



9 January 2020

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

Email: egc@parliament.qld.gov.au

Dear Committee Secretary,

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

Thank you for the opportunity to provide feedback on the Electoral and Other Legislation Amendment (Accountability, Integrity and Other Matters) Bill 2019 (Bill).

QCOSS is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector. Our members include over 500 organisations and individuals across Queensland. We have advocated on social justice issues in Queensland for over 60 years, and many of our members likewise regularly engage in systemic advocacy as well as providing essential social services to Queenslanders.

We note that the Bill covers a range of matters and wish at this stage to only to comment on the amendments relating to funding and expenditure for State elections. In this regard, QCOSS welcomes the intent of the Bill and supports the Government's aims to:

- Secure the actual and perceived integrity of the State electoral and political processes;
- Reduce the risk of significant influence by single people or entities on electoral and political processes;
- Level the playing field for electoral campaigning; and
- Increase the public funding available to support proper public discussion and campaigning.

Electoral transparency, raising the level of political discussion and supporting a variety of voices to be heard are critical steps in restoring faith in democracy and increasing civic participation in elections and in communities. QCOSS believes these are critical steps for achieving our vision of equality, opportunity and wellbeing for all Queenslanders.

However, we are concerned that certain aspects of the proposed legislation could have unintended and perverse consequences for not-for-profit organisations in Queensland. We hold that sections of the Bill will stifle public advocacy from not-for-profits, including small community groups and charities. This could risk the achievement of the stated aims of the Bill.

Social service not-for-profits play a critical role in public policy debate in Australia, and their essential contributions are foundational to the robust functioning of democracy. Not-for-profits are in a unique position to hear and represent the voices of Queenslanders who experience the most disadvantage. It is firmly within the remit of the social justice mission of civil society organisations to advocate on public policy issues; in fact, a survey by Pro Bono Australia found that 9 out of 10 not-for-profit respondents see their advocacy role as the most important factor in developing the social service sector.¹

However, public advocacy from not-for-profits in Australia is being increasingly stifled.² Not-for-profits report a range of real or perceived barriers to engaging in public advocacy, including tenuous funding relationships, resource pressures, and regulatory restrictions or uncertainty. These barriers are particularly felt among smaller organisations.

The Civil Voices report described various forms of ‘self-silencing’, and found that more than half of not-for-profit respondents (53 per cent) believed non government organisations were pressured to amend public statements to be in line with government policy and 69 per cent believed dissenting organisations risked having their funding cut.³

The proposed piece of legislation before the Committee exacerbates these risks (both real and perceived) and poses a very real threat to not-for-profit advocacy in Queensland. Rather than ensuring quieter voices are not drowned out by the communication of others⁴, the proposed regulatory burdens are likely to instead persuade small not-for-profits to avoid public advocacy altogether in the defined period.

Key issues and recommendations are outlined below.

1. Capture of charities and not for profit community groups

Charities registered with the Australian Charities and Not-for-profits Commission (ACNC) are the only actors required by law, the *Charities Act 2013* (Cth), to work in the public interest, and are prevented from having a purpose of promoting or opposing political parties. That is, charities are both legally required to ensure that all their activities serve their charitable

¹ Pro Bono Australia (2015). *Sector Survey: Gauging the state of the not for profit sector*. Melbourne, Australia. Available at: https://probonoaustralia.com.au/wp-content/uploads/2016/02/2015_sector_survey.pdf

² Maddison, S., Denniss, R., and Hamilton, C. (2004) *Silencing dissent: Non-government organisations and Australian democracy*. The Australia Institute, Canberra, Australia. Available at: <https://www.tai.org.au/node/928>; Onyx, C., Cham, L., and Dalton, B. (2016). ‘Current trends in Australian non-profit policy.’ *Nonprofit Policy Forum*. 7(2), pp.171-188; Howie, E., and Gall, C. (2017). *Defending Democracy: Safeguarding independent community voices*. Human Rights Law Centre, Sydney, NSW, Available at: https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5936933d579fb38a23dc2eda/1496748893178/DefendingDemocracy_online_June2017.pdf; Maddison, S. and Carson, A. (2017). *Civil Voices: Researching not-for-profit advocacy*. University of Melbourne. Available at: https://civilvoices.com.au/wp-content/themes/probono_theme/download/CivilVoices_reportfornonforprofitadvocacy_Web.pdf

³ Maddison, S. and Carson, A. (2017). *Civil Voices: Researching not-for-profit advocacy*. University of Melbourne. Available at: https://civilvoices.com.au/wp-content/themes/probono_theme/download/CivilVoices_reportfornonforprofitadvocacy_Web.pdf

⁴ Minister Yvette D’Ath. Introductory Speech, 28 November 2019. Available at: <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/191128/Electoral.pdf>

purpose, and legally prevented from engaging in partisan work or acting as a conduit for political donations.

If a person suspects that a charity is in breach of these requirements, they can complain to the ACNC which is empowered and resourced to investigate. If a charity is found by the ACNC to be in breach, they can be deregistered. For these reasons, charities occupy a unique legal space in the policy landscape.

It is unclear therefore why they are included in this proposed Bill and why they will actually be hardest hit by the proposed cap on donations to third parties for use on electoral expenditure, particularly charities that rely on philanthropic funding from foundations or major donors.

2. Definition of electoral expenditure

The Bill applies a broad definition of electoral expenditure, encompassing expenditure on public communications for the dominant purpose of directly or indirectly influencing voting at an election (s199(1)(c)).

Such a broad definition is vague and will create a high degree of uncertainty among social service organisations. It is likely to capture the regular expenditure of charities used towards participation in public policy debate, research, and public communications on contested policy questions in the lead up to an election.

For example, local not-for-profit social services might choose to advocate for greater or different investment in social housing in a regional area. They might conduct research and consult affected people in their area; produce, print and distribute a report which recommends a change in government policy; and host a local forum to communicate the recommendations of the report. While their recommendations may not directly reference any particular party or candidate, under the proposed definition, in the 12 months leading up to an election, such activities could still constitute 'electoral expenditure' should there be a direct link to the position/s of one or more candidate/s or parties.

Rather than trying to interpret the definitions and understand the complex obligations imposed by activity falling within them, it is more likely social services will avoid public advocacy altogether in the lead up to an election.

Recommendation: Amend the definition of electoral expenditure

QCOSS supports inserting the following subsection to amend the definition of electoral expenditure in the proposed new section 199 of the *Electoral Act 1992* (section 9 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 excludes small organisations with an annual income of \$50,000 or less and charities (as registered with the Australian Charities and Not-for-Profits Commission) from the onerous obligations and risk of penalty under the Bill unless they do very specific, clear “vote-shifting” work. These two categories of organisation pose a very low risk of being used to circumvent the donation cap to candidates and political parties and protects the right of third parties to pursue advocacy on social justice issues.

According to the *Charities Act 2013* (Cth), charities must act for the public benefit and are prohibited from having a “disqualifying purpose”, which includes promoting or opposing a candidate or political party. That is, Federal law already prevents the establishment of charities for the purposes of funnelling political donations.

We believe this amendment, by narrowing the definition of electoral expenditure for these two categories of third party alone, is preferable to merely raising the threshold for registering as a third party or raising the donation cap for third parties.

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.⁵ The definition we propose here is narrower than the Victorian definition in order to best preserve the intended purposes of the Bill, while protecting the ability of charities and small community groups to pursue social issues advocacy, which we see as crucial.

3. Thresholds and compliance

The compliance burden for handling donations to be used for electoral expenditure impose an excessive burden on would-be policy advocates, with the threshold for compliance set very low, and the requirements both complex and confusing. Currently the Bill includes:

- registration as a third party for electoral expenditure over \$1000;
- record-keeping and notification requirements for donations to be made by recipient and donor alike;
- the requirement to appoint an agent and maintain a state bank account for any electoral expenditure; and

⁵ 1 The Victorian *Electoral Legislation Amendment Bill 2018* Explanatory Memorandum states (Clause 40): *It is intended that gifts to associated entities and third party campaigners for the purpose of general issues advertising and awareness raising will not be considered political donations, if the gift is not for the dominant purpose of directing how a person should vote at an election by promoting or opposing a candidate or party. This will ensure the right of donors to be active in social issues, including by giving gifts to organisations that support these issues, without being subject to the limitations provided under the scheme. It will also ensure that third party campaigners are not subject to onerous reporting obligations due to activities that are not for the dominant purpose of directing how a person should vote at an election by promoting or opposing a candidate or registered political party.*

In his second reading speech, the Minister stated:

“Advertising and raising awareness about issues, without promoting or opposing a candidate or political party, will not be considered political expenditure. Political expenditure has been defined narrowly in this way, to ensure that all Victorians will maintain their right to engage in public discussion on policy matters that are important to them.”

- determining what classifies as electoral expenditure under ambiguous and broad definitions.

These are complex, impractical, and they impose a significant barrier, with organisations possibly needing to spend more money in trying to assess what falls within the definitions and comply with the administrative requirements than in actual electoral expenditure around public interest advocacy on their issues.

Such an impact is not only unreasonable, but is likely to produce a perverse disincentive wherein small organisations and grassroots advocacy groups avoid public advocacy altogether, rather than face the significant administrative requirements for a registered third party campaigner undertaking a very low level of electoral campaigning. This chilling effect threatens the intent of the Bill to enable a wider range of voices to participate in electoral debate.

Recommendation: The threshold for registering as a third-party campaigner should be raised.

QCOSS supports increasing the threshold of electoral expenditure for registering as a third-party campaigner so as not to prohibit small community groups from participating in public interest advocacy activities around elections.

Recommendation: Donations that are not related to or used for electoral expenditure should not have to be disclosed to the Queensland Electoral Commission

An amendment to the Bill (section 263) is required to state clearly that donations that are not used for electoral expenditure are not required to be disclosed to the Queensland Electoral Commission.

4. Inequity in the caps on donations

The Bill limits philanthropic donations that can be used for public interest advocacy work that meets the definition of electoral expenditure to \$4,000 per donor, over a four year period. Donation caps are generally supported for direct political parties and candidates, however we have concerns for third parties who unlike candidates and political parties, will not receive public funding to make up the shortfall, thereby limiting charities' essential, non-partisan issue-based advocacy in the run up to State elections.

QCOSS further notes that the caps on income and reporting obligations inequitably apply specifically to donations only, thereby excluding advocacy by entities with other incomes streams (such as those using income from commercial revenue or membership fees). As a result, companies and industry associations will be free to rely on revenue and membership fees to spend up to \$1 million each on election campaigns, even campaigning directly for politicians and parties. Further, there are no prohibitions on these entities coordinating their election campaigns. By contrast, only a handful of charities and not for profits may be able to raise enough small donations to participate in the election debate, and those that do will face a far greater regulatory burden for donations handling. This has significant implications for the equity and for the breadth of options and viewpoints presented and discussed.

5. Process of consultation

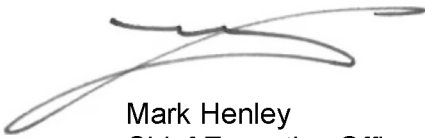
We note that while the explanatory notes for the Bill refer to consultation undertaken with peak bodies during the development of the amendments relating to funding and expenditure, QCOSS was not consulted as the peak for social services in the development of the Bill.

We further note on the topic of process, that the short timeframe for this inquiry and timing during the holiday period is likely to prohibit broad engagement and limit democratic participation and proper scrutiny by many Queenslanders, and by any smaller not-for-profits. From the opening of the Inquiry to the closing of submissions comprised six weeks, two of which fell over the holiday period. We recommend that in future, Parliamentary Committees ensure that all Inquiries allow an absolute minimum of 8 weeks for submissions, excluding the period falling over the two weeks of Christmas and New Year, and the week of Easter.

QCOSS notes that the high complexity and ambiguity of this Bill has made it difficult to fully assess the implications of these reforms for our sector. Community organisations themselves rarely have access to detailed legal advice for complex legislative interpretation; this same complexity is highly likely to prevent community organisations from engaging in public advocacy rather than risk non-compliance.

Thank you for the opportunity to comment on this Bill. As previously stated, QCOSS fully supports the intention of the Bill, however believes that amendments are required for the Bill to be truly effective.

Yours sincerely,



Mark Henley
Chief Executive Officer