

Thursday 25 January 2018

Joint Standing Committee on Electoral Matters  
Via [www.aph.gov.au](http://www.aph.gov.au) submission page

To the Committee Secretary,

**RE: The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017**

I write regarding the inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill), and to strongly urge the Committee to recommend that the Senate vote against the Bill. The explanatory memorandum for the Bill states that it intends to “reduce perceived and actual foreign influence on Australian political actors by restricting the ability of foreign money to finance domestic election campaigns, and reduce opportunities for election funding to be used for private gain.”<sup>1</sup> The Bill requires substantial revision to limit its scope and ensure it achieves its stated aims. In its current form, the Bill captures a wide range of activities from non-partisan organisations, such as making submissions to Senate Inquiries or commenting on issues in the media.

CHOICE opposes this Bill because it will restrict the ability of non-partisan charities and not-for-profit organisations to engage with decision makers and the public. The Bill would specifically impact CHOICE, adding additional compliance costs and restricting reasonable funding options in future.

In its current form the Bill will lead to unintended consequences and costs unrelated to its purpose. CHOICE recommends that:

- The Committee recommends that the Bill be withdrawn.
- If the Committee recommends that the Bill proceeds, that a full Regulatory Impact Statement (RIS) is undertaken immediately to capture the costs the Bill will place on not-for-profit organisations.

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<sup>1</sup> Explanatory Memorandum, p.3.

## **The Bill conflates issues-based advocacy with partisan political activity**

Because of the broad definition of “political expenditure”, the Bill captures activity that does not relate to genuinely partisan political activity connected to elections. CHOICE is a not-for-profit organisation that exists to work for fair, safe and just markets that meet the needs of Australian consumers.<sup>2</sup> To deliver on this purpose CHOICE:

- Educates consumers about their rights through information provision and directly assists individuals to assert their rights under the Australian Consumer Law.
- Advocates for changes to law, regulations or changes to industry behaviour to benefit consumers. This involves participating in public or government inquiries, advocating for positions to governments or other decision makers, representing the interests of consumers in the media and working directly with consumers through online campaigning. Much of this work is actively solicited by the Government or the Parliament—through requests to participate in consultations and inquiries.
- Researches and tests products and services to inform people about the best and worst options in a market.
- Provides tools and services to help people make decisions in their interests. For example, [www.doineedhealthinsurance.com.au](http://www.doineedhealthinsurance.com.au), an online educative quiz that helps people determine if they would benefit from private health insurance.

CHOICE’s work has always been and remains non-partisan. When CHOICE speaks publicly or approaches decision makers on an issue, it is because that issue is important to Australian consumers.

The Bill introduces the new, broad classes of “political campaigner” and “third party campaigner”. If an organisation spends more than \$100,000 a year on “political expenditure” it is considered a “political campaigner” and if it spends more than \$13,500 it is a “third party campaigner”.

“Political expenditure” is defined as “expenditure incurred for one or more political purposes”, and a “political purpose” includes “the public expression by any means of views on an issue that is, or is likely to be, before electors in an election”.<sup>3</sup> CHOICE strongly disagrees with the underlying

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<sup>2</sup> CHOICE Constitution: <https://www.choice.com.au/~media/fc19dce6d7544330a1cdb3f34bc36632.ashx>

<sup>3</sup> See proposed s287(1) of the Bill.

assumption that appears to be driving this Bill – that advocacy on issues the Australian people care about is intended to influence elections in an undemocratic manner.

Given that CHOICE reviews and comments on cost of living issues, such as health insurance and the retail energy market, our view is that a significant portion of CHOICE's spending would be classified as expenditure incurred for political purposes.

As it is currently written, the Bill would likely classify spending on any of the following activities CHOICE undertakes as political, even though they are non-partisan activities and not intended to influence voting intentions of Australians:

- Publishing the results of a survey of Australian views on a matter being considered by government, such as the survey work CHOICE conducted to demonstrate consumer support for improved country-of-origin food labelling.
- Speaking in the media about a major cost-of-living concern for consumers, such as the impact of rising health insurance costs on Australian consumers.
- Speaking to politicians about the need for action when a company or manufacturer has a dangerous product in the market, such the exploding Takata airbags currently subject to an inconsistent voluntary recall that is putting Australian consumers' lives at risk.
- Participating in a Senate or government-initiated inquiry.
- Releasing information about harmful industry practices that relate to an industry likely to be discussed in an election period, such as calling out poor billing practices by energy companies or investigating harmful practices by financial institutions.

### **The financial impact of the proposed Bill on CHOICE**

The Bill would add additional costs to CHOICE and restrict funding options in the future. If an organisation such as CHOICE is classified as a political campaigner, it will result in a significant, onerous increase in regulatory red tape that will have a negative impact on the way we fight for consumers' rights. The requirements include:

- An obligation to register as the appropriate organisation type;
- Increased disclosure obligations, including a requirement to disclose the political party membership of some staff;
- A prohibition on receiving international funding; and
- An obligation to nominate a "financial controller", on whom several obligations fall.

CHOICE is primarily funded directly by Australian consumers through membership fees.<sup>4</sup> Most CHOICE members are based in Australia. Approximately 506 of 180,000 subscribers are based overseas. We do not currently collect information about subscriber's citizenship status. It is not clear whether subscriptions or membership fees for an organisation that is not a charity or a union would be considered "donations" under the Bill. If subscriptions or membership fees were captured by the Bill, CHOICE would need to invest in significant changes to our technology and processes to monitor funds paid by people outside of Australia.

The Bill restricts possible future activities CHOICE is considering. CHOICE may in the future look to assist consumers in nearby markets--for example, New Zealand, or other countries where consumers would benefit from the information and services already produced for Australian consumers. CHOICE also believes that working to create better functioning markets in our nearby neighbours in the Pacific can lead to positive outcomes for Australian consumers. In addition to this, CHOICE is closely connected to a network of international organisations that also advocate for consumer rights. We may in the future seek funding from international bodies to conduct projects with organisations based in the Pacific. This Bill would restrict CHOICE's capacity to receive international funding, even from trusted bodies such as the World Bank or international philanthropists for development work in the Pacific.

The Bill captures a broad range of activities undertaken by non-partisan organisations at any time, not just during elections. This does not achieve the intended aim of the Bill of reducing foreign influence over elections. Instead it conflates issues-based advocacy with political activity and adds compliance costs to organisations that represent often under-represented public interests.

For further information please contact CHOICE on [sagar@choice.com.au](mailto:sagar@choice.com.au).

Yours sincerely,  
Alan Kirkland  
CEO

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<sup>4</sup> The most recent financial report is available at <https://www.choice.com.au/-/media/8cef62776c95423189e233a74228d2e7.ashx>