Public Health Association of Australia submission to the Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017
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Introduction

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia. The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Preamble

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. The Australian Government, in collaboration with the States/Territories, should provide a comprehensive national cross-government framework on promoting a healthy ecosystem and reducing social and health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.
PHAA Response to the Bill

PHAA welcomes the opportunity to provide input to the Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (“the Bill”). We note that in addition to the current legislation reference, the Committee is also inquiring generally into political donations as part of its ongoing Inquiry into all aspects of the conduct of the 2016 Election.

PHAA’s position on the subject of political donations was recently outlined in our submission to a third committee process, namely the inquiry of the Senate’s Select Committee into the Political Influence of Donations (Submission No. 32). This Select Committee has yet to report.

Public rather than private interest is the first principle

In our submission to the Senate Select Committee PHAA drew attention to the need to ensure that influences on public decision-makers pursue the public interest and are based on evidence. As a matter of democratic principle, public decision-making must not be about private interests paying decision-makers for favourable outcomes. Attempts to purchase advantages for private interests almost inevitably clash with public interests and should be prevented.

Conversely, appropriate laws should protect our political representatives from advances made by private interests seeking inappropriate forms of influence.

These non-corruption principles apply equally to decisions made by ordinary officials, by ministers in our governments, and by our members of Parliament.

A constitutional basis for legislating to ensure that public decision-making is free of improper influences has also been endorsed by the High Court in the recent case of McCloy v New South Wales (2015). The Court upheld the legislative power of the Parliament of New South Wales to impose caps on political donations and expenditures, and to declare certain forms of donation to political parties and candidates to be ‘prohibited donations’. The Court based its reasoning on the potential for corruption arising from the connection between the specific business interests of the prohibited donors and the use by ministers of statutory powers which directly affected profit-making opportunities for those private interests.

PHAA will continue to argue that there are other relevant relationships between private commercial interests which should be disclosed (and in some cases prohibited) on account of the potential for some aspect of the public health of our community to be sacrificed to the profitability of private interests. PHAA believes that there several categories of business sector which should be ineligible to donate to public decision-makers, for example the tobacco and gambling sectors. NSW has been the national leader in this space.
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The remaining comments in this submission are limited to two specific issues arising from the terms of the Bill: the regime for registering and requiring disclosures from ‘non-party actors’, and the proposals regarding foreign donations.

Non-party actors

The Bill aims to create a public register for new categories of non-party political ‘actors’. In summary, were the Bill to pass the Act would define a hierarchy of four categories of political actors, with descending responsibilities to register and disclose political expenditure, as follows:

- “political parties”
- “associated entities” [of political parties]
- “political campaigners”
- “third party campaigners”

Associated entities, like political parties, are currently required to disclose political expenditure, at least to the extent required by the Act. The change proposed by the current Bill would be to widen one of four sub-definings of the term ‘associated entity’ in the current law (s.287) from including an organisation that “operates ...for the benefit of [a] political party” to also include one that “…operates to the detriment of one or more … political parties”. The change obviously picks up organisations which campaign against the parties or candidates, regardless of whether they do so out of generalized opposition to a party or as part of advocacy against a policy stance which a party has taken.

The Bill’s new categories of ‘political campaigner’ and ‘third party campaigner’ would be defined not by reference to relationships with political parties, but merely by activity related to elections and election issues. The two categories otherwise appear to differ only in terms of the proposed thresholds for the amount of expenditure they incur. Organisations that expend over $100,000 in a financial year would be ‘political campaigners’, those that expend between ~$13,500 (indexed) and $100,000 would be ‘third party campaigners’. Those expending less than $13,500 would be neither, and would remain outside the new regime.

In responding to these proposals, PHAA feels that a balance must be struck between the merits of bringing electoral influences to public scrutiny - especially where they undertake significant expenditures - and the possible impact on public interest groups which could detract from the discussion of important public issues.

Innumerable Australian individuals and organisations ‘campaign’ at elections, and also in between elections, on public health issues with which PHAA is concerned. Many might be well be described as ‘campaigners’, but almost all are entirely issues-based, and are not politically partisan in character.
Nonetheless it is fundamental to such campaigns that they will at times be supportive of particular candidates and parties whose policies align to advance their public interest goals on the relevant health issues. At other times they will be critical of candidates and parties whose policies are contrary or indifferent to the advocate’s issue-specific goals. All such advocacy is legitimate in a democratic system, and is important to assist governments to make wise, informed decisions in the greater public interest.

The Bill would impose legal descriptions, and also obligations, on (among others) public interest advocacy organisations, including those active in the public health space. Some organisations active in advancing public health issues might be comfortable with the description ‘campaigner’, but others many not. And all of them are likely to reject being in any way legislatively described as political partisans, when that is not their focus at all. The proposed new statutory descriptions may promote the very mistaken understanding that all political activity is primarily concerned with partisan outcomes for political parties, when in fact thousands of ‘campaigning’ organisations are not partisan, but are focused only on issues and with achieving the best outcomes for the common good.

For example, the Bill’s selected term ‘third party campaigners’ (currently used in the NSW legislation) could be misunderstood as meaning that public health advocacy groups captured by the definition were necessarily concerned with campaigning for ‘parties’ when they are not in fact doing so. More specifically, to some listeners the term might imply that such advocates are specifically campaigners for ‘third parties’, in contrast to ‘major parties’, when this may not in fact be true. Using a more neutral term would be preferable.

In regard to the change to the definition of the existing category ‘associated entity’, PHAA would point out that ‘operating to the detriment’ of any given candidate or party is potentially a ludicrously broad legislative provision. To illustrate, consider the example of a local mental health advocacy group expressing support in an election for each of the candidates (across all the nominating political parties and independent candidates) who reply positively to their issues-based questionnaire. By advocating that voters support the selected candidates, they are implicitly ‘operating to the detriment’ of the other candidates. Does this make the group an ‘associated entity’ of any political party whose candidates are not criticised by the group? At face value, the result could be that the group could become legally classified as an ‘associated entity’ of two or more of the political parties running candidates – or even of all of them. That result is clearly absurd.

Complicating matters further, in some cases an advocacy group may be critical of an individual candidate (and therefore be operating ‘detrimentally’ to their party, in some sense) precisely because that candidate has taken a position on an issue which is somehow distinct from the broader policy position of their party.
Understandably, issue-based public health advocacy groups will reject any unfounded suggestion that they are partisan in character, and that they are ‘associated’ with any specific political party (let alone with several).

The legislation is apparently phrased from the perspective of political parties having a ‘those who are critical of me are supporters of my opponents’ attitude. This narrow view of the political landscape fails to reflect the reality of issue-by-issue, non-partisan public policy debates which are the lifeblood of the public health matters with which PHAA is concerned.

PHAA suggests that this provision in the Bill needs to be reconsidered, and either simply deleted or else an alternative definition found which is logically limited to organisations which do indeed have an unambiguously supportive ‘association’ with just one political party. (PHAA certainly agrees that many such organisations do exist, and that they should be kept within the Act’s regime for transparency of political expenditures.)

Further we suggest that reconsideration be given to the new third and fourth categories of political actor. If they are to be retained the two categories might well be combined, and renamed in more descriptive and less inappropriate language providing a clearer definition. The provisions could also be crafted solely to catch entities which are acting in a narrow private or sectional interest, as opposed to those acting in the broader public interest.

**Foreign donations**

The case against financial or other influences by foreign governments is strong and is broadly agreed. PHAA supports legislating a workable regime to keep the influence of other governments (or government instrumentalities) out of Australian democracy.

We would note that the key target of these legislative proposals are foreign *governments*. We would also support ensuring that foreign corporations and other private interests should be prevented from unduly influencing our political system, consistent with our attitude on the financial influence of domestic corporations on the political process. We note that the Bill makes an attempt to do this. We suspect that enforcement and the following of money trails may be difficult in practice, but legislation should at least permit the regulatory agencies to try.

However we would caution against over-regulating against all influence in Australian public affairs by entities simply because of ‘foreignness’ per se, if that were to include public-interest entities such as the World Health Organization, other UN and international agencies, the International Red Cross, and a variety of international public interest and public health NGOs. From time to time these organisations will take
legitimate actions - including by communicating public messages - which are openly intended to have an influence on our public debates, and could therefore potentially have an impact on electoral behaviour.

Although financial flows are most unlikely to be in issue in such public interest advocate cases, some of those activities may potentially have an electoral ‘value’ to candidates and parties. Despite that, legitimate public interest activities should not be unintentionally captured by the new foreign donations regime.

Conclusion

PHAA supports the broad directions Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

However, PHAA would like to emphasise that Parliament should not limit improvements to the Electoral Act to this Bill alone, but should address other reforms to the regime covering political parties as well. Reforms to the thresholds at which donations to political parties should be disclosed, the current delays in parties lodging information about donations and the timetables for their public release, and the ability for donations to disappear in the course of financial movements between state branches of parties should all be addressed. These matters have been the subject of numerous other inquiries and reports, and legislative action is urgently needed.

In regard to the current Bill, we suggest that the Committee consider:

- Revising (or simply omitting) the ‘operates to the detriment’ language in the Bill in relation to classifying issue-based groups as ‘associated entities’ of political parties.
- Revising the language in the Bill which confuses the role of non-partisan issue-specific public interest campaigners with partisan and vested interest political actors.
- Simplifying the proposed ‘political’ and ‘third party’ campaigner categories into perhaps one better-defined category.
- Ensuring that foreign donations from multi-national corporations are banned by the Bill.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

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