



22 January 2018

Ms Julia Agostino
Committee Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Ms Agostino

ELECTORAL FUNDING AND FOREIGN INFLUENCE REFORMS

I write regarding the Australian Government's proposed electoral funding and foreign influence reforms and the Joint Standing Committee on Electoral Matters' inquiry into the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, *Foreign Influence Transparency Scheme Bill 2017*, the *Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017* and the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*.

The University's interest in electoral funding and foreign influence reforms is system-wide, however the focus of our submission to the Committee's inquiry centres on the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, which we understand aims to introduce new and extremely wide ranging restrictions on the financing of political entities and third-party campaigners across the Australian economy and society.

With regards to the proposed new restrictions on the financing of Australian political entities and third-party campaigners, the University provides the following commentary:

1. In principle, we support the transparency outcomes sought through the legislation of the Government's proposed electoral funding and foreign influence reforms, particularly with regard the intent of the *Foreign Influence Transparency Scheme Bill 2017*, the *Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017* and the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*. However, we have grave concerns regarding the extremely wide scope of the Bills, particularly the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* which, in its current form would severely curtail commercial operations of organisations doing business with government, including universities and more broadly would greatly impact freedom of speech.
2. Primarily, our concerns regarding the reach of the proposed reforms detailed in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* include:
 - The definitions contained in the Bill are very broad and are quite jargonistic in nature. In particular, we note purpose (b) – *expression of views on an issue that is or is likely to be before electors in an election*. The number of activities that could potentially be covered by this definition is extremely large, in fact it could include any issue of economic, societal or environmental importance. Universities are often called upon for media comment in relation to Government funding changes and

policy and we are concerned that a University could through this legislation be designated as a fundamentally political organisation simply through explaining the impact of government changes. For example:

- Public discussion of policy on funding for education – particularly critical for regional universities given the long-standing inequity in outcomes for regional areas.
- Expenditure to communicate with a wide audience of the institution's views on a particular subject. Recent Charles Sturt University examples include growth of the defence industries, regional and rural education, indigenous productivity and participation, regional development and decentralisation and industry development such as the agriculture industry cluster at our Wagga Wagga campus.
- Expenditure in publicly advocating for the results of research to be adopted into policy in politically contested areas, illustrated by way of the examples provided above. To this end we note and support the submission provided by Universities Australia to the Committee on its inquiry into the Bills.

Our interpretation of the Bill is such that while we would be required to report our “political purpose” expenditure to the Australian Electoral Commission, we understand that nothing in the Bill would prohibit any of the University's business activities being caught up with regards to the definition of spending on a “political purpose”. The University would like to clarify that during the Committee's deliberations it confirms that this is the intent of the Bill and that legal interpretation would be as such on this matter.

The University is also concerned that should the Bill be enacted and that universities would subsequently be required to register as “political campaigners” or “third-party campaigners”, that reported expenditure could be deducted from future government payments, or that government funding, including Commonwealth Grant Scheme revenues would be quarantined from allocation to reportable expenditures as contemplated in the Bill. Such an unintended outcome would severely undermine the independence of Australia's universities and would bring into question the internationally renowned and highly regarded reputation of the Australian higher education system.

3. In addition, we are especially concerned with the ambiguity of the proposed Bills, and particularly the lack of clear, concise and non-subjective definitions contained within the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*. For example, to determine whether an organisation would be considered as a “political campaigner” under the Bill the following five sections of the Bill need to be interpreted:

political campaigner means a person or entity that is registered as a political campaigner under section 287L.

Note 1: See also subsection (8) and section 287C (political campaigners and third party campaigners that have branches or are not incorporated).

Note 2: See section 287F for when a person or entity is required to be registered as a political campaigner.

and;

287F Requirement to register as a political campaigner

(1) A person or entity (except a political entity or a member of the House of Representatives or the Senate) must be registered for a financial year as a political 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 or any one of the previous 3 financial years is \$100,000 or more; or*
- (b) *the amount of political expenditure incurred by or with the authority of the person or entity:*
 - (i) *during that financial year is \$50,000 or more; and*
 - (ii) *during the previous financial year was at least 50% of the person or entity's allowable amount for that year.*

Note: A person or entity might be taken to have incurred political expenditure in a financial year if the person or entity was required to be registered as a political campaigner or third party campaigner for a previous financial year but was not so registered (see section 287J).

and;

political expenditure means expenditure incurred for one or more political purposes.

Note: A person or entity might be taken to have incurred political expenditure in a financial year if the person or entity was required to be registered as a political campaigner or third party campaigner in a previous financial year but was not so registered (see section 287J).

and;

political purpose means any of the following purposes:

- (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 intentions 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 content 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*

and;

287H Requirement to register as an associated entity

(1) *An entity (except a registered political party or a State branch of a registered political party) must be registered for a financial year as an associated entity, in accordance with subsection (2), if any of the following apply in that year:*

- (a) *the entity is controlled by one or more registered political parties;*
 - (b) *the entity operates wholly, or to a significant extent, for the benefit of one or more registered political parties (see also subsection (5));*

- (c) the entity is a financial member of a registered political party;*
- (d) another person is a financial member of a registered political party on behalf of the entity;*
- (e) the entity has voting rights in a registered political party;*
- (f) another person has voting rights in a registered political party on behalf of the entity.*

The Bill requires substantial reworking to ensure that all definitions contained in the Bill are clear, concise and non-subjective, and in particular, ensure that the Bill does not contain definitions within the body of Bill text, as demonstrated above. From this example, it would appear that the Bills were developed in haste which provides the University with little comfort that the outcomes of the Bills are thoroughly understood, whether they be in the national interest or not.

One clear, concise and non-subjective definition is required in the Bill of the terms “political campaigner” and “third-party campaigner”.

4. Together with Universities Australia, we have deep concerns regarding the definition of “genuine academic purpose”, the phrase which is used in the exclusion in paragraph (g) of the definition of “political purpose”. That is, although a “genuine academic” purpose exemption is mentioned in the Bill, it is not clear how broad such an exemption would be in practice. An activity such as undertaking an opinion poll for the purposes of scholarly research would most likely be genuine academic activity and therefore expenditure on this would not count. However, it is not clear that activity directed towards encouraging government to adopt the results of research would be considered a “genuinely academic” activity, particularly if it were public.

We interpret the expression of views of communication have to be “solely” for genuine academic purposes, or at the very least, solely for a combination of genuine satirical, academic or artistic purposes, in order to be excluded from the definition of “political purpose”, given that paragraph (g) in the definition states:

(g) the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.

If there was any other purpose, however incidental, other than satirical, academic or artistic purposes, then on a literal interpretation it could not be said to be “solely” for such purposes. For example, if the same opinion poll was to be used for commercial purposes as well as for scholarly research, would that mean it should be excluded from the scope of paragraph (g).

We note, however, that the same phrase was discussed in the Revised Explanatory Memorandum (EM) for the *Electoral and Other Legislation Amendment Act 2017* with regards to the new section 321D of the Commonwealth Electoral Act 1918, where the Revised EM states at paragraph 14 that that Act:

... limits the restriction on anonymous speech to circumstances strictly necessary to protect the public interest by providing explicit exemptions for ... communication solely for genuine satirical, academic or artistic purposes

It then goes on to explain in paragraph 59 that, in reference to a communication engaged in solely for genuine satirical, academic or artistic purposes (paragraph 321D(4)(b)):

For a communication to be solely for genuine satirical, academic or artistic purposes, there can be no intent to affect voting in an election. In the event that there are multiple purposes which incorporate such an intent, then the communication cannot be solely for genuine satirical, academic or artistic purposes.

That seems to offer up yet another interpretation on the phrase, namely that a communication need not be solely for genuine satirical, academic or artistic purposes (notwithstanding the express

wording of the exclusion), provided that any other additional purposes do not evidence an “intent to affect voting in an election”.

The University seeks further clarification from the Committee of the meaning of the phrase “solely for genuine academic purposes” as used in the definition of “political purpose” and again believe that the definitions within the Bills need to be streamlined, simplified and made very clear.

5. With regard to the strategic interests and commercial activities of universities, the University believes that such core business activities should be excluded from the requirement to register and report, this would include the example provided above, to publicly advocate for increased funding for education or against funding cuts.

The University believes that the exclusion provided in the *Foreign Influence Transparency Scheme Bill 2017* be included in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* would rectify this weakness in the Bill. That is, to protect the strategic interests and commercial activities of universities and for that matter any other non-government organisation, the following intent must be included in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*:

- There are a number of exemptions in the Bills relating to foreign interference. Most particularly, commercial negotiation is not considered lobbying. Persons lobbying in pursuit of a bona fide contract or provision of goods and services are exempt from these requirements, and normal diplomatic or consular activity is exempt. This exemption must be extended to Australian organisations as well.

Failure to include this exclusion in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, would severely impact Australian organisations, as foreign organisations would be exempt from registering and reporting on commercial grounds and yet Australian organisations would not. Such an arrangement would greatly impact the competitiveness of Australian organisations negotiating commercial arrangements with Government. Inclusion of this exemption from “political campaigners” and “third-party campaigners” registration and reporting would also address our concerns regarding advocacy for increased education funding and like activities as this relates to a universities core business.

Inclusion of this exemption in the Bill, along with our suggestion above that one clear, concise and non-subjective definition be included in the Bill of “political campaigner” and “third-party campaigner”, would ensure that the strategic intent and commercial activities of the operations of non-government organisations, including universities and businesses would not be negatively impacted by the Australian Government’s proposed electoral funding and foreign influence reforms.

6. Finally, we express concerns over the compliance costs that would be incurred by Charles Sturt University should the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* be enacted. Should the proposed Bill be enacted the Government would need to provide Australian organisations with funding to off-set the additional compliance costs with the onerous reporting required by Bill.

I would be delighted to provide further information to the Joint Standing Committee and would be available to provide evidence at any proposed hearings that the Committee may undertake in relation to considering the merits of proposed electoral funding and foreign influence reforms.

Yours sincerely

Professor Andrew Vann
Vice-Chancellor