



GetUp Submission on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

GetUp welcomes the opportunity to make a submission to this inquiry. GetUp has been a strong advocate for donations and electoral expenditure reforms as a part of GetUp's long-standing campaign for democratic integrity reforms.

Summary

GetUp is broadly supportive of these reforms as they go a long way to restoring trust in democracy. However, there are several key deficiencies and some minor technical changes needed for this bill.

Key Changes

1. Signage

GetUp supports the new restrictions on polling day signage for political parties, however, believes the prohibition on Third Parties is unconstitutional and inhibits democracy. The bill should be amended to allow third parties to display signs on polling day with the same restrictions for political parties.

2. Membership fees to third parties

Should be capped at \$4000 per individual or organisation to prevent rorting by corporate donors.

3. Changes to the definition of Electoral Expenditure

The current definition does not capture some significant items of electoral expenditure such as staff and office costs. However, the current definition also imposes a significant burden on smaller third parties and the definition should be narrowed for third parties with an annual income of less than \$50 000.

4. Threshold for third party campaigners

The suggested threshold of \$1000 should be raised following consultation with third parties.

5. ECQ needs greater enforcement powers

The ECQ needs greater enforcement powers to ensure industry groups and corporations do not exploit loopholes or fail to report.

6. Clarity on political communication for third parties

A note should be inserted in Section 199 to provide greater clarity on electoral expenditure for third parties.



Technical changes

1. Drafting Mistakes

Clause 4 omits the definition of 'source' which already does not exist.

Clause 7 omits the definition of 'source' which already does not exist.

Clause 26, which makes amendments to Section 263, creates two 'Section 263 (4)'

2. Greater clarity on handling donations

Section 263 raises several ambiguities around handling donations, particularly for organisations who collect donations for a variety of purposes, not just elections. In particular, donations that are not electoral expenditure should not be required to be disclosed.

3. Separate Bank Account

The requirement for a separate bank account is not only unnecessary and illogical, but it makes compliance with the law practically impossible at worst or impractical and ridiculously onerous at best. All the aims of this legislation can be achieved without the requirement for separate bank accounts.

GetUp's vision for our democracy - The more democracy the better

We believe that everyday people working together and chipping in what they can afford to help create the change they want to see is democracy at its very best. Australia must rebuild a completely transparent system of political finance that amplifies the small donations of everyday people.

GetUp believes these reforms should cover political parties, independent candidates, associated entities, and political campaigners like GetUp, as well as industry organisations like the Queensland Resources Council.

Key Changes

Signage Prohibition on Third Parties

GetUp supports the new limitations on polling day signage for political parties and candidates. However, we do not support the prohibition on third parties which is unconstitutional and inhibits democracy. The prohibition is, in our view, unconstitutional as it unreasonably infringes on the freedom of political communication implied in the *Australian Constitution* (the **Implied Freedom**).

The Implied Freedom promotes healthy democracy by ensuring voters are able to exercise a free and informed choice at the ballot box. Excluding third parties from communicating with voters at polling booths via signage limits the range of voices providing information to voters on election day. Not only will voters lose the benefit of information from third parties, but they will be exposed only to signage from political parties and candidates with a direct vested interest in the outcome of the election.



While we appreciate how the 'crowding out' of particular voices could also hinder free and informed voting, we do not believe that excluding a whole category of political communicator is a reasonable or appropriate measure to prevent this from occurring.

We note that in past rulings the High Court has refused to accept restrictions that for no valid reason, apply only to third parties.¹

The bill should be amended to allow third parties to display signs on polling day with the same restrictions for third parties. No one wants a return to the ugly bunting arms race that currently occurs. However, all political participants have the right to participate in elections.

Membership fees

GetUp believes this Bill can be a good step towards the comprehensive reforms that are essential to restore the eroded community confidence in our democracy. However, donations are not the only form of income received. Whilst GetUp's campaigning is powered by many small donations from everyday people in Australia, that is not the case for the campaigns run by groups like the Queensland Resources Council or the Queensland Chamber of Commerce. Their income includes as major sources membership fees and sponsorships from corporations.

The bill restricts sponsorships, which GetUp supports, however, it does not restrict membership fees. GetUp recommends that membership fees to third parties be capped at \$4000 per individual or organisation.

If this loophole isn't closed, corporate donors will simply bypass the donation requirements and pay substantial sums of money to become members of third parties in lieu of donating.

Changes to the definition of Electoral Expenditure

Expenditure caps are a vital reform to restore trust in democracy. If you can limit the amount of money political actors can spend, you limit the amount that they have to fundraise. GetUp is fully supportive of the introduction of Expenditure caps. GetUp is concerned that the proposed definition of Electoral Expenditure does not capture some significant items of electoral expenditure such as staff and office costs. This should be amended to capture these items otherwise it will be an uncapped loophole to be exploited.

However, the current definition does impose a significant burden on smaller third parties and a separate definition should be inserted for charities and organisations with an annual income of \$50,000 or less. The new definition would limit Electoral Expenditure to material that refers to a political party or candidates; and how a voter should vote in the election.

¹ *Unions NSW vs New South Wales* High Court of Australia, 29 January 2019, <http://eresources.hcourt.gov.au/showCase/2019/HCA/1>



Threshold for Third Party Registration

GetUp welcomes moves to improve transparency and accountability. GetUp believes that all candidates or political parties running for political office have an obligation to ensure compliance with real time disclosure because of the need for transparency when it comes to those running for, and potentially winning political office.

GetUp has voluntarily gone above and beyond what is required in our transparency over our donations, with real time disclosure of the amount donated to GetUp, number of donors, and average donation amount available on GetUp's website, and each month GetUp discloses the identity of all donations over \$10,000 on an annual cumulative basis.

GetUp believes our democracy is improved if similar transparency is shown by political parties and candidates for parliament. However, while GetUp is in a position to comply with reasonable administrative workloads related to these reforms, it must be noted that smaller organisations, especially charities whose main focus is not political campaigning, may struggle. GetUp is sympathetic to this, and recommends the threshold for third party registration be lifted following more consultation with groups engaging in the political process.

Greater Enforcement

It is commendable that the Queensland Government is trying to get Big Money out of politics. However, GetUp believes that the Electoral Commission of Queensland (the **ECQ**) may lack the full enforcement and investigative powers to ensure corporations and wealthy individuals comply with the law. It also seems that the only way breaches will be found if organisations register with the ECQ and self-report. There does not seem to be any legal requirement or applicable penalties requiring an organisation to register and report its expenditure and income to the ECQ.

GetUp recommends a requirement be placed in the legislation for organisations to register and report if they are liable under the Act's provisions. Failure to report should be accompanied with a specific offence.



Clarity on political communication for third parties

The definitions of what is and isn't electoral communication can be confusing and not all third parties have the relevant expertise. To assist third parties in their compliance work, and the ECQ in its regulatory and enforcement duties, a note should be inserted in section 199 to provide greater clarity on electoral expenditure for third parties to ensure their day-to-day activities are not captured.

Using the Commonwealth *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* as an example, the note for section 199 *could* read:

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).