



Submission to Economics and Governance Committee

Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

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submission

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Economics and Governance Committee for the opportunity to provide feedback on the Electoral and Other legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), midwives (RM), nurse practitioners (NP), enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 61,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

This year, 2020 will be dedicated to celebrating the International year of the Nurse and Midwife, in celebration of the 200th year anniversary of the birth of the founder of contemporary nursing, Florence Nightingale. The World Health Organisation (WHO) nominated Nurses and Midwives for their invaluable contribution to health care and to highlight the need for a strengthened Nursing and Midwifery workforce to achieve sustainable development goals (SDG) and universal health coverage. The QNMU is proud to embrace this opportunity to invest in the Nursing and Midwifery professions, particularly the investment into minimum safe staffing ratios and skill mix across all health sectors.

The QNMU is a democratic organisation that values the contribution of all citizens. We consider that public confidence in the integrity of Queensland's electoral process is paramount to upholding the democratic system. As such we commend the Economics and Governance Committee for your commitment to enhancing the integrity and public accountability for state elections through the introduction of the Bill.

In the interest of ensuring compliance, the QNMU believes that the Bill should be accompanied by sufficient guidelines that provide adequate detail about the proposed amendments. The QNMU expresses concern for the unintended consequences of the Bill. We question the need for more legislation to regulate third party activities that encapsulate union activities. The Bill appears to emulate previous aims to increase union reporting, placing excessive power and scope to scrutinise third party expenditure¹.

¹ *Queensland Police Union of Employees v Queensland (High Court)*

As a trade union registered in the federal and state jurisdictions, we have diligently complied with all legislative requirements around the disclosure of 'political expenditure' and donations, the authorisation of communications, advertisements and other election related activities and materials and record keeping.

We highlight the following proposed changes as examples of ambiguous wording that makes it difficult for organisations to understand the requirement let alone comply. We suggest that these proposed changes will make planning for communications to members, campaigning and expenditure difficult for organisations, as we are unsure if it is captured by the regime. As such, we request that sufficient guidelines are provided to accompany the bill, particularly with regards to the following aspects.

The QNMU recommends the following:

- Sufficient and comprehensive guidelines should be developed to accompany the Bill in order to promote compliance with the amendments;
- Strengthen provisions for appointing a proxy third party registered agent.

Recommendations

Expenditure Caps

The Bill imposes caps on electoral expenditure for political parties, including third parties who are involved in electoral campaigning. We acknowledge that expenditure caps are limited to specific kinds of expenditure and in the case of third parties, such as the QNMU, require a dominant purpose threshold to be considered. However, in our view the inclusion of 'other election material' specified in Section 199 (2)(a), requires further clarification. The QNMU considers that the wording 'other election material' is ambiguous and provides a broad scope for interpretation and increases the inadvertent risk of non-compliance. The QNMU communicates with members to inform them of 'electoral matters' through various publications, newsletters and online community platforms. Often communication is not intended to influence the way members vote in an election, but rather focuses on progressing the Nursing and Midwifery professions. This provision could install unnecessary restrictions on our freedom to communicate with members in a manner consistent with their profession. Defining what is meant by 'other election material' will help to elucidate this concern.

Additionally, Section 199(2)(a) requires further explanation as to whether the expenditure for designing, producing, printing, broadcasting or publishing election material includes salaries. For instance, are the wages and salaries of QNMU employees working on advertisements or other election material intended to be captured?

Registered third parties will be subject to an electoral expenditure of \$1 Million with a cap of \$87,000 per electorate. The QNMU encourages further guidelines to be developed that advise how such expenditure provisions will be dealt with.

Meaning of a Direct Cost

The QNMU considers that the bill should provide guidelines that explain the meaning of a 'direct cost' of distributing advertising or other election material, as specified in Section 199(2)(b). In general terms, a direct cost is often interpreted to mean the direct material costs and labour costs specific to a product or performance of a service of business function. The bill makes no mention of the intended meaning of a direct cost. The QNMU suggests that providing additional guidelines is necessary to adequately inform campaigners of the amended provisions and encourage compliance with the changes.

Expenditure of Another Kind Prescribed by Regulation

Section 199 (2)(d) enables the types of electoral expenditure to be expanded via another kind prescribed by regulation. As a third party campaigner, the QNMU is concerned that the bill provides a broader scope of electoral expenditure, without appropriately defining what the provisions capture. If implemented, there is a risk that the expanded definition will give rise to a disproportionate power to regulate third party expenditures. We seek to question the benefit of including this power in the Act?

Agent of Registered Third Party

The amendment proposes that the registration of agents will be expanded to include registered third parties, according to Section 208 (2). The proposed scheme provides the requirements for registration, in conjunction with Section 210. Section 213 provides an obligation for each member of the executive committee to be responsible for the relevant obligations in the absence of the agent. However, the provisions fail to acknowledge the process for appointing a proxy agent, in the absence of the originally appointed third party agent. The QNMU considers the potential for impractical interpretation of the provision, whereby there is no opportunity or requirement to appoint an acting replacement agent.

The QNMU recommends that the Bill consider a provision that enables a registered third party to appoint a proxy agent to undertake the obligations of an agent in their absence or due to an extenuating circumstance.

Donations

The QNMU considers that the proposed amendments fail to provide adequate detail about how donations will be dealt with. We suggest that sufficient guidelines should be included that provide detailed advice for compliance.

Returns

Further supporting documentation is required to determine the scope of the definition of electoral expenditure, as specified in Section 199(2). The scope of the definition is critical for informing expenditure record keeping and completion of returns, and most importantly informs compliance. The proposed model appears to be transactional and focus on the procurement activities of a registered third party. This is evident in provisions ss199, 281 and 283(2).

Section 199 of the Bill considers electoral expenditure in the context of an externally sourced production process or service delivery. We express concerns that the amendments are unclear if they are focussed on expenditure on externally produced advertisements and other material or includes the costs of internally sourced production processes. Political campaigning is likely to be conducted under time constraints and managed as a project that involved both external and internal resources. In our view, the legislation should clearly outline the scope of the definition of electoral expenditure and the form of the disclosure return.

The QNMU suggests that supporting guidelines provide details about the intended meaning of electoral expenditure, specifically the scope of internal and external considerations. Currently, the definition is ambiguous and creates complexities for the planning of campaigns and accurate recording of expenditures. In order to comply with the Act, a review of the intended meaning of expenditure is required.

Section 281 stipulates that electoral expenditure is incurred when goods or services are delivered or provided by an external entity. Section 283(2) prescribes that the structure of the return is considered in terms of a transaction between a third party and an external supplier or service provider.

Reporting

Often duplicative regulation and reporting procedures place an excessive and unnecessary burden on organisations. The QNMU recommends further consideration of the 'report once, use often' principle to help to streamline expenditure reporting processes for registered organisations (ACNC, 2017).

Conclusion

The QNMU is a well organised and efficient union that has complied with all reporting and disclosure requirements. Whilst we encourage the intention to strengthen the electoral framework, we see no need for further impingement on our ability to communicate with our members and the wider community in whose interests we continue to act. In order to comply with the amendments, we recommend that sufficient guidelines are provided to assist in compliance with the proposed expenditure regime. Additionally, further consideration should be given to the potentially disproportionate powers given to regulate third party expenditure.

References

Australian Charities and Not-for-profits Commission (ACNC), (2017). Report Once, Use Often: Charity Passport Guide for Government Agencies. Retrieved from <https://www.acnc.gov.au/sites/default/files/Report%20Once%20Use%20Often%20Guide%22for%20%20government%20agencies%20on%20using%20the%20Charity%20Passport%20%5BPDF%201.44MB%5D.pdf>

Kwan, M. (2019). When is an Electoral Expenditure Cap Justified? A Critique of Unions NSW v New South Wales. Retrieved from <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2019/06/2019-6-KWAN.pdf>

Queensland Police Union of Employees v Queensland (High Court)