



09.03.2018

Joint Standing
Committee on
Electoral Matters

PO Box 6021
Parliament House
Canberra ACT 2600

Submitted online

To the Joint Standing Committee,

**RE: INQUIRY INTO THE ELECTORAL LEGISLATION
AMENDMENT (ELECTORAL FUNDING AND DISCLOSURE
REFORM) BILL 2017**

Healthy, confident, democratic governments do more than simply tolerate their advocates and critics. They welcome them. Democratic governments ensure that all institutions of civil society facilitate advocacy and criticism for the public good.

The National Association for the Visual Arts welcomes the opportunity to contribute to the strengthening of Australian democracy through this Inquiry. NAVA protects and promotes professional practice in the visual and media arts, craft and design. We champion the artists, lead the discussions and advocate the policies that strengthen Australia's contemporary arts.

We work towards an Australia in which artists are confidently leading the nation's cultural and political agendas. By "political" we understand the public contest of ideas that advance the public good. By "partisan", on the other hand, we understand the work of registered political parties in advancing their publicly stated policies and campaign platforms. All partisan statements are political but not all political statements are partisan.

NAVA is concerned that the proposed Bill does not meaningfully distinguish between the political and the partisan.

In failing to do so, the Bill discourages advocacy for the public good, imposes severe and potentially criminal penalties for contributing to public discussion, and ultimately, undermines our democracy. This cannot be the intention of the Australian Government.

NAVA's submission highlights the impacts of the proposed Bill on the arts, endorses key elements of submissions already made by institutions with significant roles in leading public discussion, and considers the impacts on the Australian culture and on our democracy.

1. Impacts on the contemporary arts

Australia's contemporary artists are bold and adventurous thinkers. They create new work with confidence and passion, inspiring us to reconsider our world anew. While most artists work independently of any public, philanthropic or private funding, the work of many Australian artists is supported by both Australian and foreign donors, for which a stringent and workable reporting regime exists – as regulated by the Australian Charities and Not-For-Profits Commission (ACNC), and as championed and supported by the Australia Council and Creative Partnerships Australia.

In creating the work that speaks most powerfully to the Australia of today, artists frequently touch on political matters – that is, themes and issues in the public contest of ideas that advance the public good. These may include First Nations sovereignty and Aboriginal and Torres Strait Islander culture and rights, human rights and the treatment of asylum seekers, climate change and the environment, and numerous other diverse issues on which the voice of the artist can be a clarifying, unsettling or indeed beautiful contributor to our understanding of our place in the world.

While the proposed Bill seeks to exempt “genuine satirical, academic or artistic purposes,” it also holds that “political purpose” means “the public expression by any means of views on an issue that is, or is likely to be, before electors in an election”. This requires great discretion on the part of a minister, or senior or junior public servant, in determining whether a matter is “likely” to become an issue at a yet-to-be-determined future election, and also, in determining how “artistic purposes” might compare with “the public expression by any means.”

Further, sector service organisations such as NAVA are active participants in all public discussions that touch on the work of the artist. These discussions span workplace and taxation arrangements, gender equity, intellectual property, public space and venue regulation, education, health and wellbeing. NAVA advocates on behalf of our Members, but also for the public good. As a not-for-profit charitable organisation in receipt of public funds, we have clear obligations to the taxpayer, to various philanthropic and corporate partners, and to partners at all levels of government. These obligations are not merely to acquit ourselves financially to the highest of standards; they are obligations to champion the public good for the standpoint of our unique expertise. This is central to NAVA's work.

2. Endorsement of key submissions

NAVA endorses the submissions of the ACNC, Arnold Bloch Liebler, Arts Law, the Ian Potter Foundation and the Institute for Public Affairs – noting in particular:

ACNC

- The proposed redefinition of “political purpose” is too broad and is likely to reduce the expert advocacy work of charitable organisations;

- A new and unnecessary compliance burden is proposed for registered charities, with significant penalties for non-compliance, while current ACNC requirements adequately cover donation reporting;
- Legislative inconsistencies with ACNC Act (2012) would unnecessarily create new overlaps and grey areas.

Arnold Bloch Liebler

- The Bill falsely equates “the community education and advocacy activities of NFPs and charities with the campaigning and electioneering of political parties”;
- The High Court of Australia has recognised that “rather than merely operating soup kitchens or providing direct relief, agitating for policy or legal change may very well be the best and most effective means of achieving charitable objects in modern Australian society”;
- The Bill will “effectively delegitimise, silence and significantly limit the influence of Australian civil society”;
- The Bill will undermine “Australian democracy by limiting crucial funding for charitable activities and discouraging NFPs and registered charities from adding their trusted voices to robust public debates about important issues upon which they are uniquely placed and expected by the public to speak”;
- A close reading of the Bill leads “to the inevitable conclusion that the real end sought to be achieved by this Bill is not the removal of foreign influence in Australian elections, but the domestic influence of Australian charities and NFPs”.

Arts Law Centre of Australia

- While Arts Law is opposed to the Bill, they note “It is essential that no artist or arts or cultural organisation should be perceived to be third party campaigners or any other category that requires registration under this legislation”;
- Exemptions for artistic purpose should encompass not only artists and artistic organisations, but arts sector service organisations including Arts Law and NAVA.

Ian Potter Foundation

- Policy development and public advocacy is a core charitable purpose which is central to a healthy democracy. The Foundation funds a range of charitable organisations whose ordinary advocacy activities are fundamental to their work;
- Charities vulnerable to accusations of being partisan could be disqualified as charities under the Charities Act 2013 without having breached that Act;
- Charities who seek policy reform by participating in public processes should not be recast as political entities aiming to achieve partisan goals.

Institute for Public Affairs

- The IPA rejects any further regulation of political communication and sees only adverse effects for charities, community groups, religious bodies, service clubs;
- The redefinition of “political activity” is unworkably broad and encompasses such essential public discussion as comments on:
 - “homelessness, in the case of charity organisations;
 - “childhood literacy, in the case of educational advocacy groups;
 - “the state of remote communities, in the case of Indigenous organisations;
 - “bushfire preparedness, in the case of volunteer firefighting organisations; and
 - “the adequacy of parks and leisure facilities, in the case of sporting organisations”;
- “Advocacy groups play an important role in our democracy. They monitor the actions of our elected representatives, analyse the position of political parties in relation to matters of interest to their members and provide vital information and feedback to policy-makers. Reforms that would reduce the proliferation of such groups in Australia would be deeply regrettable.”

NAVA further echoes the concerns raised by the two Government scrutiny committees:

Senate Standing Committee for the Scrutiny of Bills

- Paragraph 1.61 is concerned that the new Ministerial power to determine who is an allowable donor;
- Paragraph 1.70 is concerned that the reversal of the evidential burden of proof for the presumption of innocence;
- Paragraph 1.76 is concerned that the proposed penalty levels are inappropriate in relation to comparable Commonwealth offences.

Parliamentary Joint Committee on Human Rights

- Paragraph 1.48 raises concerns that the definition of “political purpose” is too broad, while Paragraph 1.50 raises concerns that the exemptions for “press, media, academia, artists and entertainers” is a safeguard that does not apply to the full breadth of political purpose as outlined in 1.48 to include “the public expression by any means of views on an issue that is, or is likely to be, before electors in an election’, regardless of whether or not a writ has been issued for the election.”
- Paragraphs 1.55-156 raise concerns that the measures are not proportionate to the Bill’s stated objective and that work needs to be done to ensure “the right to freedom of expression, the right to freedom of association, the right to take part in public affairs and the right to privacy.”
- Paragraphs 1.69-1.70 note that the proposed penalties risk broaching criminal offence territory, which has serious consequences beyond those outlined.

3. Impacts on Australian culture and democracy

In making this submission, I have wondered whether I would be prohibited from publicly discussing and advocating for its contents, should the proposed Bill become law. This is an unwelcome feeling for any citizen – one that leads to self-censoring beyond what is proscribed by laws and regulations, which would be a highly detrimental negative consequence of this or any proposed Bill.

Australians value an open, transparent governance that celebrates honesty and integrity in both its elected members and its people.

In failing to distinguish between the political and the partisan, this Bill effectively tells Australians that only those people registered with a government authority are permitted to speak publicly on matters that affect us all.

Australia's artists take significant creative and personal risks to make work that stirs our imaginations. Their work defines our nation's contemporary values and our future outlook. Further, the expertise developed by Australia's not-for-profit organisations is one of our nation's richest assets. Whether legal, educational, scientific or artistic, this expertise is what fosters an Australian culture that welcomes cultural diversity, respects human rights, and limits onerous partisan interference in our public and private lives.

The conclusion drawn by Arnold Bloch Liebler is compelling: that the real aim of this Bill is not at all to redress any foreign influence on Australian elections, but rather, to constrain the domestic influence of Australian charities and not-for-profit organisations. This is unacceptable.

NAVA strongly encourages the Joint Standing Committee to reject the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 as an unnecessary and potentially dangerous constraint on advocacy and on democracy.

Please do not hesitate to contact me for any further information I can provide.

Sincerely,



ESTHER ANATOLITIS

Executive Director