

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

By email: em@aph.gov.au

4 September 2017

Dear Secretary

Joint Standing Committee on Electoral Matters – Inquiry into 2016 Federal Election – Review of political donations

Thank you for the opportunity to provide a submission to the Joint Standing Committee on Electoral Matters (**JSCEM**) during its review of political donations.

Our submission focuses on the question of international donations to charities.

The JSCEM recommendation

In its Second Interim Report, the government members of the JSCEM recommended “a prohibition on donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties. This ban would not apply to dual Australian citizens either in Australia or overseas, or to non-Australian permanent residents in Australia.” (Chapter 3, Recommendation 3).

If implemented, this JSCEM recommendation could prohibit international donations going towards third parties, some of whom could be charities, for activity that is not currently considered to be political and subject to the disclosure regime under the Electoral Act.

The importance of charities engaging in advocacy

Laws and regulations should encourage and facilitate individuals and civil society organisations participating in public debate and discussion. The High Court of Australia has recognised the benefits

of the contribution made by charitable organisations to public discussion, which informs voters and policymakers.¹

Current constraints on political activity of charities

The political activities of charities are already well protected and appropriately restricted in Australian law under the *Charities Act (Cth) 2013* and the *Commonwealth Electoral Act (Cth) 1918*. Under the Charities Act, it is perfectly legitimate for a registered charity to undertake advocacy, so long as it does so in furtherance of its charitable purposes.² Charities cannot promote or oppose political parties or candidates for office, but they can distribute materials that analyse those players' policies and activities.³

Under the Electoral Act third parties that spend more than \$13,500 (as at FY17/18) for a "political purpose" are required to submit an annual Third Party Return to the AEC. This return details their political expenditure, and the gifts they receive to finance it.

A foreign donation ban on charities is clearly a step in the wrong direction. Autocratic governments around the world are stifling criticism by banning foreign donors from giving money to local non-government organisations.⁴ Australia should not follow that trend, and must ensure that community voices are encouraged as part of our democratic process.

Whilst we appreciate the need to address the complex issue of foreign influence in Australian politics, it is important that the JSCEM's solution is not drawn so broadly as to capture the activities of non-political actors and have an unintended chilling effect on public discussion.

Charities by their definition are not political actors – they are disqualified if they have a political purpose and are constrained from engaging in party politics. The charities regulator, the Australian Charities and Not-for-profits Commission is already empowered to sanction charities for breaches under the Charities Act.

Particular regulation of charities' activity is appropriate

Finally, we should not assume that the appropriate regulatory regime for political parties will be equally suited to charities. There is a clear difference in the rationale and end-game for different actors' engagement in public debate and electoral advocacy. Political parties acquire state power, are publicly funded to campaign and have other benefits such as access to the electoral roll. Political actors who are not charities can directly campaign for and against particular parties and candidates, and hand out how to vote cards. Charities, on the other hand, are by definition working for the public benefit and are prevented from engaging in party politics.

¹ *Aid/Watch v Commissioner of Taxation* (2010) 241 CLR 539.

² Australian Charities and Not-for-Profits Commission, *Submission to the House of Representatives Inquiry into the Register of Environmental Organisations*, 7.

³ See Australian Charities and Not-for-Profits Commission, *Advocacy by Charities* http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

⁴ See for example The Economist, "Foreign Funding of NGOs- Donors: keep out" *The Economist* (online) 12 September 2014, available at <http://www.economist.com/news/international/21616969-more-and-more-autocrats-are-stifling-criticism-barring-non-governmental-organisations> (accessed 8 May 2017).

Recommendation

We recommend that Australian charities registered with the Australian Charities and Not-for-Profits Commission be exempt from any legislation that bans organisations from receiving international philanthropy.

Thank you again for the opportunity to make this submission. We would be happy to provide further information that the JSCEM might find useful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'ehowie', written in a cursive style.

Emily Howie

Director of Legal Advocacy