



7 October 2022

Committee Secretary
Joint Standing Committee on Electoral Matters
Parliament House

Dear Committee Members,

Inquiry into and report on all aspects of the conduct of the 2022 federal election and matters related thereto

The Hands Off Our Charities (**HOOC**) alliance is grateful for the opportunity to make a submission to the Joint Standing Committee on Electoral Matters (**Committee**) regarding how electoral laws impact our sector, and some opportunities for beneficial reform.

This submission is co-signed by 54 of our member organisations, listed below. However, please note that this submission does not override the policy positions outlined in any individual submissions from these signatories.

From the outset we would like to make clear that:

- we support reform to achieve greater transparency of money in Australian politics;
- this includes greater transparency of third party donations and expenditure where that money is spent on electoral matter, in a way that is proportionate and will not silence community voices;
- we support spending caps, to help level the playing field between very wealthy political actors and everyone else;
- we do not support the Morrison government's recent amendments to the reporting requirements of significant third parties, which conflates issue-based advocacy with electoral matter (properly defined).

About the Hands Off Our Charities Alliance

HOOC is an alliance of over 120 charities, which formed in 2018 in response to a number of bills which would have silenced charities on issues of national and public importance. For a full list of member charities please see our website <https://hooc.org.au/about-us>.

The vision of the alliance is of a thriving not-for-profit sector, where charities are empowered to advocate for lasting change in pursuit of their charitable purposes.

Together, the members of HOOC represent millions of Australians concerned with a wide range of issues, including: education; social welfare; human rights; international development; animal welfare; the environment; health; climate change; disability rights and philanthropy. Our organisations, the issues on which we work, and the communities that we represent are diverse, but we all share a fundamental commitment to serve the public interest.

How Commonwealth electoral laws impact charity advocacy

HOOC formed in response to a number of bills proposed by the Turnbull government, the biggest concern of which was the *Electoral Legislation Amendment (Electoral Funding Disclosure Reform) Bill 2017* (Cth) (**the Bill**). The Bill was ostensibly for the purpose of preventing foreign influence in Australian elections, but its effect would have been to silence charity advocacy in the lead-up to elections. In response, Australia's leading charities formed a national alliance to educate parliament about the profound impact that electoral law reform can have on our ability to fundraise, advocate on our issues and focus on our charitable work.

In 2018, we achieved some hard-won amendments to the Bill that meant we could continue doing our work. From that process, we took away important lessons, about which we would like to inform the Committee.

1. Reforming third-party donation disclosure needs careful consultation with the charitable sector

HOOC believes reform to achieve greater transparency of money in politics is well overdue. We support the Federal Labor Government's proposal to lower the disclosure threshold and introduce real-time disclosure for candidates, political parties and associated entities.

We also support new measures that will require greater transparency of third party funding that goes toward electoral expenditure, but first careful consideration needs to be given to how charities operate to ensure such reforms do not inadvertently silence community voices. In addition, any reforms need to ensure that they capture the biggest players, in particular corporate and industry influencers.

- a. The donation disclosure threshold for third parties, significant third parties, and their donors, should be set at \$2,500 a year

The current disclosure threshold of \$15,200 for political donations is far too high, and is a contributing factor to the staggering level of ‘dark money’ in our political system.¹

HOOC supports a lower disclosure threshold, but for charities and community groups a disclosure threshold of \$1,000 — or less than \$20 a week — is too low. Charities and not-for-profits often do not have a relationship with regular small donors who give up to \$1,000 cumulatively across a year such that the electoral law donation disclosure requirements can be clearly explained. In addition, donors of relatively small amounts to charities would reasonably not expect their personal details to be made publicly available. Requiring charities and not-for-profits to contact a vast number of small donors to seek permission to have their details made public on the Australian Electoral Commission’s (AEC) website would not only impose an administrative burden on them, but would discourage many people from donating to their favourite charities.

Further, compliance becomes much harder — and the risk of accidental breach more likely — if charities are required to track even small, regular donations in case some portion of them is used to incur electoral expenditure.

Charities are far more likely to have a closer relationship with donors of \$2,500 or more, and donors are likely to be more open to having their details published. This modest increase to the threshold would go a significant way to alleviating the administrative burden on charities and not-for-profits without compromising political integrity.

b. Decouple the disclosure threshold from the definition of ‘third party’

At the federal level, an organisation must register as a third party if it incurs, or plans to incur, more than \$15,200 (indexed) in electoral expenditure. Currently, section 287 of the *Commonwealth Electoral Act 1918* (Cth) (Electoral Act) defines ‘third party’ by reference to the donation disclosure threshold.

Parliament must decouple this definition from the disclosure threshold if it is to significantly reduce the disclosure threshold, so as not to inadvertently redefine third parties as those that incur very small amounts in electoral expenditure (for example, \$2,500). It is not in the public interest for small charities incurring \$2,500 in electoral expenditure to use their very limited resources to interpret the complex laws and lodge an annual return with the AEC.

The threshold for becoming a third party should be increased slightly from current levels to \$20,000, so that the regime’s substantial administrative requirements do not deter small charities and local community groups from engaging in advocacy.

c. Real-time disclosure should be introduced for candidates and political parties, but not required of third parties and significant third parties

Currently, federal candidates and political parties are required to disclose their donations only once a year, in October. The disclosures are not published on the AEC website until

¹ The Centre for Public Integrity, ‘Shining light on political finance for the next federal election’, Briefing Paper (February 2021), 1.

February the following year, which means up to 19 months can elapse between receipt of a donation and its being made public.

Real-time (or close to real-time) disclosure should be required of candidates, political parties and associated entities. Voters should know ahead of casting their ballot who is bankrolling the election campaigns of candidates and political parties. Knowing the timing of a donation can also be informative outside of election years: for instance, additional public scrutiny may follow a government tender process if it is known that corporate applicants made large political donations in the days prior.

However, real-time (or close-to-real-time) disclosure should not be required of third parties and significant third parties. First, disclosing under electoral law is much harder for third parties and significant third parties than it is for candidates and political parties, because in election years third parties are required to apply complex definitions of ‘electoral matter’ and ‘electoral expenditure’ to all their advocacy. Making this assessment often requires legal advice, which would not allow for disclosures in real time.

In addition, it is frequently not clear to charities that they will incur electoral expenditure until after an announcement is made by a major party or key candidate, which can come suddenly or unexpectedly. They may have received the donations they draw on for their advocacy many months prior. In such cases, they will not be able to retrospectively disclose donations used to incur electoral expenditure in real time. Even if this were possible, charities would need to phone donors over the threshold to ask if their donations could be publicly disclosed.

Compliance would be even harder for significant third parties which, since the end of 2021, have to work out whether a donation is spent on advocacy under an incredibly vague category: “in relation to an election”.² (See section 3 below regarding amending significant third party laws.)

The practical effect of introducing real-time disclosure, or even monthly disclosure, for third parties, is that they will opt not to engage in timely systemic advocacy such as defending human rights, relieving poverty, promoting animal welfare or protecting the planet. It would weaken our democracy and achieve no purpose: there is little public imperative to knowing the timing of donations to community groups and charities, which (for example) do not pass laws or make planning decisions.

d. Focusing on donations gives just a part of the picture, and discriminates against not-for-profits and charities

Any balanced scheme to regulate third parties must capture the most powerful influencers: multinational corporations and industry peak bodies. But while these entities often spend significant sums in elections,³ they don’t rely on donations, so they aren’t as open to scrutiny under these laws.

² Subsection 287AB(3) *Commonwealth Electoral Act 1918* (Cth).

³ Human Rights Law Centre, *Selling Out: How powerful industries corrupt our democracy*, January 2022, 10 and 22.

The only equitable way of regulating third parties and significant third parties, is to cap their election spending.

2. Election spending caps should be introduced

HOOC is deeply concerned by the current trajectory of ever-more expensive federal election campaigns. Increasingly, election years are becoming a time when our airwaves, billboards and social media are being overtaken by the opinions of wealthy individuals who can afford to flood public communications with ads. The space for candidates who don't have access to staggering wealth is getting smaller, and the quality of public debate is worsening.

Worldwide and in Australia, election spending caps are increasingly the norm. Overseas jurisdictions most similar to Australia – the United Kingdom, Canada and New Zealand – all cap election spending. In Australia, Queensland, South Australia, New South Wales, the Australian Capital Territory, and Tasmania's upper house, all have election spending caps.

HOOC supports spending caps for all those who spend money influencing election debates, be it candidates, political parties, associated entities, significant third parties or third parties.

3. The significant third party amendments should be wound back

The recently legislated *Electoral Legislation Amendment (Political Campaigners) Act 2021* (Cth) was not evidence-based law reform and instead has created a significant barrier for independent voices to participate in election debates.

The law applied a new definition of 'electoral expenditure' to significant third parties that is so broad that it is virtually impossible to comply with. It has also made compliance with foreign donations restrictions incredibly complex, and has cost HOOC members many thousands of dollars in legal fees and staff time.

The practical effect of this law is not to increase transparency for third parties — it is to silence them, by imposing so much red tape if they reach the \$250,000 threshold that it acts as an effective cap.

The Electoral Act should be amended to:

- increase the threshold back to \$500,000 in electoral expenditure
- revert back to the prior definition of electoral expenditure for significant third parties under section 287AB of the Electoral Act.

We appreciate the Committee's consideration, and would be happy to appear to provide oral evidence if useful. But further than this, given the deceptively complex nature of this reform, the charitable sector should be consulted on the detail of any proposed reforms prior to them being introduced in parliament.

Co-signatories to this submission



350 Australia



ACOSS



ACT Council of Social Service



Act for Peace



Aid/Watch



Amnesty International Australia



Anglicare Australia



Animal Liberation



Animal Liberation Queensland



Asylum Seeker Resource Centre



Asylum Seekers Centre



Australasian Centre for Corporate
Responsibility



Australian Council for International
Development



Australian Conservation Foundation



Australian Democracy Network



Australian Youth Climate Coalition



Baptist Care Australia



Better Renting



Birdlife Australia



Catholic Social Services Australia



CatholicCare Broken Bay



CLCNSW



Climate Action Network Australia



Climate and Health Alliance



Climate Council of Australia



Community Council for Australia



Conservation
Council SA

Conservation Council of SA



Doctors for the Environment Australia



Dying with Dignity NSW



Fair Agenda



Foundation for Young Australians



FOUR PAWS Australia



Friends of the Earth Australia



Grata Fund



Greenpeace Australia Pacific Limited



Hope for Nauru



Human Rights Law Centre



HUMANE SOCIETY
INTERNATIONAL
AUSTRALIA

Humane Society International



IWDA



Koala Action Inc.



Lock the Gate



Mannifera



Micah Projects



Nature Conservation Council of NSW



Public Health Association
AUSTRALIA

Public Health Association Australia



Public Interest Advocacy Centre



Sunshine Coast Environment Council



Tasmanian Council of Social Service



Tearfund



The Wilderness Society



Transparency International Australia



Voluntary Assisted Dying SA



Whitsunday Conservation Council



World Animal Protection