

9 March 2018

cohealth
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Collingwood, Vic 3066

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

em@aph.gov.au

Dear Secretary,

Re: Submission to the Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

Thank you for the opportunity to participate in the Inquiry into the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*.

cohealth is one of Australia's largest not-for-profit community health services, operating across 14 local government areas in Victoria. Our mission is to improve health and wellbeing for all, and to tackle inequality and inequity in partnership with people and their communities.

cohealth provides integrated medical, dental, allied health, mental health and community support services, and delivers programs to promote community health and wellbeing. Our service delivery model prioritises people who experience social disadvantage and are consequently marginalised from many mainstream health and other services – such as people who are experiencing homelessness or mental illness, Aboriginal and Torres Strait Islanders, refugees and asylum seekers, people who use alcohol and other drugs, recently released prisoners and LGBTIQ communities.

cohealth is deeply concerned about the potential impact of the proposed *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* on the ability of charities to advocate for their constituents and communities. While the objective of the Bill is to improve the integrity of Australia's electoral system, it conflates political campaigning and issue advocacy. As such, it jeopardises public policy development and advocacy for a fairer, more prosperous and more sustainable society.

As stated in the Explanatory Memorandum the Bill seeks to increase accountability and transparency of those involved in political finance, with a view in particular to preventing foreign attempts to influence Australian elections. cohealth supports regulation that would prevent foreign influence on Australian elections.

Nonetheless, cohealth shares the serious concerns of civil society that the Bill goes far beyond stipulations only relating to the financing of political candidates and organisations. Specifically, the Bill:



1. adopts a very broad definition of “political expenditure” that extends to public communication of information, ideas, opinions, by any means (such as media, but also events, reports, public speeches, and presumably social media), when those views relate to “an issue in an election”;
2. sets out criteria for “allowable donors” that excludes international philanthropic organisations and even long-term Australian residents who do not have a permanent visa; and
3. stipulates that any organisation receiving funds from an individual or entity not on the “allowable donor” list be prohibited from engaging in “political expenditure” activities.

Other provisions in the Bill set out an onerous administrative regime of registration and financial controls. These apply to any organisation that undertakes “political expenditure”, regardless of whether an organisation receives funding from foreign-sources, or whether the organisation wields any significant influence on elections.

These obligations are to be enforced by substantial penalties, including up to 10 years imprisonment, and are accompanied by a very low threshold for reportable donations. The effect of these provisions is to create an onerous and expensive compliance regime that will act as a deterrent for most civil society organisations to continue to engage in activities that would be considered ‘political expenditure.’

In addition, the Bill will heavily constrain or ban charities from receiving international philanthropic donations, which support and advance a wide range of activities that funding from our governments and donations from Australians cannot achieve on its own.

As such, the consequences of the Bill are far reaching and will suffocate policy development and public advocacy, both of which are central to a healthy democracy. At the same time the Bill will do nothing to curtail the ability of wealthy corporations and individuals to gain access to politicians and influence policy directions through significant donations¹.

The Bill will also define many key parts of civil society, including charities, philanthropists and donors, as political actors, rather than advocates for a better society.

This attempt to restrict advocacy must be seen in the context of a number of other ongoing public debates about the appropriateness of advocacy as a valid charitable purpose. cohealth is profoundly concerned about these debates. Public comment and recent reviews, such as the Treasury review of Tax Deductible Gift Recipient Reform Opportunities and the appointment of a vocal critic of the charity sector as the new commissioner for the charities regulator, the Australian Charities and Not-for-profit Commission, attempts to question the legitimate role advocacy plays in civil society, even when this advocacy is directly related to

¹ <https://www.smh.com.au/politics/federal/we-pay-for-access-minerals-councils-admission-on-political-donations-20180117-h0jgpf.html>



organisational mission. Advocacy plays an essential and legitimate role in Australian society, that has been confirmed by the High Court.²

These concerns about deteriorating freedoms in Australia have been echoed internationally. In October 2017, the United Nations Special Rapporteur on the situation of human rights defenders conducted an official visit to Australia to inquire into the working environment for journalists, human rights lawyers and all of the people in civil society who work to protect human rights. His report highlights the cumulative detrimental effect of stifling advocacy that these debates are having. The report noted that the Special Rapporteur was “astonished to observe mounting evidence of a range of accumulative and persistent measures that have levied enormous pressure on Australian civil society”³. The current Bill was specifically referenced as one of a number of approaches designed to weaken civil society and freedom of association.

Many of the problems society faces have their roots in the systems, structures, policies and laws within which we all live. Advocacy enables organisations that identify the negative repercussions of these on our economic, social, cultural and environmental circumstances to take action on them. Advocacy assists the voices of those with less access to power and decision making to be heard. In this way it is an integral part of a mature democracy.

Furthermore, cohealth believes that this regular scrutiny of a lawful activity – namely advocacy – has a secondary effect of casting doubt over the legitimacy of that activity, resulting in a potentially chilling effect on advocacy activities. Recent research has illustrated the constraints charitable organisations impose on themselves due to their concern about possible negative repercussions.⁴ This is highly undesirable.

Despite the minority views trying to limit the advocacy activities of charities, there is widespread community support for charities' advocacy function. Indeed, a survey commissioned by the Fred Hollows Foundation has found that less than one in five Australians believed charities took one-sided, political positions with their advocacy.⁵ Support for charities to advocate on social issues crossed the political spectrum.

As an organisation whose purpose is to improve health and wellbeing, we know that advocacy is essential to delivering on our mission. While we provide a broad

² Aid/Watch ruling: http://www.abc.net.au/news/2010-12-06/charities_can_be_political/41852

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https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a97e2f824a6940809c6ab47/1519903484470/Report+of+the+Special+Rapporteur+on+the+situation+of+human+rights+defenders+on+his+mission+to+Australia.pdf?utm_source=TractionNext&utm_medium=Email&utm_campaign=Worm-Subscribe-020318

⁴ <https://civilvoices.com.au/>

⁵ https://probonoaustralia.com.au/news/2018/02/one-five-australians-favour-proposed-limits-charitable-advocacy/?utm_source=Pro+Bono+Australia+-+email+updates&utm_campaign=9d75817022-EMAIL_CAMPAIGN_2017_08_18&utm_medium=email&utm_term=0_5ee68172fb-9d75817022-147735377&mc_cid=9d75817022&mc_eid=83ca50ca54



range of health and medical services to the communities we operate in, as described above, we also recognise that health is affected by many factors including education, housing, employment, and social inclusion. We are committed to addressing these underlying causes of health inequality - the social determinants of health. To this end, we undertake an active program of advocacy activities designed to shift some of these underlying systemic drivers of poor health outcomes.

Our advocacy activities are as critical to achieving our purpose as are our service provision, health promotion, and community education activities.

From our own experience, and thinking of the experience of other organisations who are involved in similar purposeful work we cannot emphasise strongly enough the critical importance of advocacy as a legitimate form of charitable activity. Any proposals that restrict or limit advocacy by charities will be harmful to the Australian community, and to Australian democracy.

In this light cohealth firmly believes it is critical that the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* be significantly amended, following a comprehensive consultation process with charities and not-for-profit organisations. The Bill should be redrafted to focus on the need to restrict foreign donations to political parties from unduly influencing Australia's electoral processes. It should ensure that charities' right to advocate is not restricted, specifically ensuring that:

- Charities and not-for-profits are explicitly excluded from definitions as political actors engaging in political expenditure
- Charities and not-for-profits are able to continue to advocate on issues deemed likely to be debated during an election without new and onerous reporting requirements
- There is no prohibition on advocacy by charities and not-for-profits that receive funding from international sources.

Should the Bill remain in its current form cohealth urges the committee to recommend that it be rejected by Parliament.

Yours sincerely

Lyn Morgain

Chief Executive

