and the requirement to keep additional records that identify whether donors are allowable will add additional processes at both the point of request (collecting additional information) and point of receipt, requiring additional burden in both accounting processes and system changes, plus redesign of materials to capture information we do not currently seek.

Privacy implications are also a concern. There is evidence that people are becoming more concerned about the storage and use of their personal information by a range of entities, including charities.⁴ The requirements of this Bill appear to necessitate asking donors for personal details, such as electoral details, citizenship status or residency. This will not be appreciated by some, particularly when other charities (international) do not require this information. The requirement to collect and store additional personal data from donors will also require charities to implement systems to prevent data breaches and ensure compliance with relevant laws governing the collection, storage and usage of people's information and data. Together with additional point of request and point of receipt administrative burdens, this may also increase questions and feedback generally and add to the increased administrative costs.

One of the key aspects that shapes philanthropic decision making is a charity's administrative spend. The community rightly expects that their donations to charities will be used in the implementation of the organisation's mission, rather than in administration and compliance. This Bill, however, will make it more difficult for charities to meet donor expectations. While the Society supports robust regulations to ensure probity in the use of funds, such regulations should be simple to administer and proportionate to risk. It has been widely recognised that unnecessary regulations and red tape interferes with the capacity of charities to efficiently and effectively use donations to fulfil their mission. In 2016 the Australian Charities and Not-for-Profits Commission report, *Cutting Red Tape*, reported that "Regulation of the charitable sector relating to fundraising, state taxation, and incorporated associations, is estimated to cost charities approximately \$34.9 million annually".⁵ By adding additional and unnecessary layers of administrative complexity, this Bill will further divert resources away from services and advocacy. In a context where donors are often concerned about the efficient use of funds, the ultimate effect of this additional administrative complexity may be a reduction in the amount of donations charities receive.

The effect on advocacy by charities

If this Bill is enacted, some charities may make the decision to cease all public comment on issues that may become election issues in order to avoid onerous administrative and financial burdens. Some charities may also refrain from commenting on public policy matters for fear of incurring fines of over \$50,000 for breaches of the Legislation.

If charities make the decision to discontinue advocacy, communities will suffer. Many of the rights, laws and policies we now benefit from in areas as diverse as family violence, homelessness, discrimination, and workplace safety have been secured after years of advocacy by community organisations. Such advocacy is vital to identify and address systemic issues, and to ensure government policies and services are effective and responsive to community needs. For the Society, tackling social injustices entails not only providing services to ameliorate the symptoms of social problems, but also advocating for policy and legislative change to address the root causes. As noted by the Productivity Commission, such advocacy benefits communities and provides an efficient use of resources as it addresses systemic issues rather than just individual cases, with the potential to relieve pressure from other frontline services.⁶

For example, the St Vincent de Paul Society South Australia is a strong advocate for reducing and preventing domestic violence, as are many other organisations. Through sustained advocacy

undertaken in collaboration with multiple like-minded organisations and government efforts, the Society in South Australia has contributed to policy reforms to help prevent domestic violence and to ensure those fleeing or experiencing such violence have access to services and support. There is no doubt such positive changes may not have been made if charities and other community organisations had publicly removed themselves from this conversation.

The St Vincent de Paul Society, however, will not cease its advocacy work, because for members of the Society charity and advocacy for justice are intricately linked. However, by increasing the administrative burden on charities, this Bill will decrease the amount of money available for both assistance and advocacy. Indeed, the Society would be unfaithful to its mission if it were to allow the structural and historical causes of poverty, inequality and homelessness to remain unchallenged and unchanged. As it states in the Society's Rule:

Where injustice, inequality, poverty or exclusion are due to unjust economic, political or social structures or to inadequate or unjust legislation, the Society should speak out clearly against the situation, always with charity, with the aim of contributing to and demanding improvements.⁷

Effect on democracy

The input of charities and NFP organisations is vital to the ongoing development, amendment and review of laws and policies across Australia. Laws and policies are constantly being reviewed, changed or introduced. Policy debates and representations to politicians shape the content of these laws and policies. Each year, for example, the Parliament requests the community (including charities) make public submissions to various inquiries about Bills before the Parliament or other important matters. The public nature of these submissions means that the costs associated with making these submissions would be deemed political expenditure as defined by this Bill.

By preparing policy submissions and contributions to public inquiries, charities ensure a voice in policy processes for marginalised and disadvantaged groups. The contribution of charities and NFP organisations can reveal the impact of laws and policies on the constituencies they work with, which in turn contributes to better laws and policies and more efficient and effective delivery of government services.

Recent feedback from a supporter of the St Vincent de Paul Society encapsulates the importance of policy submissions from charities:

Vinnies and the many other charitable and not-for-profit organisations who speak out on behalf of people who are poor, vulnerable or marginalised are critical to a vibrant democracy concerned with social justice and rights. If you read the submissions these groups make to parliamentary inquiries they are rich with 'lived experience' (that comes from providing counsel, care and essential services to those in desperate need), evidence drawn from the research base, and a perspective. Critically, they offer alternative ways to realise important social, cultural and economic objectives. Informed advocacy costs money but provides a voice for those frequently unable to speak. It is a tiny price to give more people a say.⁸

These submissions are also highly valued by members of Parliament, are often quoted in the resulting Committee reports, and lead subsequently to improved legislation before the Parliament.

If this Bill is passed, groups in the future will have to consider whether their contribution to a Parliamentary inquiry will take them over the threshold of being deemed a political campaigner. This may ultimately lead to a reduced number of submissions being made to Parliamentary inquiries, which will in turn reduce the quality of democratic debate and the capacity for informed decision making.

The vital democratic contribution of charities and NFP organisations is widely recognised. A landmark High Court decision in 2010 confirmed that advocacy is a valid function of modern charities.⁹ Similarly, the Productivity Commission has noted that limiting consultation with the NGO sector may “impede the efficient and effective delivery” of government services and “reduce the government’s ability to develop the evidence base needed to effectively identify problems and assess the relative merits of alternative policy proposals.”¹⁰ The Senate Legal and Constitutional Affairs Committee has stated that community organisations are “an invaluable source of information for government to make informed and balanced policy decisions”.¹¹ This view was echoed by the Australian Government in its sixth report to the United Nations under the International Covenant on Civil and Political Rights, which stated:

*A strong civil society, which includes an active and innovative non-government sector, makes an important contribution to the protection and promotion of rights in Australia, including by contributing to public debate and informing government policy.*¹²

A dampening of the democratic process will also be felt at the state and territory levels, where the input of charities into public policy has contributed to more effective policies that are responsive to community needs. For example, in New South Wales, the Society advocated strongly for an affordable housing growth fund from the State Government to overcome existing barriers and unlock a new flow of construction investment. The New South Wales Government subsequently created the Social and Affordable Housing Fund.

Also in New South Wales, the St Vincent de Paul Society launched the Right to Home petition in 2016 in response to concerns about the profound impacts of the lack of affordable housing. The campaign created positive conversations within the community and with members of Parliament. It centred on a proposition to change the planning system so that all new residential developments include at least 15 per cent affordable housing. The petition was signed by 16,300 residents and 180 people watched the ensuing debate from the NSW Parliament’s public gallery. Members of Parliament from all sides of politics recognised the value of the campaign in identifying a critically important issue and putting forward new ideas for change.¹³

Confusion of aims of the Bill

The explanatory memorandum for this Bill indicates that maintaining the integrity, real and perceived, of Australia’s electoral system is critical to our system of government. It indicates the need to regulate new political actors and mentions the danger of foreign attempts to influence elections around the world.

In the first instance, charities are not new political actors. Since the earliest days of Federation, charities have advocated on behalf of those in need. Already, the role charities can play in the electoral process is well established. A charity cannot, for instance, support or oppose a particular

political party or candidate. Nor can it produce material asking its members or supporters to vote for a particular party or candidate. These rules not only safeguard the electoral process, but also are of benefit to charities in reinforcing their non-partisan approach to politics.

Furthermore, the Government has not provided evidence to justify the additional reporting and compliance requirements for charities that receive foreign donations. While some charities may receive foreign donations, we are not aware of any evidence that such donations are being used to subvert the electoral system or to campaign for particular political candidates or parties. In addition to the existing restrictions on advocacy associated with elections, charities are subject to various registration checks, reporting, transparency and compliance safeguards under charity and tax law. No evidence has been provided to show that these existing laws and regulations are not working or are insufficient. Therefore, we cannot see how the burdens placed on charities in this Bill will in any way promote the Bill's aims to maintain "the integrity, real and perceived, of Australia's electoral system". It is like legislating that swimmers are to wear bicycle helmets.

Conclusion

The *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, if passed, will adversely affect many charities in both their charitable work and their public advocacy for the most vulnerable. This will occur because of the burdensome administrative requirements contained within the Bill. As a result, rather than enhancing the integrity of Australia's electoral system, this Bill will erode confidence and weaken democratic processes by making it more difficult for charities to comment on issues of public concern to their beneficiaries. Moreover, this Bill is ill-conceived because it attempts to solve a perceived problem of foreign influence in elections, by regulating organisations (charities) in which there is no evidence of foreign influence. We therefore urge the Parliament to reject this Bill because it hinders the work of charities in this country, and will erode, rather than build confidence in the electoral system. A robust democracy has nothing to fear from a strong and flourishing civil society, but rather has everything to gain.

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