



Jesuit Refugee Service Australia

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Submission to the Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

**Jesuit Refugee Service (JRS) Australia
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About Jesuit Refugee Service (JRS) Australia

An international organisation

Jesuit Refugee Service (JRS) Australia is part of a broader international Catholic organisation, founded in 1980 as a work of the Society of Jesus (“the Jesuits”).

Seeking social justice for refugees worldwide: JRS undertakes services, accompaniment and advocacy at national, regional and international levels to ensure that refugees, people seeking asylum, and other forcibly displaced people have full rights while in exile, and to strengthen the protection afforded to them.

Programs offering global support: JRS programs are found in 51 countries, assisting refugees, people seeking asylum and other displaced people in camps, detention centres, war zones and urban settings. JRS offers support mainly through access to education, emergency assistance, healthcare, livelihood activities and social services.

At the end of 2016, more than 733,400 individuals worldwide were direct beneficiaries of JRS projects.

JRS in Australia

We offer dignity and hope through emergency assistance, temporary shelter, a foodbank, professional casework, community activities, employment support, school engagement, legal advice, targeted advocacy, and a project to empower women seeking asylum.

Strong local alliances: We have a strong alliance with parishes, communities and schools across Australia, religious orders, local and state governments, refugee organisations, campaigns and coalitions, and other organisations in the community in the not-for-profit and education sectors.

A global presence: We have a presence on advisory forums in the Asia-Pacific region, and at the global level, participating in international campaigns and coalitions and contributing to UN forums, including in relation to the Global Compact on Refugees (GCR) and the Global Compact on Safe, Orderly, and Regular Migration (GCM).

A stronger voice for refugees: Advocacy is a central pillar of JRS’ work. To guide our advocacy and service, we utilise an expanded definition of ‘refugee’ to encompass ‘de facto refugees’ including victims of armed conflicts, erroneous economic policy or natural disasters and internally displaced persons (IDPs). JRS’ advocacy is characterised by the following principles:

- It stems directly from our close engagement with refugees
- It flows from [accompaniment](#) and [service](#) and is linked to JRS projects
- It is based on [Jesuit values, inspired by Ignatian spirituality](#)
- It is built on solid research.

Summary

The purported aim of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, as indicated in the general outline of the explanatory memorandum, is to “uphold the integrity, real and perceived, of Australia’s electoral system.”¹ Whilst JRS Australia recognises the importance of this aim, we hold concerns that there is a conceptual disconnect between the diagnosis of the problem – ie. the implied role of charities as a threat to the integrity of Australia’s electoral system – and the solutions proposed. That is, we question whether there is any evidence of a causal link between (perceived) threat and the legitimate activities of the charity sector in a liberal democracy. We are particularly concerned that the legislation mischaracterises the vital role that charities play in public debate, and could have negative and unwarranted reputational and fundraising consequences for organisations such as JRS Australia. The following aspects of the Bill are of particular concern:

- In “Chapter 2 – The Registers,” overly broad definitions of the terms ‘political purpose,’ ‘political campaigner,’ and ‘political expenditure’ require most charities operating in Australia to register as political campaigners or associated entities.
- In “Chapter 5 – Foreign Donation Restrictions,” restrictions on foreign donations to charities for political purposes will necessitate that JRS forfeit these donations or forego vital collaborative advocacy on forced migration at a national, regional and global level.
- The onerous administrative burden of ensuring that all donations meet the new source and amount requirements and the disproportionately high penalties for perceived non-compliance will dissuade charities from prioritising advocacy.
- Stipulations in “Chapter 6 – Disclosing personal details and political party membership of senior staff, and of discretionary benefits such as grants or contracts could breach the right to privacy and the right to political participation.
- This Bill will affect charities’ ability to contribute to evidence-based public debate and therefore compromise the quality of Australia’s democracy.

¹ Explanatory Memorandum: Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill (2017), 3.

The requirement to register as a political campaigner or associated entity

This Bill requires organisations to register as political campaigners if “their political expenditure during the current, or in any of the previous three, financial years was \$100,000 or more or if their political expenditure during the previous financial year was at least 50 per cent of their allowable amount.”² Political expenditure is defined as any “expenditure incurred for one or more political purposes.”³

Political purpose is in turn defined very broadly 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.”⁴

Under these stipulations most charities will be required to register as political campaigners.

JRS Australia regularly contributes to policy development and reform on refugee, asylum, and migration-related issues. We write submissions to parliamentary inquiries on new bills; publish and present research on the impacts of policies on the people we serve, at conferences, symposia, and public dialogues; raise awareness of new policy developments through social media, talks at schools and parishes, and opinion pieces; and provide platforms for people with lived experiences to comment on their lives under specific policy regimes. We see these forms of public engagement as vital to improving the conditions faced by vulnerable people in our communities, contributing to well-informed public debate, and for influencing policy for future generations of forced migrants in this country.

While these forms of advocacy are carried out on a shoestring budget, they can amount to over \$100,000 per annum when factoring staff salary costs.

The criteria for registering as an associated entity, while narrower, includes a clause that could be interpreted to include JRS Australia and most other charities. This clause states that an entity operating “wholly, or to a significant extent, for the benefit of one or more registered political parties”⁵ is required to register thus. First, it is unclear how someone assessing a charity’s practice will determine ‘significant extent’, or ‘operating for the benefit of one or more registered parties.’ Left unclarified, it is possible that a charity’s public advocacy could align with those of a political party, and therefore indirectly benefit the latter, even if there are no direct associations or acknowledgements by either actor of the other. Given its breadth, there is a real risk that this lack of clarity will have a silencing effect.

² Ibid., 18.

³ Ibid., 15.

⁴ Ibid.

⁵ Ibid., 20.

Conflating charitable purpose with politics

The *Australian Charities and Not-for-profit Commission (ACNC)* defines political purpose more narrowly than this Bill. It states “an organisation may have a disqualifying purpose if its purpose is to promote a particular political party or a candidate for political office.”⁶ Even within the realm of party politics, charities have significant leeway in what they are permitted to do. Charities can, for example, “spend money to publicly express views on the policies of different political parties relevant to [their] charitable purpose, or conduct research in order to critique the policies of different parties.”⁷

Similarly, the *Charities Act 2013* (Cth) permits as charitable purpose (as opposed to political purpose) “promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory, or another country, if in the case of promoting a change, the change is in furtherance or in aid of, for example, advancing social or public welfare, or protecting human rights.”

By any of these latter definitions, JRS Australia’s policy reform and advocacy work on behalf of the rights of forced migrants is well within the scope of charitable purpose. Moreover, the purpose of our work is not to compare parties’ policies for party-political purposes or to seek to promote any particular party agenda in any way. Indeed, we regard impartiality and neutrality in party politics as imperatives of our work. The definitions within this Bill mischaracterise the nature of JRS Australia’s advocacy and policy reform work as politics.

Moreover, the requirement for the registrations to be made publicly available could have adverse reputational and fundraising consequences for JRS Australia. Parishioners, supporters, volunteers, and staff come from across the political spectrum, and it is fair to assume that the vast majority would expect JRS Australia to be expressly apolitical (in party political terms) in its work. Being publicly labelled and characterized as political campaigners could discredit the organisation’s standing in the eyes of the JRS support base and also affect our significant service delivery mandate.

Finally, it is fair to assume that politicians could use the label political campaigner to discredit charities’ evidence-based policy interventions where they do not align with a party’s interests or agenda. The potential for policy analyses to be misinterpreted as political interventionism in a deeply politicized refugee/asylum debate is very real.

⁶See Australian Charities and Not-for-Profits Commission, *Advocacy by Charities*, available at http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

⁷Ibid.

Programmatic impacts of restrictions on foreign donations for advocacy purposes

This Bill criminalises the financial controller of a political campaigner also registered as a charity if the charity receives a gift:

- From a foreign donor, defined as any non-Australian citizen or permanent resident deemed ineligible by the Minister or any foreign entity;
- Is over \$250;
- Is made for a ‘political purpose,’ as defined by the Bill;
- Is not returned to the donor or surrendered to the Commonwealth within six weeks receipt;⁸

What this means in practice is that organisations such as JRS Australia will be required to forfeit donations that meet the above conditions, or forego joint advocacy initiatives at a regional or global level, in situations where foreign sources fund these initiatives.

The following examples highlight how these forfeitures may transpire:

- Example 1 – JRS Australia holds an Easter appeal, and receives individual donations above \$250 from local parishioners, some of whom are non-citizens, which they would like to go towards the organisations’ schools and parishes engagement program. Given that such a program would include public expression of views on issues of asylum and refugee policy, these activities would be deemed political. JRS Australia would likely be required to reject and return the funding within the prescribed six week time frame.
- Example 2 - A JRS Australia staff member is invited to participate in an international dialogue on the Global Compact on Refugees. The staff member’s tickets, accommodation, and food allowances – amounting to in excess of \$250 - are paid for by an international foundation as a subsidy, grant, or donation. The staff member will likely have to reject the offer of payment and find an alternative means to fund her/his trip.
- Example 3 – JRS Australia proposes a joint research and advocacy initiative on the drivers of irregular migration within South East Asia in partnership with two country offices in the region. The funds for the initiative are sourced from a range of Australian and foreign sources. JRS Australia will likely have to pull out of the initiative pending withdrawal of all foreign funds from the project.

Migration governance is an international issue. Global and regional civil society coalitions comprising NGOs with diverse funding sources partner together in order to participate in dialogues with governments, carry out research or monitoring, or respond to the latest forced displacements. Australian NGOs have significant experience and resources to contribute, and

⁸ Explanatory Memorandum, above n 1, 37–45.



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also play a key role in highlighting Australia's leadership in refugee resettlement. As the examples above demonstrate, the proposed restrictions in their current form will curtail significant aspects of this international engagement, and may even work against Australia's 'national interests'.

Administrative impacts of adherence to foreign donor restrictions

This Bill places significant and disproportionate responsibilities on donation recipients (ie. charities) to monitor sources of donations, and determine whether the donor is allowable or not.

The Bill notes that "where a donor does not provide information establishing that they are an allowable donor, it is irrelevant whether they are in fact an allowable donor or not."⁹ Recipients are expected to provide "authenticating information," presumably in the form of verifiable identification or a statutory declaration to prove the donor's allowable status.¹⁰ In seeking exemptions to the application of this rule, the contravention of which carries maximum ten years imprisonment,¹¹ the recipient must bear the "evidentiary burden."¹²

What this means in practice is that an organisation such as JRS Australia will have to gather clear proof from certain donors of their identities in order to prove whether they meet the allowable donor conditions. Not only is this a significant administrative burden on an NGO with a small accounts team that receives hundreds of small private donations each year, it is also a breach of privacy.

This aspect of the Bill also creates a significant disincentive to donors to make donations essential for the functioning of JRS Australia. This is likely to have negative fundraising and reputational consequences for a small organisation like JRS Australia with tightly knit supporter bases. Creating and managing separate accounts for different kinds of donations¹³ is a further administrative burden on a small NGO.

Finally, it is important to note that JRS Australia often receives donations via emergency appeals, some of which result in cash or cheque donations by churches, parishes, or schools. These cannot be disaggregated to ascertain who an allowable donor within these communities is, how much they have donated and the purpose of their donation.

Disclosures as breaches of privacy

The Bill calls for political campaigners and associated entities to "specify details of senior staff and their membership of registered political parties; and for charities to specify

⁹ Ibid., Pg 40.

¹⁰ Ibid., Pg 44.

¹¹ Ibid., Pg 40

¹² Ibid., Pg 44.

¹³ Ibid., Pg 40.



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discretionary benefits such as grants, contracts, and other benefits by Commonwealth or State or Territory governments.”¹⁴

Publishing these details engages organisations’ and individuals’ right to privacy. JRS Australia is not satisfied with the government’s justification of this breach on the basis that it “promotes transparency of the electoral system.”¹⁵ This provision could potentially be justified in relation to charities if there existed definitive, publicly available proof of charities’ systemic influence over political parties. To our knowledge, no such evidence exists. Even in the event that such evidence existed, publicly releasing the details of senior staff members in charities along with their political affiliations would not necessarily be a productive way to deal with that challenge.

Australia has a strong political party system, and many Australian citizens working across the private sector, in universities, for unions, and in civil society are members of political parties. To presume political interference or undue political influence solely by virtue of a staff’s membership of a political party could breach the right to political participation under Article 25 of the International Covenant on Civil and Political Rights (ICCPR).¹⁶ It would also go beyond standards imposed on members of the Australian Public Service, who have professional obligations to maintain political neutrality and to avoid conflicts of interest, but are not explicitly required to declare membership of a political party.

Effects on Australian democracy

In 2010, the High Court of Australia affirmed the right of charities to monitor and comment on government policy, also noting that “agitation” for legislative and political change has long been a part of Australian democracy, and is reflected in our constitution.¹⁷ As mentioned on page 6 of this submission, the *Charities Act 2013* (Cth) also provides significant leeway for charities to question political parties’ positions on policies relating to the charity’s mandate.

As previously noted, charities play a significant role in promoting fact and evidence-based debate in our public discourse. Federal, State, and Territory governments invite oral and written submissions from civil society (charities included) on a range of policy matters. Such submissions often bring to politicians’ attention issues gleaned from frontline work with those most affected by policies, and unable to speak out. Legislative amendments and regulations often reflect charities’ concerns about policies and proposed reforms. In the last five years, JRS Australia has made a number of submissions to parliamentary and senate inquiries. JRS Australia has been part of key NGO-public service dialogues or committees on issues pertaining to refugee and immigration policy.

¹⁴ Ibid., Pg 50 – 51

¹⁵ Ibid., Pg 7

¹⁶ On equal Participation in Public and Political Affairs, see

<http://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx>

¹⁷ *Aid Watch Inc vs Commissioner of Taxation* (2010) 241 CLR 539; Elizabeth O’Shea, ‘Charities Can be Political’, *ABC News* (online), 6 December 2010, available at http://www.abc.net.au/news/2010-12-06/charities_can_be_political/41852



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Similarly, charities spend considerable resources informing the broader community, and the media about key policy challenges within their mandate. This is primarily to raise awareness about the challenges that vulnerable people in our communities face. JRS Australia regularly participates in community events, schools workshops, and parish gatherings to discuss refugee, asylum, and migration-related issues. We also publish action-research, policy briefs, and press releases on such matters.

The concerns highlighted throughout this submission demonstrate that the passage of this Bill in its current form will hinder the ability of organisations such as JRS Australia to carry out such vital public policy and advocacy work. It will inevitably lead to a less informed public debate, fewer checks and balances on government and poorer legislation on many key issues.

It must be restated that none of these actions or activities are to influence the outcomes of elections or see one party elected over another. They are to highlight and drive reform on some of the most serious social policy issues of our time.

Concluding Summary

To conclude, the key objections of JRS Australia to this Bill are the following:

- The breadth and lack of clarity in the requirement to register as a political campaigner or associated entity, and the real risk that this will have a silencing effect.
- The unacceptable conflation of charitable purposes with political purposes in contrast to the more narrowly framed *Charities Act 2013* (Cth).
- The programmatic impact of restrictions on foreign donations to JRS Australia as an organisation engaged in activities and advocacy of an inherently international nature and the criminalisation of failure to register certain donations made for legitimate charitable purposes.
- The significant administrative burden imposed on donation recipients to monitor sources of donations and determine whether the donor is ‘allowable’ or not, and associated disincentives for donors themselves.
- The interference with the rights to privacy and to political participation associated with proposed obligations of disclosure relating to senior staff.
- The negative impact of the Bill on robust debate in a liberal democracy

The concerns highlighted throughout this submission demonstrate that the passage of this Bill in its current form will hinder the ability of organisations such as JRS Australia to carry out such vital public policy and advocacy work. As such, we reiterate our call to withdraw this bill in its current form.

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