Policy Brief

SACOSS
South Australian Council of Social Service

Reform of SA Election Laws on Funding and Disclosure

Background

Transparency in election campaign funding and expenditure is an important part of the democratic process, but the current SA electoral law is unclear about what activities the disclosure laws applies to and it conflates activities aimed at influencing the electoral process with policy advocacy around issues.

There is a substantial material difference between those organisations that are primarily aimed at influencing the electoral process, and those, such as SACOSS that are peak bodies with charitable status, and other charities, who advocate on behalf of their members and the wider community on a variety of political and non-political matters well outside the electoral cycle. Yet the definitions of election matters and political expenditure are unclear, (and in fact impossible to comply with as they require knowing what an will be an "issue in an election") but may capture much issues-advocacy within the requirements of the Act.

As the provisions currently stand, Third Parties (organisations that spend more than $10,000 in the lead up to a State election) are required to lodge financial reports of *all expenditure* – not just election related political expenditure – between elections, every six months. This creates a significant administrative impost upon charitable organisations.

Of even greater concern is that any donor who gives more than $5,000 in between elections is also required to send in a 'donor return' to the SA Electoral Commission, even when the donation is unrelated to political expenditure. Further, this return requires the donor to publicly disclose their name, address, and the amount of the donation.

These requirements materially impact on charities' ability to raise funds. Donors with apolitical purposes and no party-political affiliations fearing the public presumption of a political intent that accompanies a public disclosure of their donations, while other donors are dissuaded from supporting our organisation simply because they value their privacy. Yet other donors are dissuaded by the additional administrative burden of lodging a return when other organisations may exist that can accept their donations without such 'red tape'.

Alternatively, charities may be dissuaded from public policy advocacy for fear of both the bureaucratic requirements of the Act and the impact on donors. Yet it is part of the mission statement of many of the most well-known charities in the social welfare sector that they should address the causes of poverty alongside providing services to those who are vulnerable and disadvantaged. Thus, a charity working with homeless people may advocate for provision of public housing or a charity working with gambling addicts may advocate for tighter harm prevention measures. They do this as a matter of course, regardless of the

political cycle and should not become Third Parties just because these issues may become "issues in the election".

While extensive reporting requirements are appropriate for organisations and individuals aligned with political parties, these impacts on charities appear to be completely unintended consequences from the 2017 changes to the Electoral Act.

Sector Regulation

The charities sector is already regulated by the Australian Charities and Not-for-Profit Commission (ACNC) so there already exists transparency around charitable organisations. To maintain this charity status and the tax benefits that go with it, charities must adhere to ACNC governance standards, lodge annual reports, including financial reports, and provide details of the people responsible for running the organisations (i.e. the Board). These are all publicly available on the ACNC website.

Further, to maintain their charitable status, charities must act in pursuit of their charitable purpose (which can not include election of political parties or candidates). While political lobbying and advocacy is acceptable if incidental to a charitable purpose, any charity whose activities demonstrate a purpose to elect candidates or support parties at an election can be deregistered and lose their tax-exempt status. If there are any concerns about a charity being or supporting a political entity, the ACNC can investigate and, if necessary, deregister the charity.

Accordingly, for charities registered with the ACNC there is already a high level of transparency, so the public knows who is running them and what they do, and a clear regulatory and complaints process governing any advocacy during an election cycle. On this basis, the additional regulation of registered charities as Third Parties under the Electoral Act is redundant, and as noted above, problematic.

Finally, we note that the South Australian *Collection for Charitable Purposes Act*, exempts charities registered with the ACNC from a range of SA fundraising licence and reporting requirements because federal oversight and regulation is already in place. The full state regime applies to any body not registered with the ACNC.

We believe this is a good model for electoral disclosure.

In 2021 SACOSS worked with the Conservation Council of SA to identify these problems and propose solutions when an electoral amendment bill was being developed and introduced into parliament. That bill addressed some, but not all of our concerns, but it was not passed in the Legislative Council and has now lapsed.

Recommendation

SACOSS calls for the next parliament to amend the Electoral Act to properly define electoral matters and political expenditure (separate from policy advocacy) and exempt charities policy advocacy from the disclosure provisions.