

# ELECTORAL FUNDING AND DISCLOSURE REFORM



Submission to the Joint Standing Committee on Electoral Matters

January 2018

# ABOUT RESEARCH AUSTRALIA

**Our vision:** Research Australia envisions a world where Australia unlocks the full potential of its world-leading health and medical research sector to deliver the best possible healthcare and global leadership in health innovation.

**Our mission:** To use our unique convening power to position health and medical research as a significant driver of a healthy population and contributor to a healthy economy.

**Our goals:**

**Engage**

Australia in a conversation about the health benefits and economic value of its investment in health and medical research.

**Connect**

researchers, funders and consumers to increase investment in health and medical research from all sources.

**Influence**

government policies that support effective health and medical research and its routine translation into evidence-based practices and better health outcomes.

**Nadia Levin**

CEO & Managing Director  
02 9295 8547  
Nadia.levin@researchaustralia.org

www.researchaustralia.org  
384 Victoria Street Darlinghurst NSW 2010

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## Summary of recommendations

If the Bill is legislated in its current form it will impose an unreasonable regulatory burden on these organisations, for little or no benefit. The Bill *must* be amended if these unintended consequences are to be avoided.

The Committee is requested to consider the breadth of organisations in the Australian community that would be subject to the ongoing obligation to monitor their 'political expenditure' and the unintended and/or unnecessary burden this imposes across the community, and how these effects can be mitigated.

A grant for health and medical research purposes to a charity where a) the purpose does not meet the definition of political expenditure and b) the grant is expended for the purpose for which it is provided, should be exempted from the definition of gift in the Electoral Act 1918.

# ELECTORAL FUNDING AND DISCLOSURE REFORM

## SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

### Introduction

Research Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters about the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

Research Australia is supportive of the objectives of the Bill but is strongly of the view that it will have a disproportionate and unintended impact on the not for profit sector, including many health and medical research organisations.

Health and medical research receives significant funding and support from Australian Commonwealth, state and territory governments through a range of different funding programs. At the Commonwealth level this includes:

- funding for research activities from the National Health and Medical Research Council, the Australian Research Council and the Medical Research Future Fund;
- funding for universities' indirect research costs through the Department of Education and Training; and
- funding for research development and commercialisation activities through the Department of Industry Innovation and Science.

All of these programs are regularly reviewed and changed, and the health and medical research sector is regularly invited to respond to reviews by Government departments and agencies and to Parliamentary inquiries. Doing so is now likely to bring many of these health and medical research organisations within the scope of the legislation as a 'third party campaigner'. Many research organisations, community groups and not for profit organisations outside the health and medical research sector are likely to be similarly affected.

Health and medical research is a global activity. Australia has a reputation for world class health and medical research, and Australian researchers receive funding from overseas funding bodies and collaborate internationally. Many of these activities involve Australian researchers receiving international funding that is categorised as a 'gift' under the Electoral Commission Act 1918, bringing these organisations under the provisions relating to international funding.

**Research Australia submits that if the Bill is legislated in its current form it will impose an unreasonable regulatory burden with resultant expense on these organisations for little or no benefit. The Bill must be amended if these unintended consequences are to be avoided.**

# 'Political Expenditure', 'Political Campaigner' and 'Third Party Campaigner'

A new definition of political expenditure was introduced into the Electoral Commission Act 1918 by the Electoral and Other Legislation Amendment Act 2017, and takes effect in March 2018. Under the new section 287(1), introduced in this Bill, the political purposes for which expenditure becomes 'political expenditure' are:

- a) The public expression by any means of views on a political party, candidate in an election or a member of the Federal Parliament;
- b) The public expression by any means of views on an issue that is, or is likely to be, before electors in an election;
- c) The communicating of any electoral matter for which particulars are required to be notified under s 321D;
- d) The broadcast of a political content regulated under s 4(2) of Sch 2 of the *Broadcasting Services Act 1992*;
- e) Opinion polling, and other research, relating to an election or the voting intentions of electors.

Of most concern to Research Australia is b) above. The Australian Government is a key supporter of health and medical research in Australia, the bulk of which is conducted in our universities and not for profit health and medical research institutes.<sup>1</sup> As noted in the Introduction, this includes:

- funding for research activities from the National Health and Medical Research Council, the Australian Research Council and the Medical Research Future Fund;
- funding for universities' indirect research costs through the Department of Education and Training; and
- funding for research development and commercialisation activities through the Department of Industry Innovation and Science.

While there is broad support for the public funding of health and medical research across the major political parties, there are often differences in the specific detail of how health and medical research should be publicly supported. In the last election, for example, the coalition, ALP and the Greens all included health and medical research in their election policy platforms. As such, health and medical research can be '*an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election)*'.

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<sup>1</sup> The Commonwealth is estimated to invest \$1.639 billion in health and medical research in universities, medical research institutes and hospitals in 2017/18. The bulk of this is NHMRC funding; other components include ARC funding (estimated at 10%) and university block grants (estimated at 34%). This does not include funding of R&D commercialisation activities through the Department of Industry, Innovation and Science. Source: Australian Government Department of Industry, Innovation and Science, *Science, Research and Innovation Budget Tables Snapshot 2017-18*, 2017

There are a range of other policy areas which are relevant to health and medical research sector and which are periodically the subject of reform or review. In the last few years these have included:

- regulation of charities;
- the creation of the Australian Charities and Not for Profits Commission;
- the Research and Development Tax Incentive Scheme;
- immigration and visas;
- crowd sourced equity funding;
- privacy legislation; and
- the availability of public data for research purposes.

In many of these areas, the Government's proposals have been criticised by one or other political party. All of these could be *'an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election)'*.

The health and medical research sector is most likely to publicly express a view on one or more of these matters when a public inquiry or review is initiated by the Government or when it is the subject of a Parliamentary Inquiry.

Recent examples of the former include the Department of Health's consultation on the Secondary Use of My Health Record data for research purposes) and the public consultation on the inaugural strategy and priorities for the Medical Research Future Fund.

A recent example of the latter is the Senate Select Committee Inquiry into Funding for Research into Cancers with Low Survival Rates.

Currently, any organisation that incurs more than \$13,500 political expenditure in a financial year will be designated a 'third party campaigner'. It is quite possible that a health and medical research organisation, in the course of responding to several public inquiries and reviews of the type outlined above, could incur more than \$13,500 in expenditure in a financial year, taking into account the cost of staff time, travel to public hearings etc.

Other activities will also be subject to this provision. For example, the simple act of tweeting support for a ministerial announcement of funding from the Medical Research Future Fund or the National Health and Medical Research Council could be a political purpose under this clause, as would circulating the Ministerial announcement to an organisation's staff or membership if any comment that can be implied as approval or disapproval is made.

Organisations that do so will be required to determine and track their expenditure on these activities at any time in each financial year (not just during election campaigns). Even if they don't exceed the threshold, just monitoring expenditure on this ongoing basis in this manner will be onerous.

Research Australia is of the view that there is little merit in requiring an organisation to be identified as a Third Party Campaigner in respect of activities that involve responding to public reviews, consultations and inquiries, or communicating developments such as funding and policy announcements in the sphere in which the organisation operates.

Furthermore, the prospect of having to comply with the regulatory obligations that accompany being categorised as a Third Party Campaigner could deter health and medical research organisations from responding to reviews and inquiries, weakening the development of public policy.

**Research Australia asks the Committee to consider the breadth of organisations in the Australian community that would be subject to the ongoing obligation to monitor their ‘political expenditure’ and the unintended and/or unnecessary burden this imposes across the community, and how these effects can be mitigated.**

Exempting these activities from the definition of political expenditure for some or all organisations, particularly where their activities relate to their charitable purpose, would have the benefit of significantly reducing the number of organisations that are subject to the provisions. This will reduce the regulatory burden on these organisations and simultaneously reduce the supervisory and compliance obligations placed on the Australian Electoral Commission, enabling to make more efficient use of its resources.

## Gifts from International Sources- Charities

The Electoral Commission Act 1918 currently defines a ‘gift’ as:

*gift* means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a payment under Division 3; or
- (b) an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person’s membership of the party, branch or division.

The Australian Government (and the state and territory governments) provides significant research funding to Australian universities and the not for profit research institutes (both of which are charities) as grants for health and medical research. While these grants are for a specific project or purpose and typically subject to ‘milestones’, there is no consideration received by the Australian Government. The same applies to funding for research received from charitable foundations. These grants meet the above definition of a ‘gift’.

Of more consequence, Australian health and medical researchers are also the recipients of grants for health and medical research from international sources. This includes government bodies such as the USA’s National Institutes for Health and philanthropic organisations such as the UK’s Wellcome Trust. This funding may be received solely by the Australian research organisation, or as part of a research collaboration with an International research organisation. These grants also meet the above definition of a ‘gift’.

The current Bill proposes to amend the definition to remove the exemption for gifts made under a will. It also amends the definition to provide a further exemption for the definition of gift for

- ‘(c) any visit, experience or activity provided for the purposes of a political exchange program.’

The limited nature of these exemptions suggests that the application of the definition of ‘gift’ has only been considered narrowly, in the context of what would normally be considered as ‘political activities.’

It has not adequately considered the much broader range of organisations that are charities and will be captured as a political campaigner or third party campaigner under this Bill.

This creates the anomalous position where international funding of a political exchange program does not trigger the requirements in relation to international gifts, but a research funding grant from the Wellcome Trust will be a gift and could trigger these requirements.



Research Australia suspects that this situation is an unintended consequence of the current Bill but it is one that could have significant and negative implications for the health and medical research sector.

**Research Australia submits that a grant for health and medical research purposes to charities where a) the purpose does not meet the definition of political expenditure and b) the grant is expended for the purpose for which it is provided, should be exempted from the definition of gift in the Electoral Act 1918.**

## Conclusion

The objective of this submission is to highlight the extent of the reach of the current provisions and the regulatory burden that they are likely to impose on much of Australia's health and medical research sector (and on many other community and not for profit organisations) if they are legislated in their current form.

Research Australia believes that the objectives of the Bill can be achieved without imposing such a regulatory burden on a large part of Australian civil society, and have proposed some amendments to reduce this burden.

We are aware that submissions from other organisations are highlighting similar concerns and are proposing a range of different measures to address this issue. Research Australia recognises that we are not experts in the regulation of political donations and that there are undoubtedly other ways of achieving the same end.

Through this submission, Research Australia expresses significant concern and strongly urges the Committee to consider the issues raised in this and other submissions, and to more appropriately limit the impact of this Bill on the Australian health and medical research sector.

Research Australia offers, either as its own entity or through its sector convening role, to assist in an appropriately considered manner on this issue to ensure that the objectives of this Bill are met without the unintended consequences on a highly valued and significant national sector.

**RESEARCH AUSTRALIA LIMITED**

384 Victoria Street, Darlinghurst NSW 2010

P +61 2 9295 8546 ABN 28 095 324 379

[www.researchaustralia.org](http://www.researchaustralia.org)