

Submission to the Electoral Legislation Amendment (Electoral Funding and Disclosure reform) Bill 2017

23 January 2018

About us

Baptist Care Australia is the national representative body for Baptist community service organisations. We work to bring social justice to Australian communities, advocating nationally on issues important to our members.

Baptist Care Australia members serve people in aged care, affected by family violence, experiencing homelessness, on low incomes, experiencing relationship breakdown, living with a disability, and affected by multigenerational disadvantage. Services include crisis accommodation, social housing, out of home care for children, counselling, no and low interest low schemes, and other programs that help people rebuild their lives or live independently with the right support.

With a combined annual turnover of \$700 million, Baptist Care Australia members employ over 9,000 staff and engage with more than 2,500 volunteers annually.

Baptist Care Australia is a company limited by guarantee, a registered charity and a public benevolent institution with income tax deductible gift recipient status.

Contact details

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Submission

Baptist Care Australia welcomes the opportunity to make a submission to the Inquiry into the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*.

In preparing this submission, Baptist Care Australia acknowledges the federal government's intention to use these proposed amendments as a way to deal with the threat of foreign powers interfering with our elections. We recognise there are legitimate reasons why our elections should be protected from foreign interference, and are not opposed to measures that would ensure the integrity of our political parties, members of parliament and electoral system.

The impact of the proposed amendments to the *Commonwealth Electoral Act 1918* under this bill is unclear and open to interpretation. The updated definitions and their application are both complex and vague, particularly in the way that they will apply to charities' and other not-for-profit organisations' ability to advocate.

Baptist Care Australia believes there is a fundamental difference between the role of charities in our public policy debate and the roles played by political parties and third-party entities. Charities in Australia exist to benefit the public and they contribute to our society in vital ways, including addressing disadvantage and strengthening the fabric of our communities and environment.ⁱ Charities make an invaluable contribution to our nation, providing vital services, engaging volunteers and helping beneficiaries all over Australia and internationally. The regulatory environment in Australia should be one that encourages charities to participate in the public policy debate, with a distinction made between entities that engage in political party activities and the non-partisan voice of charities.

The *Charities Act 2013* provides charities with the remit to advocate on issues that advance public debate,ⁱⁱ with the recognition that public advocacy is an important part of charities working to achieve their charitable purpose. Charities are permitted to promote or oppose any matter of law, policy or practice, as long as their advocacy furthers or aids their charitable purpose.ⁱⁱⁱ The Act also stipulates that charities must not, in any part of their advocacy, engage in the promotion or opposition of a particular political party or candidate for political office. In addition, charities must comply with a set of reporting requirements which include reporting income and advocacy activities as part of their charitable registration. There are significant penalties in place to ensure that charities and charitable organisations abide by the legislation which includes revoking a charity's registration and fines.

As the complexity of the amendments to the legislation and the lack of clear definitions, the consequences for a charity or not-for-profit being engaged in advocacy is unclear, and it is unclear how this would be applied if the bill were to be passed.

There is concern among charities about additional compliance obligations (on top of the existing obligations stipulated in the *Charities Act*), which include registering with the Australian Electoral Commission as a political campaigner, increased disclosure obligations, and obligations to nominate a 'financial controller' to be legally responsible for compliance (with a risk of criminal penalties for

non-compliance). These requirements may act as a disincentive for organisations to advocate for change that will help benefit the community and achieve a charitable purpose. Baptist Care Australia opposes additional obligations and penalties that would potentially divert resources away from providing services and advocacy and into managing red-tape.

Baptist Care Australia questions the reasoning behind extending the definitions proposed in this bill to apply to charities and charitable organisations given the existing robust legislation that applies to charities and the apparent lack of evidence that charities are a channel for foreign powers to hold influence over our elections.

If there were some reasonable concern that charities have been, or could be, used by foreign powers to influence Australian policy by providing funding, it is likely that this would have already been included in the *Charities Act 2013*.

Should the government believe there is a legitimate need to further regulate the activities of charities; this should be included in part of the existing charities legislation, rather than part of a bill where the intent is to stop political interference in elections.

Charities and not-for-profit groups greatly rely on the support of the wider community to fund their organisations, and rely on the trust and confidence of the public. In 2016, charity revenue in Australia totalled \$142.8 billion, with donations and bequests being a source of revenue for 70.1% charities.^{iv} Placing limitations or restrictions on the use of donations for charities and not-for-profits will impact on their ability to operate, and will inevitably increase the administrative cost of compliance.

A strong, transparent and accountable electoral system forms the basis of a functioning democracy, and should be appropriately protected. However the proposed changes in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* also place limitations on charities' ability to advocate on issues that advance the public debate. These proposed changes will instead cause an unnecessary compliance burden and potentially act as a disincentive for charitable organisations to advocate on issues that are of significant importance for the Australian public.

Recommendation

Charities and charitable organisations should be made exempt from the reporting requirements stipulated in the bill as there is no evidence to suggest that they have been or are likely to be used in the future as a mechanism for foreign powers to influence Australian elections.

ⁱ Australian Charities and Not-for-profits Commission, Regulator Approach Statement 2014

ⁱⁱ *Charities Act 2013*, s12(1)(k)

ⁱⁱⁱ *Charities Act 2013*, s12(1)(l)

^{iv} Australian Charities and Not-for-profits Commission Annual Report 2016