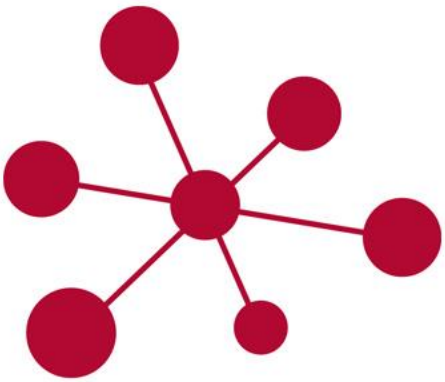

public interest
ADVOCACY CENTRE

Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Submission to the Joint Standing Committee on Electoral Matters

25 January 2018

Level 5, 175 Liverpool Street, Sydney NSW 2000
Phone: 61 2 8898 6500 • Fax: 61 2 8898 6555 • www.piac.asn.au

1. Background

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles difficult issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through legal assistance and litigation, public policy development, communication and training.

Our work addresses issues such as:

- homelessness;
- access for people with disability to basic services like public transport, education and online services;
- Indigenous disadvantage;
- discrimination against people with mental health conditions;
- access to energy and water for low-income and vulnerable consumers;
- the exercise of police power;
- the rights of people in detention, including the right to proper medical care; and
- government accountability, including freedom of information.

We note that, as a registered charity and a community legal centre that engages in strategic litigation and related advocacy around important issues of public policy, PIAC is likely to be captured by the very broad definition of 'political campaigner' included in the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017. PIAC is therefore exposed to its donation, reporting and other obligations, and associated penalties.

1.2 PIAC's work on charities regulation and electoral reform

PIAC has contributed to public policy debates around both the regulation of charities and non-government organisations, and of electoral reform including campaign finance, over many years.

In terms of charities, this includes involvement in key public consultations such as:

- a submission to the Australian Senate *Inquiry into the disclosure regimes for charities and not-for-profit organisations*[1]; and
- a submission to the recent *Treasury Tax DGR Reform Opportunities Paper*.[2]

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1 Public Interest Advocacy Centre, *Not-for-profit Accountability: Submission to the Inquiry into the disclosure regimes for charities and not-for-profit organisations*, available at https://www.piac.asn.au/wp-content/uploads/08.09.10-Charity_Sub.pdf (accessed 22 January 2018).

2 PIAC, *Harmonising DGR Regulation Without Imposing New Burdens*, 18 July 2017, available at: https://www.piac.asn.au/2017/07/20/harmonising-dgr-regulation-without-imposing-new-burdens-submission-to-treasury-tax-dgr-reform-opportunities-paper/ accessed on 22 January 2018.

In terms of electoral law this includes submissions to both the First[3] and Second[4] Electoral Reform Green Papers in 2009.

PIAC acknowledges the work on this issue by the Human Rights Law Centre, the Australian Council for International Development, and St Vincent de Paul Society,[5] which has informed this submission.

2. Summary of recommendations

Recommendation 1

The Parliament should reject the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 in its current form, given its adverse impact on charities, unions and non-government organisations and their legitimate participation in democratic debate.

Recommendation 2

If Recommendation 1 is not accepted, sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 which define and regulate political campaigners, including imposing donation restrictions and reporting obligations, should be removed.

Recommendation 3

If Recommendations 1 and 2 are not accepted, sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 which apply to political campaigners should exempt charities regulated under the Australian Charities and Not-for-profits Commission Act and unions registered under the Fair Work (Registered Organisations) Act as this regulation is sufficient.

Recommendation 4

The sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 that impose donations restrictions and reporting obligations on third party campaigners should be removed.

Recommendation 5

The expanded requirements to register as an associated entity, as proposed in section 287H of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, should be removed.

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3 PIAC, *Deepening Democracy: Submission to the Australian Government in response to the Electoral Reform Green Paper*, 23 February 2009, available at: https://www.piac.asn.au/2010/07/13/09-02-23-piac-electoral-reform-sub/

4 PIAC, *Accessing Democracy: Submission to the Australian Government in response to the Electoral Reform Green Paper – Strengthening Australia's Democracy*, 27 November 2009, available at: https://www.piac.asn.au/2010/07/13/09-11-27-piac-sub-on-electoral-reform/

5 See St Vincent de Paul Society, *Briefing Paper: Electoral Funding and Disclosure Reform Bill*, available at: https://www.vinnies.org.au/page/Publications/National/Factsheets_and_policy_briefings/Electoral_Funding_and_Disclosure_Reform_Bill/ accessed on 22 January 2018.

Recommendation 6

The requirement for political campaigners, third party campaigners and associated entities to include the political party membership of senior staff members in their annual reports should be removed.

Recommendation 7

Based on the prohibition on donations from non-allowable donors, including foreign donors, of at least $250, the Commonwealth Electoral Act should be amended to require disclosure of all donations of at least $250, rather than the current threshold of $13,500.

Recommendation 8

Donations above the threshold to political parties and candidates should be reported to the Australian Electoral Commission, and published, more frequently, and at least monthly.

3. Regulation of 'political campaigners': too broad and too onerous

PIAC has serious concerns about the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 and in particular its impact on charities, unions and other non-government organisations involved in public policy debates, including through advocacy.

These concerns involve two key problems:

- The regulation of 'political campaigners' is too broad, and
- The requirements that are then imposed on 'political campaigners' are too onerous.

3.1 Political campaigners, political expenditure and political purposes

The Bill, if passed, will impose significant new obligations on 'political campaigners', defined under section 287F as follows:

> i) A person or entity where 'the amount of political expenditure incurred by or with the authority of the person or entity during that or any one of the previous 3 financial years is $100,000 or more' or
> ii) A person or entity where 'the amount of political expenditure incurred by or with the authority of the person or entity during the financial year is $50,000 or more and during the previous financial year was at least 50% of the person or entity's allowable amount for that year.'

The key to these definitions is the phrase 'political expenditure', which the Bill defines in section 287(1) as 'expenditure incurred for one or more political purposes', with 'political purpose' defined as:

> (a) the public expression by any means of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate;
> (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);
> (c) the communicating of any electoral matter (not being matter referred to in paragraph (a) or (b)) for which particulars are required to be notified under section 321D;

(d) the broadcast of political matter (not being matter referred to in paragraph (c)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*;
(e) the carrying out of an opinion poll, or other research, relating to an election or the voting intention of electors;
except if:
(f) the sole or predominant purpose of the expression of the views, or the communication, broadcast or research, is the reporting of news, the presenting of current affairs or any editorial in news media; or
(g) the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.

This definition is extraordinarily and unacceptably broad.

Clause (a) would seem to capture all public comments about existing Members of Parliament and Senators, including where they stand on particular issues of public policy, or the actions they have taken, or not taken, with respect to these issues.

Clause (e) is similarly expansive, with 'other research relating to an election' potentially covering policy research on issues that feature as part of an election.

However, the most concerning of these proposed clauses is (b), which is extremely broad in three important ways:

- *'public expression by any means'* is likely to include not just campaigning via advertising and media commentary, but also activities such as producing submissions, giving evidence to parliamentary inquiries, producing and publishing research papers or even social media engagement;
- *'on an issue that is, or is likely to be, before electors in an election'* is exceptionally wide in scope, and potentially captures all issues of significant public interest, including health, education, workplace relations, justice and human rights – nearly all topics that would be the subject of constructive advocacy by charities, unions and other non-government organisations; and
- *'whether or not a writ has been issued for an election'* means that such activities can be covered irrespective of when they occur, especially for issues that are 'perennially' raised during election campaigns (for example, research on taxation or housing policy will likely be counted no matter when it is produced during the three-year electoral cycle).

Most, if not all, public policy and law reform work engaged in by charities, unions and non-government organisations, including community legal centres such as PIAC, would seem to fall within this definition. In addition, a large number of charities, unions and non-government organisations would spend at least $100,000 on such work at least once in a four-year period, thereby exposing them to significant obligations under the proposed legislation (see discussion at 3.2 and 3.3, below).

The proposed definition of 'political purpose' also clashes with existing regulation of charities and may create confusion. Under the *Australian Charities and Not-for-profits Commission Act*, charities are not permitted to have a 'disqualifying purpose', which

includes 'promoting or opposing a political party or candidate for political office',[6] although this prohibition explicitly 'does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office.'

In contrast, under this Bill a registered charity otherwise lawfully distributing information or advancing debate about the policies of political parties or candidates on specific issues would likely be deemed to be undertaking activities for a political purpose under both clauses (a) and (b) of the Bill outlined above. If passed, this legislation would inevitably create legal confusion for charities that engage in public policy advocacy between these different laws.

3.2 Restrictions on donations

One of the consequences of being deemed a 'political campaigner' under the above definitions is restrictions on receiving foreign donations.

These restrictions fall into two categories:

- For political campaigners that are not charities (registered under the *Australian Charities and Not-for-profits Commission Act*) or unions (registered under the *Fair Work (Registered Organisations) Act*) there is a complete ban on foreign donations (technically donations from 'non-allowable donors') over $250, irrespective of what purpose the international funding would be put to, political or otherwise.[7]
- For political campaigners that are charities or unions, they are allowed to receive foreign donations of greater than $250 but they cannot be for one or more political purposes, and the organisation must maintain separate bank accounts for domestic funds which can be used for advocacy and donations from non-allowable donors.[8]

The penalties for breaching these restrictions are high: criminal penalties of 10 years imprisonment and/or 600 penalty units, or civil penalties of 1,000 penalty units.

The consequences of these restrictions are potentially significant. Political campaigners that are not charities or unions – where, it should be noted, political campaigning is likely to be only one of many activities undertaken to achieve that organisation's objectives – will be forced to choose between accepting any donations from foreign sources or undertaking any political campaigns.

For political campaigners that are charities or unions, the choices, while less stark, are nevertheless serious – establish new processes and record-keeping to determine the status of each and every donor, as well as setting up entirely separate bank accounts and financial processes, or reduce expenditure on political campaigning, either to under $100,000 per annum[9] or abandon political campaigning altogether.

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6 Section 11(b).
7 Proposed section 302D.
8 Proposed section 302F.
9 Although see discussion of third party campaigners, 4.1 below.

3.3 Reporting obligations

The second serious consequence of being deemed a 'political campaigner' under the Bill is the imposition of a range of registration and reporting requirements.

This includes:

- Registering for that financial year[10]
- Appointing a financial controller[11], and
- Submitting an annual return within 16 weeks after the end of the financial year which includes:[12]
    - The organisation's finances, including the total amount received by the organisation and their particulars if they exceed the disclosure threshold[13]
    - Any senior staff[14] employed or engaged by or on behalf of the political campaigner, in its capacity as a political campaigner
    - Any discretionary benefits received by the organisation from the Commonwealth, State or Territory during the financial year
    - An auditor's report and
    - For charities and unions, statements confirming compliance with the restrictions on foreign donations.

As with the restrictions on foreign donations, the penalties for failing to comply with these requirements are high. For example, incurring political expenditure after failing to register as a political campaigner during that financial year attracts a civil penalty of 240 penalty units.

Once again, the combination of what are onerous obligations, with significant penalties for non-compliance, may dissuade some charities, unions and other non-government organisations from undertaking any advocacy on public policy issues.

3.4 Unnecessary additional regulation of charities and unions

In PIAC's views, the definition of political campaigners in the proposed Bill is too broad, and the restrictions on donations and reporting obligations these organisations attract are too onerous.

This is particularly the case for political campaigners that are registered charities or unions, who are already subject to extensive regulation elsewhere. We are unconvinced by arguments that present regulation is inadequate.

Further, while we understand the aim of the Bill to remove the influence of foreign donations in elections, and especially foreign donations to political parties and candidates, we do not believe the Government has demonstrated that expanding such

10 Proposed section 287F.
11 Proposed section 292E.
12 Proposed section 314AB and 314AC.
13 Currently $13,500.
14 For a person or entity with directors this means the directors of the person or entity, otherwise it includes any person who makes or participates in making decisions that affect the whole or a substantial part of the operations of the person or entity.

restrictions to charities, unions and other non-government organisations is necessary, or proportionate, to achieving that aim.

In terms of charities specifically, PIAC submits that the current requirements to register with, and report to, the Australian Charities and Not-for-profits Commission are appropriate, and appear to be working well. This regulation includes recognition of the legitimate use of advocacy as a strategy to achieve their respective charitable purposes.

As we noted in our submission to the Treasury in its consideration of DGR reforms:[15]

> Advocacy is a legitimate, and often necessary, strategy employed by many charities and not-for-profits, including those that have DGR status, to help achieve their respective charitable purposes. This is recognised by the existing law. As noted by the ACNC on their website:
>
> The *Charities Act* makes clearer the existing law on advocacy and political activity by charities. A charity can advance its charitable purposes in the following ways:
>
> - involving itself in public debate on matters of public policy or public administration through, for example, research, hosting seminars, writing opinion pieces, interviews with the media
> - supporting, opposing, endorsing and assisting a political party or candidate because this would advance the purposes of the charity (for example, a human rights charity could endorse a party on the basis that the charity considers that the party's policies best promote human rights), and
> - giving money to a political party or candidate because this would further the charity's purposes.[16]
>
> Although the ACNC also notes that 'while a charity can support a political party or candidate, this support must be a way of achieving its purposes rather than a goal in itself (for example, it can't have a hidden purpose of fundraising for a political party).'[17]
>
> The lawfulness of charities engaging in political advocacy has been confirmed by the High Court. In *Aid/Watch Incorporated v Commissioner of Taxation*, the Court observed that '[p]olitical speech by charities enriches the political process by encouraging political debate, facilitating citizen participation and engagement and promoting political pluralism.'[18]

Our position is unchanged. As we noted in that submission:[19]

> PIAC therefore believes that the important role of advocacy by charities and not-for-profits in achieving their charitable purposes should be facilitated by government and the ACNC, rather than be subjected to increased reporting and policing.

3.5 Limiting of democratic debate

While the impact of the proposed regulations on charities and unions is a serious concern, it is not the most significant adverse impact of the Bill. If passed, the biggest

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15 PIAC, *Harmonising DGR Regulation Without Imposing New Burdens*, 18 July 2017, pp 4-5, available at: https://www.piac.asn.au/2017/07/20/harmonising-dgr-regulation-without-imposing-new-burdens-submission-to-treasury-tax-dgr-reform-opportunities-paper/ accessed on 23 January 2018.

16 Australian Charities and Not-for-profits Commission, *Legal meaning of charity*, available at https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Char_def/ACNC/Edu/Edu_Char_def.aspx (accessed 28 June 2017).

17 Ibid.

18 *Aid/Watch Incorporated v Commissioner of Taxation of the Commonwealth of Australia* (2010) 241 CLR 539.

19 PIAC, *Harmonising DGR Regulation Without Imposing New Burdens*, 18 July 2017, p5, available at: https://www.piac.asn.au/2017/07/20/harmonising-dgr-regulation-without-imposing-new-burdens-submission-to-treasury-tax-dgr-reform-opportunities-paper/ accessed on 23 January 2018.

negative consequence of this legislation would be in terms of limiting democratic debate, particularly by narrowing the voices that are heard on issues of public policy.

Parliament should be concerned with ensuring more voices are heard on important policy matters, including the voices of vulnerable groups within society and organisations that work with them. This is important for the functioning of any healthy democracy. Unfortunately, for the reasons outlined above, this Bill appears to work in the opposite direction, and will likely reduce the number, and diversity, of organisations contributing to public discourse.

This is a major flaw, as noted by St Vincent de Paul:[20]

> Members of charities see firsthand the distress and suffering caused to people by injustice. Often this suffering and distress is hidden in society and without the voice of charities speaking out, it can too easily be ignored. Charities have an obligation to shine a light on injustice and to work with those they serve to remove obstacles that create and unfair society.
>
> Tackling social injustices like poverty is not only about providing services to alleviate the symptoms of social problems, but is also about advocating for changes to address the root causes…
>
> More broadly, the ability of charities to speak out on injustices is important to hold governments to account and to maintain a vibrant and inclusive democracy. Stifling the voice and independence of charities ultimately damages the health of our democracy and civil society, erodes systems of accountability and undermines informed public debate.

In PIAC's case, the focus of our work is on making a practical difference to the lives of people who are marginalised and disadvantaged. We tackle difficult systemic issues facing groups including homeless people, Indigenous Australians, people with disability, young people and people in detention. While much of our work centres on legal assistance, including legal representation and litigation, achieving broad-based and sustainable change for the benefit of our client groups often requires strategic, constructive advocacy, including making submissions, meeting decision-makers in business and government and participating in public debates.

PIAC submits that the Bill cannot be supported in its current form, given the significant restrictions it imposes on charities, unions and other non-government organisations that it deems 'political campaigners'.

Recommendation 1

The Parliament should reject the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 in its current form, given its adverse impact on charities, union and non-government organisations and their legitimate participation in democratic debate.

Recommendation 2

If Recommendation 1 is not accepted, sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 which define and regulate political

[20] St Vincent de Paul Society, *Briefing Paper: Electoral Funding and Disclosure Reform Bill*, available at: https://www.vinnies.org.au/page/Publications/National/Factsheets_and_policy_briefings/Electoral_Funding_and_Disclosure_Reform_Bill/

campaigners, including imposing donations restrictions and reporting obligations, should be removed.

Recommendation 3

If Recommendations 1 and 2 are not accepted, sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 which apply to political campaigners should exempt charities regulated under the Australian Charities and Not-for-profits Commission Act and unions registered under the Fair Work (Registered Organisations) Act as this regulation is sufficient.

4. Other issues

While the above discussion focuses on what we consider to be the main problem of the Bill, PIAC submits that there are a range of other serious flaws with this legislation which require amendment. These include:

4.1 Third party campaigners

In addition to regulation of 'political campaigners' the Bill proposes restrictions on other 'third party campaigners'. This is defined under section 287F as:

> A person or entity 'must be registered for a financial year as a third party campaigner, in accordance with subsection (2), if:
> (a) the amount of political expenditure incurred by or with the authority of the person or entity during that financial year is more than the disclosure threshold; and
> (b) the person or entity is not required to be registered as a political campaigner under section 287F for that financial year; and
> (c) the person or entity is not registered as a political campaigner.

With the disclosure threshold currently set at $13,500, this effectively captures any organisation that spends between $13,500 and $100,000 on 'political expenditure' in any financial year.

Given the expansive definition of political expenditure (and 'political purposes') discussed at 3.1 above, and especially clause (b),[21] a large proportion of charities, unions and non-government organisations engaged in any advocacy on issues of public policy will be deemed third party campaigners. This would likely include any of these organisations that employ even a part-time or casual policy officer to prepare submissions on and/or comments about public consultations, such as this consultation by the Joint Standing Committee on Electoral Matters.

The restrictions that are then imposed on third party campaigners are only slightly less onerous than those for political campaigners, discussed above, including:

- Register for that financial year[22]
- Appoint a financial controller[23]

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21 '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)' – proposed section 287(1).

22 Proposed section 287G.

23 Proposed section 292E.

- Submit an annual return within 16 weeks after the end of the financial year which includes:[24]
    - Expenditure incurred, and where the total amount received by the organisations from one or more donors exceeds the disclosure threshold in sum, the particulars of those receipts (eg names and addresses of donor(s), the date and amount)
    - Any senior staff employed or engaged by or on behalf of the campaigner, in its capacity as a third party campaigner
    - Any discretionary benefits received by the campaigner from the Commonwealth, a State or a Territory
    - A signed statement by the campaigner's financial controller that the campaigner complied with restrictions on international donations.

Third party campaigners are also subject to restrictions on foreign donations (technically donations from non-allowable donors), including not being able to accept:

- Donations where the organisation incurs more in political expenditure and donations to political parties or campaigners during a financial year than the organisation's allowable amount (that is, their total funding excluding international funding and excluding loans) and
- Donations above $250 for one or more political purposes.

The penalties for non-compliance are again high, with breaches of the restrictions on donations attracting a criminal penalty of 10 years imprisonment and/or 600 penalty units, or a civil penalty of 1,000 penalty units.

As with the impact of political campaigners discussed at 3.4 above, it is likely that this regulation will cause some charities, unions and other non-government organisations to withdraw completely from advocacy on public policy debates, which will again negatively impact on Australian democracy (3.5, above).

PIAC queries the justification for subjecting organisations that spend less than $100,000 per annum on engaging in public policy debates (broadly defined, as discussed above) to similar reporting requirements and bans on accepting foreign donations, as major political parties and advocacy groups. By way of illustration, in the 2013-14 year, the Liberal Party spent approximately $45m[25] and the Labor Party spent approximately $39m,[26] while the Minerals Council of Australia spent $17.2 million in its 2009-2010 campaign against mining taxes.[27]

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24 Proposed sections 314AEB and 314AEC.

25 This is the last full financial year including a federal election for which there are public figures. See Australian Electoral Commission funding disclosure return for the Liberal Party, here: http://periodicdisclosures.aec.gov.au/Party.aspx?SubmissionId=55&ClientId=6 accessed on 24 January 2018.

26 See the Australian Labor Party 2013-14 return here: http://periodicdisclosures.aec.gov.au/Party.aspx accessed on 24 January 2018.

27 Sydney Morning Herald, *A snip at $22m to get rid of PM*, 2 February 2011. http://www.smh.com.au/business/a-snip-at-22m-to-get-rid-of-pm-20110201-1acgj.html accessed on 24 January 2018.

Recommendation 4

The sections of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 that impose donations restrictions and reporting obligations on third party campaigners should be removed.

4.2 Associated entities

Another flaw of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 is the proposed expansion of organisations treated as 'associated entities'.

Currently, section 287(1) defines an associated entity as

> (a) an entity that is controlled by one or more registered political parties; or
> (b) an entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or
> (c) an entity that is a financial member of a registered political party; or
> (d) an entity on whose behalf another person is a financial member of a registered political party; or
> (e) an entity that has voting rights in a registered political party; or
> (f) an entity on whose behalf another person has voting rights in a registered political party.

This seems to be based on a close link between one associated entity and one political party. In contrast, the requirement to register as an associated entity under proposed section 287H, and especially 287H(5)(b), is much broader:

> An entity is, for the purposes of this Part, taken to be an entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties if:
> (b) the expenditure incurred by or with the authority of the entity during the relevant financial year is wholly or predominantly political expenditure, and that political expenditure is used wholly or predominantly:
> (i) to promote one or more registered political parties, or the policies of one or more registered political parties; or
> (ii) to oppose one or more registered political parties, or the policies of one or more registered political parties, in a way that benefits one or more other registered political parties; or
> (iii) to promote a candidate in an election who is endorsed by a registered political party; or
> (iv) to oppose a candidate in an election in a way that benefits one or more registered political parties.

There are both principled and practical reasons to oppose this expansion.

First, the inclusion of promoting or opposing the policies of registered political parties is inappropriate because such actions do not, and should not, automatically infer a relationship between the organisation and that party.

Indeed, for organisations involved in advocacy on public policy issues, securing changes in the policies of political parties is itself a legitimate objective, and promoting those policies once they have been adopted is not the same as promoting that political party in a partisan way.

The inappropriateness of this definition is further revealed if one considers an 'ideal' outcome, one in which the organisation achieves multiparty support for their objectives. If the organisation then promotes those policies, including the fact that it has been adopted

by more than one registered political party, would they then be an associated entity of all of those parties?

This leads to the more practical difficulties of this definition, and specifically of 287H(5)(b)(ii), which includes opposing one or more registered political parties, or their policies, in a way that benefits one or more other registered political parties. Para 61 of the Explanatory Memorandum clarifies that:

> Where an entity operates to the detriment of, or to oppose, a candidate or registered political party, they must do so in a way that benefits one or more political parties in order to be deemed an associated entity under subsection (5). The entity is associated with the party or parties that benefited from the entity's negative campaigning. For an entity to be associated with a registered political party because of negative campaign techniques (that is, the entity opposes a party, or operates to its detriment), intent to benefit is not required in order for an association to exist. For example, if an election is contested by a limited number of parties, and an entity operates predominantly to the detriment of a contesting party, the entity may be an associated entity of the other contesting party or parties.

On its face, this means a 'single-issue' organisation that campaigns against the policy of one registered political party in one Senate election could be considered an associated entity of every other registered political party contesting that election (because their actions may benefit those other parties, irrespective of the organisation's intent). In other words, an organisation campaigning against the policies of just one of the parties that contested the 2016 Senate ballot in NSW could have been an associated entity of 39 registered political parties. This appears unworkable.

Similarly, it appears an organisation may be deemed an associated entity for supporting and opposing the policies of the same political party in the same financial year. For example, an organisation may oppose the policies of the Liberal and National Coalition in a Senate election, considered to be to the benefit of the Labor Party and the Greens, and then oppose the policies of one Labor or the Greens in a by-election between them in the same financial year.[28]

On the basis of both these principled objections, and practical difficulties, PIAC does not support the expanded definition of associated entities as introduced by proposed section 287H(5).

Recommendation 5

The expanded requirements to register as an associated entity, as proposed in section 287H of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, should be removed.

4.3 Political party membership

One requirement imposed by the Bill on each organisation considered a political campaigner, third party campaigner or associated entity that gives rise to particular concern is the obligation to report on the political party membership of senior staff.

[28] A comparable scenario would involve opposing the policies of the Labor Party in a general election, and then opposing the policies of one of the Liberal Party or National Party in a three-cornered contest.

Under proposed section 314AB, registered political parties and political campaigners must as part of their annual returns:

> (b) include details of:
> (i) any senior staff employed by or engaged by or on behalf of the party or branch, or by or on behalf of the campaigner in its capacity as a political campaigner, and any membership of any registered political party that any of those members of staff have.

The relevant sections for third party campaigners are included in proposed section 314AEB; for associated entities in amendments to section 314AEA.

As noted earlier, for an entity with directors, senior staff means the entity's directors, while for other organisations a senior staff member is any person who makes or participates in making decision that affect the whole or a substantial part of the operations of the person or entity.

In effect, any charity, union, or other non-government organisation that spends more than $13,500 in any year on any advocacy around issues of public policy will likely need to report on the political party membership of directors and/or other senior staff members.

PIAC sees this as an unjustified intrusion on the reasonable expectation of privacy of directors or employees of such organisations and may undermine the right to freedom of association.[29]

While directors or other senior staff would not be compelled to resign from membership of a political party, the requirement for this information to be recorded may encourage them to cancel or suspend their membership for as long as they remain in a position which requires disclosure to avoid any appearance of a link between the party and the organisation.

PIAC notes that for any organisations, like PIAC, that are companies, their directors are already bound by the *Corporations Act 2001.* Duties of directors include to act in good faith, which requires revealing and managing conflicts of interest. There is no evidence that these obligations are being breached or that the existing law is inadequate to ensure the directors of incorporated charities and non-government organisations are acting in good faith.

For all of these reasons, PIAC submits that these requirements should be removed.

Recommendation 6

The requirement for political campaigners, third party campaigners and associated entities to include the political party membership of senior staff members in their annual reports should be removed.

[29] See Article 22 of the International Covenant on Civil and Political Rights.

4.4 Donation disclosure

The Bill sets the 'disclosure threshold', including for the registration of third party campaigners, at $13,500 (consistent with the current donation disclosure threshold of $13,500, indexed from $10,000 in 2005).

However, the Bill also prohibits donations from non-allowable donors (including foreign donors) to political parties, candidates, Senate groups and political campaigners that are at least $250.[30]

The obvious implication of setting this figure is that donations of more than $250 represent an amount that is meaningful (or at least not trivial), and that removing donations of this size and over consequently removes the potential for foreign influence from Australian elections.

PIAC submits that, both for the sake of consistency, and to increase transparency of political donations within the Australian electoral system, a similar threshold ($250) should be set for donation disclosure.

Introducing such a threshold would improve the integrity of the political system and is arguably a higher priority than attempts to regulate the public policy advocacy of charities, unions and non-government organisations as proposed under this Bill.

However, in order for this disclosure threshold to be effective, donations should also be publicly reported more frequently, even contemporaneously (or at least monthly). It is, in PIAC's submission, unacceptable that, as we prepare this submission in January 2018, some political donations from the 2 July 2016 federal election have yet to be published.

Recommendation 7

Based on the prohibition on donations from non-allowable donors, including foreign donors, of at least $250, the Commonwealth Electoral Act should be amended to require disclosure of all donations of at least $250, rather than the current threshold of $13,500.

Recommendation 8

Donations above the threshold to political parties and candidates should be reported to the Australian Electoral Commission, and published, more frequently, and at least monthly.

[30] Proposed section 302D(1)(e).