



9 January 2020

Committee Secretary
Economics and Governance Committee
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Greenpeace Australia Pacific (GPAP) welcomes the opportunity to make a submission to the inquiry into the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Bill 2019 (Bill)*.

While GPAP supports the stated intention of the Bill, we are concerned that the onerous donation caps, restrictive expenditure caps and the arduous accounting and disclosure obligations placed on charities and not for profits by the Bill will stifle non-partisan, issues based advocacy and be a chokehold on donations for these groups as they seek to fulfil their community objectives.

GPAP is a leading independent campaigning organisation. Amongst other tactics, we use peaceful direct action and creative communication to expose global environmental injustices. We have over one million supporters and are part of a global network tackling the world's most pressing environmental problems. We are an entirely independent, people-powered, registered charity and do not accept donations from governments or corporations. GPAP is likely to be a third party in the upcoming 2020 Queensland State Election.

The consultation process

We are concerned that the current consultation process for the Bill does not allow a reasonable timeframe for organisations and the general public to respond. In particular, the Bill has a significant impact on charities and not for profits. These organisations have limited resources and the short timeframe for consultation, combined with the holiday period created a barrier to public participation for these groups, and the broader community. We recommend the Queensland Government extend the submission deadline to 24 January 2020, and postpone the Committee hearings to allow adequate public participation and facilitate a fair and equitable process.

The essential role of civil society within our democracy

Civil society groups, including charities and not for profits play a vital role in the democratic process by providing critical analysis of political policies and educating the wider community on the implications of such policies. Entities like GPAP are an essential voice within the political framework because they are independent from party politics, do not have conflicts of interest and are able to use their specialised industry knowledge to provide an accurate, unbiased assessment of how policies will impact



their charitable goal – in our case - the protection, preservation and enhancement of the natural environment.

In light of Australia's high level of media ownership concentration,¹ it is more important than ever that the voices of independent entities like GPAP are not drowned out of societal discourse around election time. A small group of corporations and interconnected family interests control much of Australia's media, and it is no secret that many of these entities are closely affiliated with, and supportive of, particular political parties.² Nine Entertainment even went so far this year as to host a AUD\$10,000 per head fundraiser at its headquarters for the Liberal Party.³

The partisan nature of our concentrated press poses a barrier to the ability to conduct free and fair elections. The close affiliations between the oligopoly of media owners in Australia and the major political parties hampers the ability of the major media outlets to inform, criticise and stimulate debate on political policies.

As such, independent voices, like those of Australian charities are increasingly important. They educate, raise awareness of, and encourage debate on important public policy issues without the vested interests that often taint the views of the major media outlets and political parties. Civil society educates the public, engages in public policy debate, undertakes research, and encourages public communications on contested policy questions, and this essential function within our democracy is never more important than in the lead up to an election when policy positions are being formed and voters are eager for accurate, unbiased information to make informed decisions at the polling booth. Reforms which restrict or discourage organisations from doing this important work are not in the public interest.

The definition of “electoral expenditure” in the Bill restricts civil society from fulfilling their role within our democracy

The Bill as proposed would undoubtedly restrict GPAP's ability to engage in public interest conversations around election time due to the vague definition of “electoral expenditure” in the proposed section 199. Without further clarification, this definition potentially captures expenditure incurred by charities for issues-based advocacy which, as discussed above, is an essential function of our democracy.

The definition is broad. It goes beyond expenditure incurred for the dominant purpose of promoting or opposing a political party or candidate and instead seeks to

¹ Tim Dwyer, 'FactCheck: is Australia's level of media ownership concentration one of the highest in the world', *The Conversation* (online), 12 December 2016, <<https://theconversation.com/factcheckisaustralias-level-of-media-ownership-concentration-one-of-the-highest-in-the-world-68437>>.

² Michael West and Simone March, 'Dirty Power: Big Coal's Network of Influence over the Coalition Government' (Research Report), Greenpeace Australia Pacific, May 2019, p 9.

³ Amanda Meade, 'Nine Entertainment hosts \$10,000 a head fundraiser for Liberal party', *The Guardian* (online), 2 September 2019. <<https://www.theguardian.com/media/2019/sep/02/nine-entertainment-hosts-10000-a-head-fundraiser-for-liberal-party>>.



encompass expenditure which merely relates to material which indirectly influences voting at an election.

The Queensland government's approach to bushfire management and climate change mitigation will inevitably be an issue in contention at the upcoming Queensland State Election. This new definition means that expenditure by environmental charities or emergency services who seek to educate the public about the impact of climate change on the bushfires will be captured and capped as it is likely to indirectly affect voting at the election even if it does not mention a party or candidate. For example, if a Rural Fire Brigade pays for billboards which state "Fight the fires in the poll booths. Demand action on climate change this election", this is likely to constitute electoral expenditure and be subject to the expenditure caps. This limitation on non-partisan advocacy disadvantages voters and policy makers as it silences essential voices in the democratic process.

Charities are fundamentally different to the entities this Bill seeks to regulate. Registered charities cannot have a disqualifying purpose under the *Charities Act 2013* (Cth). This means they cannot have the purpose of promoting or opposing a political party or candidate for political office.⁴ Therefore registered charities, including GPAP, by their very nature, have limited engagement with the political process other than issues-based advocacy that furthers their charitable purpose. If a person suspects that a charity is in breach of these requirements, they can file a complaint with the Australian Charities and Not for Profit Commission (ACNC), which has extensive powers to investigate. For registered charities, promoting or opposing a political party or candidate for political office can result in deregistration and the loss of deductible gift recipient status.⁵

Therefore registered charities occupy a unique space in the policy landscape and are already legally prevented from engaging in partisan work or acting as a conduit for political donations. This pre-existing incentive to avoid promoting or opposing a political candidate or party is incredibly strong. Such a constraint is sufficient to create transparency within the registered charity sector and ensure the actual and perceived integrity of Queensland State elections. By the same token, any concerns that donors will attempt to circumvent the restrictions on political donations by donating through registered charities who could campaign on their behalf are ameliorated by the pre existing restrictions. The obligations placed on charities by the proposed Bill are wildly disproportionate given the lack of a legitimate risk that undue political influence could come from the registered charity sector.

Similarly, the risk of small organisations which accrue less than \$50,000 income per annum being used to circumvent the donation cap is exceptionally low. The administration costs involved in setting up an organisation of that size in order to incur electoral expenditure would be time intensive, complex and would likely be prevented by the anti-avoidance measures.

⁴ *Charities Act 2013* (Cth) s11.

⁵ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) div 35.



We recommend that issues-based advocacy work be expressly excluded from the definition of electoral expenditure proposed by the Bill. This could be effectively achieved by:

1. inserting a note similar to that in section 4AA(1) the *Commonwealth Electoral Act 1918* (Cth) which expressly excludes “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 [as they] are not for the dominant purpose of influencing the way electors vote in an election”; and
2. limiting the definition of “electoral expenditure” for charities who are either registered with the ACNC or have an annual income of less than \$50,000, so that “electoral expenditure” for these groups is confined to expenditure which refers to a political party or candidate in the election and which explicitly suggests how a person should vote. Both charities registered with the ACNC and third parties pose a very low risk of being used to circumvent the donation cap to candidates and political parties. GPAP therefore supports the insertion of the following subsection into section 199 of the Bill:

(6) Expenditure incurred by a third party registered under the Australian Charities and Not-for-profits Commission Act 2012 or with an annual income of less than \$50,000, is only electoral expenditure if material that is published, aired or otherwise disseminated refers to—

(a) a candidate or a political party; and

(b) how a person should vote at an election.

This amendment follows the approach of the narrower Victorian definition of “political expenditure” for third parties, which the Victorian government explicitly stated was designed to protect the right of third parties to pursue social issues advocacy, and the right of donors to fund it.

The donation caps create inequality between political participants and will be a stranglehold on the income philanthropically funded organisations can receive

The Explanatory Notes to the Bill emphasise that one of the purposes of the Bill is to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

The donation restrictions outlined in the Bill discriminate between revenue streams, and as such they have a negative and disproportionate effect on community groups, not-for-profits and charities, like GPAP, who rely on donations as their main source of income. Companies and industry associations will not feel the same brunt of the income restrictions because they rely on income streams that are not donations, such as revenue and membership fees. Candidates and political parties will receive public



funding to make up the shortfall. For not for profits, community groups and charities which rely on philanthropic giving to do their work, the Bill is a stranglehold on their income, and therefore their impact. It will drown out their voices in public discourse.

As a proudly independent organisation that does not accept donations from corporations or governments, GPAP relies heavily on individual donations to fund our charitable advocacy. Restricting the contributions our donors can make would amount to a considerable loss of income. Section 259 of the Bill prohibits third parties from accepting "political donations" in excess of \$4,000 from any single donor, aggregated across a four year term.

This assessment of political donations under the Bill requires charities and not for profits to determine up to four years in advance whether an issue that they campaign on will be considered an issue in an election held in the future - a near impossible task given the rapidly changing nature of politics and the environment.

The proposed section 250 of the Bill provides that a gift or loan made to or for the benefit of a third party to enable that third party to incur electoral expenditure is a political donation. Given the proposed broad definition of "electoral expenditure", GPAP estimates that it will be forced to refuse millions of dollars of donations annually in order to comply with the Bill - donations that would otherwise have gone towards raising awareness, encouraging debate and educating the public on important public policy issues.

It is clear that the restrictions this Bill imposes will have a great financial impact on all participants in the political system, but this Bill unfairly compensates political parties and candidates for this shortfall while leaving third parties to shoulder the burden of these financial losses. The Bill has almost doubled the public funding entitlements available to political parties and candidates in order to discourage private donations, and yet it provides no compensation to third parties that will lose significant income as a result of the restrictions. As detailed above, charities, not for profits and community groups that rely on donations are uniquely affected by this in a way that other actors in the political system, such as unions, industry boards, corporations, and wealthy individuals, are not. It is therefore inequitable to impose the donation caps on charities such as GPAP whose independence requires them to rely on generous individual donations. The Bill is extremely likely to prevent charities like GPAP from raising the necessary funds sufficient to communicate with the public on a level playing field. It will limit the impact that charitable organisations like GPAP can have in continuing to provide awareness to the public on essential public policy issues in Queensland, and surrounding jurisdictions.

The Bill also prohibits third parties from spending more than \$1 million (or \$87,000 per electorate) in electoral expenditure in the year prior to polling day. Given the non-partisan nature of charitable advocacy, we advocate that registered charities in Australia be exempt from the donation caps and expenditure caps set out in the Bill.

In the alternate, if the Committee does not accept this approach, we request that the donation threshold be raised to a more reasonable level (e.g. \$10,000 per donor per



annum), and that the period over which donations are restricted be shortened so that it begins no later than one year prior to polling day. This is a less desirable outcome for charities and not for profits, but will go some way towards ameliorating the adverse effects of the Bill on these groups.

The Bill poses a prohibitive compliance burden on charities and not for profits

The Bill imposes prohibitively burdensome requirements for handling donations on third parties. The notification requirements for donations to be made by both the recipient and donor, the requirement of an agent, the maintenance of a state bank account, and the test for determining what classifies as electoral expenditure are complex, impractical and a significant barrier to advocacy.

As a charity that relies largely on small donations from individuals and family trusts, ascertaining at the point of receiving donations which funds will be used to incur electoral expenditure and arranging for a donor statement for donations of any amount which could be used towards electoral expenditure is incredibly burdensome, particularly when the fundraising occurs years before the election in question. As an independent organisation GPAP largely relies on untied donations, and therefore it is impractical to predetermine which donations will be used in advocacy communications years into the future. Furthermore, these administrative burdens make raising funds for rapid responses to policy announcements during election campaigns extremely difficult.

The requirement that third parties disclose the name and address of donors who donate over the threshold is a serious privacy concern for many of our donors, who are often modest in their altruism and avoid public displays of their wealth, even in the form of charitable giving. Having their names, addresses and donation amounts on the public record opens them up to relentless requests for financial assistance, and the dissemination of their personal information into the public domain is perceived as a serious invasion of their privacy which makes them far less willing to give charitable assistance in the future. Furthermore, the current wording of the Bill requires the disclosure of a donor's personal information where they have donated very small amounts. For example, in the year leading up to the election if they donate \$995 to Greenpeace as a regular giver in donations which are untied to any campaign (and are not used for electoral expenditure) and then donate \$10 towards a Greenpeace billboard which will appear in Queensland two months prior to a state election and read "Demand strong climate leadership! Vote for a better, greener future" they will be required to disclose their personal details, despite only \$10 of their donation been used, or intended for use in electoral expenditure.

The Explanatory Notes state that "those impacted [by the Bill] are limited to those who freely choose to be directly involved with the electoral process (as recipients of political donations) or provide resourcing to those who are (as political donors)." In order to fulfil this aim, an amendment to section 263 of the Bill is required to clarify that donations to third parties that are not used for electoral expenditure are not required to be disclosed to the Queensland Electoral Commission.



The obligation on charities and community groups to lodge a return detailing every item of expenditure, and to retain records of that electoral expenditure over the entire election cycle is practically unfeasible. The dominant purpose test used to determine what is "electoral expenditure" is ambiguous and requires an analysis of each item of expenditure incurred. Most charities, not for profits and community groups do not have an inhouse legal team or the resources required to fulfil this compliance burden.

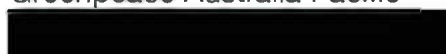
It is deeply concerning that charities with a public interest purpose are forced to choose between dedicating inordinate amounts of time and resources to comply with onerous compliance requirements or avoiding electoral expenditure entirely in order to avoid the potential \$26,000 fine for non compliance.

The Bill, in its current form severely compromises the ability of not for profits, charities and community groups to engage in public policy advocacy. It will remove rigorous debate on the merits of public policies. This will enforce a lopsided and severely compromised view to the Queensland public when exposing the current status of existing environmental issues and will hinder voters' ability to make well informed decisions when deciding between political candidates and their policies. The onerous donation caps placed on charities, not for profits and community groups will be a chokehold on donations for these groups. This, combined with the restrictive expenditure caps and arduous accounting and disclosure obligations will stifle non-partisan, issues based advocacy and degrade the actual and perceived integrity of State elections - the very issue the Bill seeks to address.

Yours sincerely⁶

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⁶ GPAP would like to thank Saqqeira Toleafoa and Annagh Cielak for their invaluable contribution to these submissions.