

care DIGNITY
respect
change HOPE

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

25 January 2018

www.anglicare.asn.au

About Anglicare Australia

Anglicare Australia is a network of over 40 independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the Christian faith that every individual has intrinsic value. With a joint budget of \$1.48 billion, a workforce of over 18,000 staff and more than 11,000 volunteers, the Anglicare Network contributes to more than 50 service areas in the community. Our services are delivered to more than one million Australians, in partnership with them, the communities in which they live, and other like-minded organisations in those areas.

Anglicare Australia has as its Mission “to engage with all Australians to create communities of resilience, hope and justice”. Our first strategic goal charges us with reaching this by “influencing social and economic policy across Australia...informed by research and the practical experience of the Anglicare Australia network”.

Contact Person

Roland Manderson
Deputy Director

Anglicare Australia
PO Box 4093
Ainslie ACT 2602
T: 02 62301775
roland.manderson@anglicare.asn.au

Contents

About Anglicare Australia	2
Contact Person	2
Introduction	4
Democracy and public debate	4
Transforming unjust structures	6
Advocacy and democracy	7
Solving a problem that doesn't exist	8

Introduction

Anglicare Australia is pleased to take this opportunity to comment on the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*.

It is our view that the Bill as drafted serves no useful purpose. It would not address the influence of foreign interests in electoral politics in any meaningful way, nor would it shine any meaningful light on any untoward influence on elections or political decision making.

Furthermore, the Bill is anti-democratic and authoritarian. It is seemingly designed to intimidate common citizens and community representatives, discourage them from using their knowledge and work to inform and influence public policy, and limit their participation in the robust debate of the public sphere. This would make political activity less inclusive; preserving it instead for increasingly unpopular political parties, the staff they employ, and the well-funded lobby groups, industry advocates and associated entities who they regularly – though not always publicly – work alongside.

It is particularly telling that a Bill that would deliver complex, far reaching changes to the regulatory oversight of the most important organisations of Australian civil society has not been subject to a full regulatory impact statement. It is government accountability – rather than sector accountability – which is failing.

We recommend this Bill be withdrawn.

Democracy and public debate

We need to acknowledge what democracy means today. Key policy decisions are no longer made only in the lead up to an election the political parties presenting a manifesto for voters to endorse. Today democracy, in its social imaginary, is about everyone having a stake.

Politics is a continuous process. The ongoing contest of ideas and understanding which permeates the media and other public spaces now informs and justifies the decisions of our governments. The richness and diversity of these views, and an inclusive debate, has never been so essential to democratic government.

It is self-evident that government itself can never be apolitical. Every government situates its policy and decision-making in an ideological construction of society, which dictates what priority it gives to issues such as the configuration of the economy, the importance of the environment, and the approach taken to address social inequity, to name a few. Both the politics of those decisions and their implementation through the bureaucracy are fundamental fields in which to contest of ideas about what our society should look like and how it should function. It is vital, no matter who is in government, that civil society can critically engage with its policies and decisions. In other words, whatever their values, our governments exist for the benefit of the whole society and so all its constituent voices must be powerfully and equally present.

This Bill seems designed to discourage that participation by deliberately conflating participation in political discourse – the exchange of ideas on the how and what of our society (ordinary community debate) – with party political partisanship.

Under the guise of resisting foreign influence, it suggests that all advocacy is partisan electioneering, that politics itself is a subversive and dangerous activity when it involves community groups, and that the intense scrutiny and public exposure of everyone involved in seeking change is required.

A submission such as this one, for example, seems to fit the Bill's definition of political expression as “public expression of any views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election).” Every charity that employs someone to analyse issues such as these is likely to end up classified as a political campaigner. That classification would then impose a set of requirements so complicated that some charities will be forced to hire staff simply to manage their compliance. The Bill also requires the appointment of a financial controller, who will be personally responsible (and liable, with significant penalties including imprisonment in some cases) for many of the obligations. Charities will need to re-train, re-define and potentially recruit new staff for this role.

Others might stop speaking out altogether, deterred by the new requirements and huge penalties for getting it wrong – miscalculating the date that a charity becomes a ‘political campaigner’ could cost tens of thousands of dollars per day.

In contrast, however, the Bill would do nothing to ensure greater transparency when it comes to accessing and influencing politicians themselves, whether that is by Australian or international organisations and corporations. Nor would it do anything to make donations to political parties more transparent or their declaration more timely. Public trust in politicians and their parties is seen as low in Australia and around the world. Rather than address that issue, this Bill simply aims to curtail the ability of ordinary people and their community to participate in political discourse that might make politicians uncomfortable.

The question which should be at the heart of the Bill, but which palpably is not, is one of undue influence. Anglicare Australia takes the view that not-for-profit organisations working with communities and in the interest of those with the least power have an interest in influencing the public mind and policy. As we’ve pointed out, labelling that interest as political would be acceptable if being political was seen as a good thing, and if there were no great restrictions or threats held over ‘political actors’ by the state.

The Government would do better to welcome public participation and collective action in the sphere of national policy and debate as evidence of a healthy democracy – and then to ensure the funding of political parties and access to policy makers across the electoral cycle is both equitable and transparent. That would be a good approach to rebuilding trust in our political institutions.

Transforming unjust structures

Anglicare Australia is a network of 34 Australian based social service organisations, with affiliates in New Zealand and Papua New Guinea. Each member is independent; has grown from and is connected to the Anglican Church; and reflects intrinsic values of equity, care and inclusion that we share. The services they provide – such as emergency relief, foster care, aged care, social housing – have come about in response to immediate need. Yet they all reach beyond delivering human service to the goals of social change.

That is not surprising. There are five Anglican Marks of Mission and this Bill would impact directly on the three of them which relate to the need for social change:

- To respond to human need by loving service
- To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation, and
- To strive to safeguard the integrity of creation, and sustain and renew the life of the earth.

It would seem that the Bill constructs the work of the Anglican Church – as well the agencies that make up Anglicare Australia – as in need of curtailment or control on the grounds that it is, in essence, electioneering that exercises undue influence. In setting out to argue that the activities of organisations such as ours should be curtailed on this basis, the Bill is arguing for a redefinition of political discourse, which is self-serving and ultimately a betrayal of Australian civil society.

Forcing organisations involved in public advocacy to register as ‘political campaigners’, coupled with the onerous proposed parsing and reporting of what funds are used for ‘political’ activities, will result in the silencing of many organisations currently active and positively contributing to Australian public debate. The irony that this is an initiative of a government which has championed the removal of red tape is obvious. In addition, the severe financial and criminal personal and organisational penalties for non-compliance with these proposed requirements will create a level of risk that will further see organisations refrain from public comment.

It would be a complex and resource-consuming exercise under the Bill to hold the Anglican Church and associated service delivery organisations to account for every donation made to it and judge every utterance, even sermons, as a form of political campaigning. The problems that would come through government encouraged workplace giving, which does not have the provenance this Bill requires, are likely to be unsolvable.

The Bill appears to ignore the fact that the majority of organisations that will be affected undertake public comment and advocacy as only one component of their activities, and then deliberately conflates partisan political activity with public debate and advocacy. As a result, the amendments would force many organisations to choose between service delivery and having a public voice, denying the essential relationship between the two in providing a critique of policy and decisions; and hence improving our society.

These measures would redefine civil advocacy as being party-political. It is one of the tools of authoritarian regimes to make every stance either with or against the government, the party, or the state. This approach threatens democracy, and would impoverish the thinking and capacity of political parties themselves.

The role of advocacy

There has been a great deal of commentary on advocacy as a legitimate tool for charities to fulfil their charitable purpose. Anglicare Australia goes further, arguing that advocacy is essential to the work of charities and other community organisations.

In 2010, a landmark High Court judgement involving Aid/Watch found that charities could have a dominant purpose of influencing and engaging in public “‘agitation’ for legislative and political changes.”¹ The decision applied the right to freedom of political communication in Australia, which the High Court had previously defined as a constitutional precondition for representative democracy. In the Aid/Watch case, the High Court found that “the generation by lawful means of public debate... itself is a purpose beneficial to the community.”²

Following this, the Charities Act 2013 recognised that charities can advance their purpose by engaging in public debate about public policies. Systemic advocacy is clearly recognised and protected under this definition.³ And while campaigning for or any party or candidate is rightly not allowed, charitable organisations are permitted to compare or rank the policies of both parties and candidates.⁴

At the heart of this existing legal framework is a recognition that advocacy is an essential, and often the most effective, means of achieving charitable purposes. For agencies in the Anglicare network, tackling poverty and inequality entails not only providing services to assist people at coalface of these issues, but also advocating for policy and legislative change to address the root causes – as “addressing unjust structures” and “safeguarding the integrity of creation” would require.

Without the ability to influence policy and social attitudes, and support those we work with to articulate their own views, Anglicare Australia would simply not be able to deliver on our mission to “engage with all Australians to build communities of resilience, hope and justice”.

Advocacy and democracy

Anglicare Australia believes that elections are much more than a platform for politicians – a notion that was implied in this Committee's Interim report on the inquiry into the conduct of the 2016 Federal Election.⁵ In recent years, and particularly since the 2016 federal election, a number of politicians have commented negatively on the increasingly active participation of civil society organisations in election campaigns. They have frequently argued that civil society organisations have a lesser “right” to engage in election campaigns than political parties and candidates. This view is both harmful and wrong, fundamentally ignoring the role of self-interested advocacy by far more powerful players in the political debate.

Advocacy is an essential aspect of civil society organisations’ ability to participate in public life and influence public policy and action. Advocacy is the act of having a voice in the public arena, and is an essential element of a free society. The Government has an obligation to

¹ Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42

² Ibid.

³ Maddison, S. and Carson, A. (2017) *Civil Voices*. University of Melbourne. p8

⁴ Ibid.

⁵ Joint Standing Committee on Electoral Matters (2017) *Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations*. Parliament of Australia. Recommendation 4.

encourage public participation by civil society organisations. Anglicare Australia explores these concepts in greater depth in our recent response to the Treasury's recent consultation on DGR arrangements,⁶ which we have appended to this submission.

Without charity and civil society advocacy, we would see a shallow and weak public debate on important issues such as inequality, the causes of poverty and unemployment, the design of the tax system, and the role of fossil fuels in global warming. Yet it is only through robust debate of these and other controversial issues that major reforms that improve people's lives and protect the environment are achieved. We only have to consider the changed perception of slavery, civil rights, women's suffrage, child labour and pollution. Without community advocacy, charities would still be delivering sandwiches to children working in the mines instead of changing and improving their lives.

The measures proposed by this Bill would weaken debate by silencing the voices of the poor who are typically represented by charities in the public arena, and by placing onerous restrictions on civil society groups representing the views of large numbers of Australians. This will result in public debate being further dominated by those who already enjoy access and privilege.

Solving a problem that doesn't exist

Anglicare Australia notes that no evidence has been provided through the JSCEM's Inquiry to the 2016 Federal Election that foreign donations to charities, community groups, or civil society organisations eroded debate at the last election. The Committee also provided no evidence that debate generated by civil society more broadly led to undue influence at the election – indeed, the evidence that does explore community advocacy largely focuses on its social value.⁷

On the other hand, there is no shortage of research on the impact on public debate from lobbyists, donors, and other self-interested advocacy. As Anglicare Australia's submission to the Treasury notes, business spending on advocacy and lobbying can be written off as a legitimate cost. Membership fees that companies pay to their own advocacy bodies are tax deductible. Even donations to political parties, from businesses, unions and individuals, can be taken from pre-tax income. On top of that, many of these interests can afford to spend millions on lobbyists to help them secure important meetings, on advertising before elections, and on airspace to set the political agenda.

None of this is curbed by the Bill. Indeed, our reading of the Bill is that foreign donations can still be accepted provided they are accounted for in a separate bank account and not directed to political expenditure – a step that any party or large industry group can easily take, and that does very little to restrict the influence of these donations.

It is disappointing that the amendments proposed by this Bill take no action on the activities that truly corrode our democracy. Anglicare Australia calls for this Bill to be withdrawn.

⁶ Anglicare Australia (2017) *Submission to the Tax Deductible Gift Recipient Reform Opportunities Discussion Paper*. Anglicare Australia.

⁷ Human Rights Law Centre (2017) *Defending Democracy: Safeguarding independent community voices*. Human Rights Law Centre. p3.