



# GetUp 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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## Overview

Public trust in our democracy is at an all time low, and it's easy to see why.<sup>1</sup> A broken system allows corporations and millionaires to funnel eye-watering sums to political parties with little oversight. Big business lobbyists casually admit these payoffs grant them special access to politicians and inordinate influence over public policy.<sup>2</sup> Meanwhile, everyday people across the country suffer the real world consequences.

Unfortunately, the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* (the Bill) does nothing to address these problems. Instead, it launches a broadside on civil society organisations and the rights of everyday people to have an impact on our democracy.

Australia's political system is crying out for *real* reform that will improve the lives of everyday people – including robust measures to crackdown on foreign interference in our democracy. However, such reforms should be aimed at ensuring Australians know who donates to political actors and creating robust safeguards against corruption. Of course, such reform should fairly and proportionately apply to third parties, from multinational corporations to grassroots organisations such as GetUp.

In drafting the Bill, this Government appears to have ignored the most straightforward public policy solutions. It has also failed wholesale to consult with civil society groups. This submission outlines six key reasons why the Bill should not be supported by any party, including:

1. Charities and civil society groups will be gagged, whereas multinational corporations with business in Australia will have free rein to campaign and donate without additional restriction;
2. It does not protect Australia's democracy from foreign influence; the Bill would not have prevented the very donations that ostensibly prompted the Bill's creation;
3. It creates an unwarranted restriction on international philanthropy;
4. It attacks fundamental democratic freedoms;
5. It imposes significant and unwarranted compliance burdens on charities; and
6. It creates dangerous new subcategories for civil society organisations engaging in advocacy.

This submission then outlines an alternative approach that would strengthen our democracy and serve the interests of the Australian people.

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<sup>1</sup> Confidence in democracy hits record low as Australians 'disaffected with political class', ABC News, 20 December 2016

<sup>2</sup> 'We pay for access': Minerals Council's admission on political donations, Sydney Morning Herald, 17 January 2018

Taken as a whole, the Bill enfeebles the integrity, vibrancy and strength of Australia's democracy. Should it be enacted into law, it would result in fewer people being afforded a voice in public debate, less ability for civil society to advocate for the values millions of Australians care deeply about, and a greatly reduced contest of ideas. As a result, it would result in more power and influence for corporations and the cashed-up lobby groups that represent them. This Bill is deeply damaging, fundamentally anti-democratic and GetUp strongly urges the Committee to recommend it be rejected outright.

## Key Problems with the Legislation

### Not an effective public policy solution

The Bill is ostensibly a response to a series of recent scandals surrounding foreign funding of politicians and political parties – and the potential for undue foreign influence thus created. Yet these scandals *would not have played out any differently* if the Bill were enacted into law. The “foreign donors” namechecked in the media – Chau Chak Wing and Huang Xiang Mo – *both* hold or held Australian citizenship or residency at the time the donations were made and therefore would be allowable donors under the provisions of the Bill.

Meanwhile, the Bill not only prohibits many not-for-profits from receiving international philanthropy entirely, but imposes a large administrative burden for them to confirm the identity of all donors – as opposed to, for example, simply determining whether the donation came from a foreign bank account. This represents a near-impossible feat for community organisations that depend on the small donations of thousands of everyday people. There is also a reasonable concern that banning donations by reference to a person's identity in the way currently drafted is unconstitutional.

It is clear the Bill is not serving the interests of the Australian public, concerned about the recent slew of foreign donations scandals – which raises the question, what or whose interests does it serve?

One clue is in what the Bill *omits*. It misses by far the biggest risk for “foreign influence” in Australia's democracy: large multinational corporations. Multinational corporations are major sources of “foreign donations” in Australian politics, making numerous large payments to major political parties.<sup>3</sup> They have deployed their ample resources to wage campaigns that have eroded protections on our natural environment, reduced the rights of Australian workers, and locked-in corporate tax cuts that have deprived everyday Australians of billions of dollars in additional public revenue.

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<sup>3</sup> Who did the political parties receive donations from?, ABC News, 1 February 2017

While these multinational corporations may have operations in Australia, and may even employ Australian workers, their legal and financial interests lie with their beneficial owners and foreign shareholders. The Bill fails entirely to address the growth of foreign corporate interests, which funnel money through Australian subsidiaries to political parties or peak industry groups.

## Negative impacts on civil society

Instead of reducing the potential for undue foreign influence in our politics, the Bill will attack civil society advocacy and threaten the rights of everyday people to participate in civic life. The Bill does this in five key ways:

- 1. The Bill requires select not-for-profit organisations to obtain a statutory declaration from mum and dad donors who give \$5 per week. This will destroy grassroots groups' and minor parties' revenue streams.**

Under the Bill, political campaign organisations – such as GetUp – will not be able to accept a donation of over \$250 cumulative over the financial year (the equivalent of just \$4.80 a week) without obtaining a statutory declaration from the donor certifying that they are an allowed donor. This declaration will need to be signed by an independent authorised witness, such as a Justice of the Peace or a Police Officer. This will require organisations to monitor cumulative small donations in real time, and once the \$250 ceiling is met, refuse further donations until a statutory declaration is obtained. Failure to comply results in *ten years imprisonment* or a fine of \$210,000.

Statutory declarations are typically used for court proceedings and other legal processes. For organisations and minor parties that rely on small donations, particularly online donations, expecting them to obtain a statutory declaration from hundreds or even thousands of regular small donors is absurd. This will have a major negative impact on the revenue of grassroots-funded civil society groups caught by the provision, as well as significantly impacting smaller political parties.

- 2. The Bill places an extremely high administrative burden on not-for-profit groups and will discourage them from engaging in public discourse.**

The Bill will require civil society groups - even very small ones that only spend \$13,500 throughout an entire year on advocacy - to negotiate burdensome laws to determine if they are regulated; to register with the AEC; appoint a financial controller; open separate bank accounts and meet complex record keeping and disclosure provisions. The penalty for not meeting these standards are well beyond the capacity of many organisations.

A small advocacy organisation unaware of its obligations or unable to negotiate complex legislation would be liable for a \$25,200 fine for *each day* that it is not registered. A political campaigning organisation would be liable for \$50,400 for *each day* it is not registered, or face 10 years imprisonment for accepting a foreign donation. It is realistic to assume many groups will stop advocacy altogether rather than risk such severe penalties.

**3. The Bill bans not-for-profit groups from receiving and using international philanthropy for advocacy, while leaving foreign corporate money untouched.**

By extending the same foreign donation ban and cumbersome regulatory requirements to civil society groups as that which apply to politicians, the Coalition Government is claiming that civil society constitutes equivalent corruption risks to our democracy. This is clearly untrue: politicians vote on laws, draft policies and have a large public megaphone – and they can be corrupted in doing so through big donations. On the other hand, civil society operates once removed from the political process, advocating to electors on issues that resonate with them. Both the likelihood and consequence of corruption is far less.

Moreover, the ability of multinational corporations and foreign-funded peak industry groups such as the Minerals Council of Australia and the Business Council of Australia to use foreign money for campaigning purposes will not be restricted the Bill. The likes of Chevron and Adani can continue to funnel offshore profits through their Australian subsidiaries for political ends. On the other hand, charities and other not-for-profits will not be able to rely on – or in some cases even accept – international philanthropy of any kind.

GetUp has campaigned for a ban on foreign donations *as part of holistic reform* that captures *all* political actors fairly. GetUp and experts alike have warned that piecemeal reform in the foreign donations space will not achieve this aim, but only serve to benefit the Government's allies in the corporate lobby. To be effective and fair, bans on foreign donations *must* be accompanied by donation and expenditure caps, and far greater transparency measures. Furthermore, holistic reform is the only way to prevent the formation of super PACs and other forms of corrosive regulatory circumvention.

**4. The Bill divides charities between those that do more advocacy (what the Bill calls “political campaigners”) and those that do less (“third party organisations”) in a bid to discredit more active advocacy groups.**

The charity sector has been under steady fire for its advocacy work by the Government. Recently, the Government announced a plan to severely restrict the ability of environmental organisations to advocate, and threatened to strip them of their charitable status if they become too “political”. Meanwhile, the

Government has also launched resource-draining investigations into the operations of not-for-profit groups, and appointed a staunch critic of charities' right to advocate as commissioner of the Australian Charities and Not-For-Profits Commission.

This context shows that the Government is actively looking for ways to use its power to intimidate and discredit its critics – and this Bill is no different. By distinguishing between charities that spend very little on advocacy in a year (<\$13,500) and those that spend more (>\$100,000), the Bill will put charities that are active on sensitive election issues in the government firing line. This government's track record – including seemingly punitive recent raids on the Australian Workers' Union – suggests that they will not shy away from doling out resource-draining investigations or threatening to take away the organisation's charitable status.

**5. The Bill forces any advocacy group that happens to align on policy grounds with a political party or parties, to formally associate with that party – or risk bankruptcy.**

Under Australian law, "associated entities" are entities that provide direct support to political parties. The concept was introduced to the *Commonwealth Electoral Act* in 1995 after the Liberal Party laundered \$7.2 million through a trust fund to avoid disclosure provisions.

GetUp has never given money to, or accepted money from, any political party – which goes to the fundamental purpose of the associated entity category. Moreover, GetUp has previously been reviewed twice by the Australian Electoral Commission at the instruction of a Coalition Member of Parliament, and twice the Commission has found that GetUp is *not* an associated entity. For a government determined to label GetUp as a 'front' of opposition parties, clearly the law as it stands is of little use.

Towards that aim, this Government has used this Bill to dramatically expand the definition of an associated entity to include third parties that – through no coordination or agreement – happen to have policy alignment with a political party, or alternatively, cause even an incidental detriment to a party's electoral adversaries. This perverts the original intent of the provision for the sake of attaching a label to one political actor in particular: GetUp.

It is no secret that this clause has been purpose-built to target GetUp, and as such, has come to be known as the "GetUp Clause". From all advice, the clause appears to have been carefully crafted to capture GetUp exclusively among large political actors, although small single-issue advocacy groups may be inadvertently caught by the provision.

The revised definition would lead to fairly ludicrous results. For example, if this Bill applied to GetUp's campaign activities in the 2016 Federal Election in the electorate of Mayo alone, it would potentially make GetUp an associated entity of the Nick Xenophon Team, the Labor Party, Family First, the Greens and the Liberal Democrats. And if applied to GetUp's campaign for a diverted profits tax to combat corporate tax cheating, for example, it would also potentially make GetUp an associated entity of the Liberal Party.

The "GetUp Clause" is an assault on the political freedom of Australian people. The GetUp movement does not have (or want) DGR status, meaning our one million members are free to engage in strategic campaign interventions without fear of the kinds of government crackdowns described above. Nor do we accept any form of government funding, removing the threat of funding cuts that so often prevent organisations from engaging in political advocacy. GetUp members are part of this movement because they want to realise change on issues they believe in – saving the Great Barrier Reef for future generations, making sure corporations are contributing their fair share to our local schools and hospitals, and humane treatment for people seeking asylum in Australia. People have the democratic right to campaign on these issues without being forced to associate with a political party.

## Roadmap for Genuine Reform

The GetUp movement has been campaigning for far-reaching reforms to improve the integrity of Australia's democracy for over a decade. We believe that our political system should reflect our nation's values – and elevate the voices of everyday people over those of vested interests and large corporations.

As such, we believe the Committee should reject the Bill, and recommend that reform be progressed according to the following principles:

1. **Transparency:** Australians should know who is funding our political parties, and what access that gains them. Genuine transparency and disclosure reform would involve:
  - a. reducing the disclosure threshold to \$1,000;
  - b. an end to donation splitting, through which a donor could give millions to a political party, split across different days and different State branches, without ever having to declare a cent;
  - c. frequent, if not real-time, disclosure, and the inclusion of additional details such as a donor's industry; and
  - d. lobbying reform, whereby the access that big donors have to our politicians is publicly documented.

2. **Fairness:** GetUp recognises that, while political corruption is a key target of campaign finance reform, it is not the only goal. Reforms should promote a platform for diverse, everyday Australians to have an impact on the policies that affect them and impact our nation.

Throttling the political impact of third parties and civil society, while leaving peak industry groups and corporations virtually unchecked, does just the opposite. It drowns out the voices of everyday people under the weight of corporate money and influence. Laws seeking to “level the playing field” should take account of the fact that groups such as GetUp are by their nature democratic, representing a wide range of voices, whereas corporations represent profit motives. Proper and proportionate regulation of third parties would involve donation *and* expenditure caps, to ensure corporate influence is regulated as closely as not-for-profit organisations. These aspirations form part of GetUp’s broader democracy campaigning.

However, acknowledging that such reforms do not achieve Parliament’s more immediate aims, GetUp recommends a more modest reform to achieve transparency. We also recommend clarifying the definition of “political expenditure” to make compliance more achievable by small third party campaigners. By doing so, Parliament will achieve greater participation by civil society, instead of chilling it.

3. **Overseas influence:** There exists a widespread public expectation that an entity influencing Australia’s elections should be genuinely representative of the interests of Australia, rather than foreign governments or other foreign entities. As such, it is an appropriate public policy objective to enact legal protections to restrict the capacity of multinational corporations, foreign governments and other foreign entities from exerting undue influence over Australia’s elections, and the current legal framework is not sufficient to achieve this aim.

Genuine reform in this area, that would achieve these aims without silencing civil society, would involve:

- a. banning donations from all foreign entities (including foreign political entities) to political parties, candidates and associated entities (this clause alone goes to the heart of the scandals that prompted this Bill); and
- b. banning donations from foreign entities to third party entities that have incurred significant political expenditure in any of the past three financial years (including GetUp, but excluding registered charities and unions).

## Recommendations to the Committee

**Recommendation 1:** That the Committee recommends that the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* be rejected by Parliament.



**Recommendation 2:** That the Committee recommends that the following reforms be enacted to improve the integrity of Australia's democracy:

1. Ensure that the *actual* controversies that prompted this Bill - money donated to political parties from sources with connections to foreign governments - are addressed.
2. Define the foreign donation ban by reference to the source of the income, as opposed to the identity of the donor.
3. Ban donations from public foreign entities and foreign bank accounts to political entities (such as political parties and associated entities) and third party entities, excluding registered charities, that have incurred significant political expenditure in any of the past three financial years.
4. Reduce the disclosure threshold for foreign and local donations to \$1,000 and introduce as close to real-time disclosure as possible.
5. Outlaw donation splitting, by which political parties can currently avoid disclosing millions in donations by having donors split their donations across different days and party branches.
6. Clarify the definition of political expenditure to lessen the significant burden on small third party organisations that may wish to advocate on an electoral issue.
7. Clarify the definition of associated entity to extend to entities whose annual expenditure includes a significant portion of political expenditure, and which have also entered into an agreement to incur political expenditure on the political party's behalf or for the purpose of directly benefiting the political party.

## Appendix 1: GetUp Financial Disclosure

The GetUp movement is not and has never been afraid of transparency. In order to dispel enduring misconceptions about GetUp's financial practices and operations, we are making significant additional financial disclosures. These additional disclosures are detailed here and in our Annual Report for Financial Year 2016/17.

These disclosures were first detailed in GetUp's submission to the Joint Standing Committee on Electoral Matters dated 6 October 2017. Those figures were approximations as we were awaiting our audited financials, which were subsequently finalised in November 2017. Here we present our final audited financial information to the Committee.

**Total receipts, including gifts-in-kind**

Total receipts for the financial year ending 30 June 2017 = \$8,377,434

The value of gifts-in-kind included in total receipts = \$16,269

**Total payments (in aggregate)**

Total payments for financial year ending 30 June 2017 = \$8,377,434

**Total amounts owed as at 30 June 2017 (in aggregate)**

Total debts: \$0

Total unpaid bills: \$444,289

As a matter of standard cash-flow management, GetUp pays outstanding bills on or just prior to the due date. Any outstanding invoices as at 30 June 2017 have subsequently been paid as they became due.

**Details of outstanding amounts owed over \$13,200 as at 30 June 2017**

The below includes all outstanding amounts of more than \$13,200 as at 30 June 2017.

As a matter of standard cash-flow management, GetUp pays outstanding bills on or just prior to the due date. None of the liabilities in the below table were past due as at 30 June 2017 and all have since been paid, on time.

To	Address	Total Amount	Financial or non-financial institution	Description
Australian Associated Press AAP	PO Box 3411 Rhodes Waterside Rhodes NSW 2138	13,332.00	Non-financial institution	Advertising
Australian Taxation Office	1/32 Martin Pl Sydney NSW 2000	85,979.00	Non-financial institution	Standard PAYG Withholding
Benedictus Media Buying and Planning Pty Ltd	PO Box 440 Darlinghurst NSW 1300	48,367.04	Non-financial institution	Advertising
Centre for Australian Progress	103/55 Holt Street Surry Hills NSW 2010	22,000.00	Non-financial institution	Consulting services
Community Shapers Pty Ltd	Civic Square Post Shop PO Box 536 Civic Square ACT 2608	15,544.24	Non-financial institution	Membership communications services
Essential Media Communications Pty Ltd	PO Box 242 Carlton South Vic 3053	22,000.00	Non-financial institution	Communications support and research
Essential Media Communications Pty Ltd	PO Box 242 Carlton South Vic 3053	18,700.00	Non-financial institution	Media and communications support
Green Energy Markets Pty Ltd	2 Domville Ave Hawthorn Vic	17,600.00	Non-financial institution	Market research and analysis

	3122			
Jones Lang LaSalle (NSW) Pty Ltd	Level 25 420 George St Sydney NSW 2000	54,947.45	Non-financial institution	Office rent
Office of State Revenue	Revenue NSW GPO Box 4042 Sydney NSW 2001	19,432.52	Non-financial institution	Payroll tax
University of Technology Sydney	PO Box 123 Broadway, NSW 2007	22,000.00	Non-financial institution	Commissioned Research

### Political donations = \$0

GetUp has never donated to, or received money from, a registered political party. Not in financial year 2016/2017. Not ever.

### Details of 'other receipts' received over \$13,200 during the financial year

GetUp already discloses donations of over \$10,000 aggregated over the year within 30 days on our website. Donations over \$13,200 from the financial year 2016/2017 was also provided in the previous JSCEM submission dated 6 October 2017.

The below table contains information about individual amounts received during the financial year 2016/2017, other than donations, that exceed the disclosure threshold amount under the *Commonwealth Electoral Act* (\$13,200).

These 'other receipts' are commercial transactions which include commission on members who have made the switch to Powershop as part of GetUp's Better Power campaign, Business Activity Statement (BAS) refund from the ATO, rent for subleasing some of our office space, and licensing fees for our tech platforms. These amounted to less than 5% of GetUp's income for financial year 2016/2017.

From	Address	Total Amount	Type
Australian Taxation Office	1/32 Martin Pl Sydney NSW 2000	\$43,247.27	BAS refund
Nature Conservation Council of NSW	Level 14, 338 Pitt Street Sydney NSW 2000	\$42,752.86	Rent (office sublease)
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$55,836.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$49,643.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$47,256.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$46,244.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$39,655.00	Commissions

Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$37,510.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$35,475.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$32,230.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$22,044.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$19,998.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$19,855.00	Commissions
Powershop Australia	Level 15, 357 Collins Street Melbourne VIC 3000	\$18,777.00	Commissions
Purpose	115 Fifth Ave, Fl 6 New York, NY 10003 USA	\$38,515.86	Software licence fee