



Submission to the Joint Standing Committee on Electoral Matters

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

25 January 2018

The University of Melbourne appreciates the opportunity to make a submission to the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* introduced to the Senate on 7 December 2017.

While the University acknowledges the importance of preserving the integrity of Australia's electoral system and supports the need to protect against foreign interference in Australia's political affairs, the University is concerned that some of the measures introduced by the Bill may inappropriately constrain the University's activities and stifle an active philanthropic program. In addition, the regulatory compliance burden is potentially excessive for the University as the Bill is currently drafted.

As a public-spirited institution, participation in public policy debates across a range of issues forms a central part of academic discourse. The University – its academics and public officers – routinely participate in discussion forums where proposed policies have impact – either directly or indirectly – on the University's operations, research capabilities, provision of education, or community service functions.

The University of Melbourne Act 2009 states:

The University of Melbourne is a public-spirited institution with a mission that encompasses learning and teaching, research and knowledge transfer, all of which exist for public benefit.¹

Academics engaged in research and related activities are typically required to engage in public debate about sometimes politically contentious public policy issues. Indeed, as the nation encourages increased research translation, commercialisation and impact, the requirement to engage for policy impact will only increase. We consider this activity to be a legitimate and worthwhile expression of relevant academic expertise, which is consistent with the Objects, general powers and functions of the University as enshrined in the University's constituting legislation.

Further, The University of Melbourne has specific policies that govern the acceptance of gifts and that also prohibit the making of political donations. Of note, the University does not make political donations or pay to attend political fundraising events or incur political expenditure to political parties or their affiliates.

For the Committee's background information, in relation to philanthropic donations, the University's Advancement Policy includes stipulations that:

- the University accepts only gifts that are consistent with the University's established academic priorities and does not accept gifts when a condition of such acceptance may compromise its integrity, autonomy and commitment to academic freedom. The University does not accept donations for purposes that are inconsistent with the objects of the University (according to the [University of Melbourne Act 2009](#)).

¹ The University of Melbourne Act 2009 No.78 of 2009, Preamble
[http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/edfb620cf7503d1aca256da4001b08af/489fcd5278f3602ca25767f00102b11/\\$file/09-078a.pdf](http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/edfb620cf7503d1aca256da4001b08af/489fcd5278f3602ca25767f00102b11/$file/09-078a.pdf)

- Donors cannot direct the University to give, nor can the University give, undue consideration to the donor, or anyone they designate, in the use of their gift.
- Donors do not have direct control over judgements about the recipient of a scholarship or other award funded by them, or the appointee to an academic post supported through their philanthropy.
- Employees, volunteers and hired fundraisers who solicit or receive funds on behalf of the University must ensure that no inappropriate benefit is secured in return for a gift.

We are concerned that, due to the haste with which the Bill is being advanced, its provisions will inadvertently constrain legitimate university activity by virtue of a significantly increased regulatory and compliance burden and/or by creating a disincentive for philanthropists to make much needed donations to support legitimate University activity. Further, the sector is being asked by Government to diversify its funding sources, including from industry and philanthropic sources, and we are concerned that this Bill will constrain our ability to seek out legitimate partnerships and impeded external partners who may wish to co-invest with the University.

The simplest approach would be to exempt universities from the provisions of the Bill given the need to preserve academic freedom, and give regard to the role of the contemporary university, the importance of building a culture of philanthropic giving to research and university endeavour, and the range of other controls and regulations surrounding university activity.

Alternatively, at a minimum, amendments to the Bill should ensure universities are not captured by the definition of ‘political campaigners’ as a result of their legitimate, and expected, public engagement.

Based on a preliminary analysis of the Bill, and notwithstanding that some of these provisions are an existing feature of the Commonwealth Electoral Act, the University is concerned with a number of the definitions and aspects of the reach of the Bill.

It is our understanding from the information in the Explanatory Memoranda and Bill, that it will be *“unlawful to knowingly retain or use foreign donations to finance political expenditure in Australia”,*

... where political expenditure is: *“expenditure incurred for one or more political purposes”,*

... and where 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 (whether or not a writ has been issued for an election).”*

A black letter reading would suggest that foreign philanthropic donations made to support research and then disseminate the findings, including to influence government policy where the evidence suggests this is warranted, could be captured by the Bill. If so, foreign philanthropic donations in these instances would be prohibited, or the activity associated with policy advocacy to government and/or the wider community, would be prohibited.

While the Explanatory Memoranda states that the academic exemption is to ensure that academia is not required to register as a political actor by virtue of carrying on their core business, the academic exemption is narrow, requiring that the *sole* purpose must be an academic activity. “In the event that there are multiple purposes, then the communication cannot be solely for genuine satirical, academic or artistic purposes”.

Where a foreign-sourced donation is made for research and associated advocacy to government and/or the community for policy change where the research suggests this is required, there is reason to believe that this would be captured, which would make the academic, and possibly the university, a political actor and the donation unlawful in so much as it was used to fund research-informed advocacy.

Where the above situation transpired, but without a foreign donation, that conduct potentially would similarly be captured by the Bill requiring the academic and/or university to register as a political actor.

Specifically, the University’s concerns include:

1. The definition of ‘political purpose’ is problematic

Given that the definition of ‘political purpose’ at subsection 287(1), subparagraph (b) does not require that there be a writ issued for an election, any dissemination of views on a matter of public debate or public interest by an entity, at any time, may be considered a ‘political purpose’ (by way of example, this could include research publications, presentations and public statements on public policy issues such as climate change, education policy, economic policy, transport and urban planning and also research that is commissioned by government). While the University understands that the concept of ‘political purpose’ is a feature of existing legislative frameworks, the University is of the opinion that the new proposed definition significantly broadens the definition’s current scope of operation. It does so by expressly providing for the public expression of views on ‘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 addition of this qualifying language and broadening of scope may, regardless of intent, have the practical effect of capturing a range of the University’s activities in areas of public policy given that the Bill does not require the issues to be tied to an election. In any case, the present lack of clarity around the meaning of ‘academic purpose’ (refer below) makes it difficult for the University to determine whether it would be covered by this exception.

One of the core aspects of the University’s operations is research. On occasion, part of the research process may involve ‘research relating to an election or the voting intentions of electors’ or some form of opinion polling carried out for various reasons. If university academics were engaged in research concerning an area of public policy or public interest and, as part of the research process, participants were asked to reveal which political party they intended to vote for, or how policy development on an issue might inform an elector’s choice at the ballot, such activity, whilst carried out as part of academic inquiry, may inadvertently fall within the definition of ‘political purposes’. It would be concerning if universities were defined as ‘political campaigners’ or ‘third party campaigners’ as their core mission is not to engage in political campaigning but to bring expert consideration to bear on policy matters.

2. The exception of 'sole genuine academic purpose' is unclear

The Bill provides an exception for 'sole' and 'genuine' academic purposes, but does not define 'academic purpose' therefore creating ambiguity as to how the exception would apply in practice. Our interpretation is that the Bill seeks to delineate the difference between activity directed at policy makers and activity that seeks to influence policy makers through electoral pressure at the ballot box. We anticipate that it is not the intention to unduly constrain policy advocacy for universities. This consultation provides an opportunity for drafters to provide greater clarity on the definition, intent and application of this provision and to craft a suitably broad academic exception that recognises that a political purpose requires the expression of views with the *substantial purpose* of influencing the voting intentions of Australian voters.

However, if a narrow interpretation is adopted with respect to the meaning of 'academic purpose' (for example, 'academic' implying theoretical or abstract matters), then this would not actually reflect the breadth of university activities and the present-day role of a university as outlined above (for example, research translation, commercialisation and impact, public engagement and debate). The University considers that a definition for 'academic purposes' should be inserted into the Bill and that this definition should be broad enough to capture the role, function and breadth of activities undertaken by universities, which provide for universities to be engaged academic members of the community. The definition should be expanded to include, at a minimum, teaching and research activities, including the communication of research findings and expert opinion by any means.

The public expression of views on an issue that is or is likely to be before electors (whether or not a writ for election has been issued) could conceivably include *any* public comment from the University and/or its academics about any issue of public policy or public significance. The lack of clarity around the meaning of 'academic purpose' could mean that the exception is not able to be relied upon by the University with any measure of confidence.

3. Significant regulatory burden

The Regulatory Impact Statement for this Bill has not been released. To ensure compliance with the wide remit of the definitions of the Bill, the University would be compelled to track and code all expenditure, no matter how small, that could conceivably be captured by the legislation. For example, the cost of hosting a public event at which academics or the University present expert opinion on a matter that is, or is likely to be, before electors at an election. In no time, the threshold for 'political expenditure' as defined by the Bill, would be breached. If this is not the intent of the Bill, given the University's commitment to a high level of compliance across the broad range of its legislative responsibilities, this type of expenditure would still be reported to ensure compliance and no inadvertent breaches given the penalties. It will be expensive to build a compliance system to record activity that spans hundreds of academics across thousands of research engagements and other relevant activities. At a time when Government is asking universities to find efficiencies, this seems a miss-allocation of scarce resources that could otherwise be spent on teaching and students.

4. The introduction of ‘allowable’ and ‘non-allowable’ donors may create adverse impacts on the University’s advancement and fundraising activities

The introduction of the concept of ‘allowable’ and ‘non-allowable’ donors may inadvertently constrain the University’s advancement and fundraising activities. For example, universities would need to monitor and ensure that any proposed gift made by, or trust terms imposed by, foreign donors do not fall within the scope of the ‘political purpose’ definition.

The potential issues highlighted in this preliminary analysis suggests a need for a comprehensive ‘academic purposes’ definition to be included in the Bill, so that the full scope of legitimate academic activities is covered by the proposed exception.

With respect to the receipt of gifts, universities are increasingly active participants in the international community, and should be able to accept or solicit financial support from foreign entities to support the pursuit of their legitimate educational and research activities. Presently, the University receives charitable gifts along with grant funding from myriad overseas entities and individuals. Given the broad scope of ‘political purposes’ (as considered above) it is conceivable that certain gifts and/or donations made by foreign actors to the University, which may be made for purposes that include the dissemination of views on a matter of public policy debate or public interest, might be caught by the proposed legislation.

Organisations across Australia are fortunate to have been the recipient of generous donations from foreign philanthropists and foundations for many decades. None more so than Australia’s leading biomedical institutions and universities, which have been beneficiaries of hundreds of millions of philanthropic dollars from overseas funders such as the Bill and Melinda Gates Foundation, Wellcome Trust and Mr Chuck Feeney and The Atlantic Philanthropies.

For example, from 1998-2016, The Atlantic Philanthropies have invested over US\$368 million in Australia to help build our nation’s world-leading biomedical infrastructure, bolster higher education and advance social equity. In September 2016, the University of Melbourne received a US\$50 million philanthropic gift (valued at AUD65 million at the time) from Atlantic to establish the Atlantic Fellows for Social Equity program. Driven by Indigenous people and based on Indigenous sensibilities, the program aims to drive systemic social change through the development and connection of emerging leaders passionate about improving the wellbeing of communities, especially Indigenous communities, and making society more healthy, inclusive, and fair.

The program was announced in Parliament House by Prime Minister Malcolm Turnbull in October 2016 where he pledged up to \$40 million in Commonwealth support will be provided over the life of the program. At the announcement, the Prime Minister remarked that “we need more philanthropy like that of Atlantic Philanthropies: larger-scale personal investments that act as a catalyst for action.”

Philanthropy, both domestic and international, allows universities and other charities to engage with their broader constituencies, dream big, challenge the status quo and pursue projects that can be that a catalyst for action.

Universities are already subject to stringent regulatory and accountability measures with respect to foreign donations. These existing safeguards against improper foreign influence are sufficiently proportionate and appropriately respond to the risk of foreign interference that the Bill is seeking to remedy.

The core activity of a university and its academics should clearly be exempt from the reach of this Bill. This is the stated intention however, in practice, this may not be the case.

We consider that the preferred outcome for the University is that the scope of the 'academic purposes' exception is broadened sufficiently to cover the University's research and engagement activities and therefore bring the University's activities outside of the scope of the registration requirements and donation prohibitions under this Bill. This can be done through providing for either the inclusion of a relevant and updated definition for the term 'academic purpose' and/ or otherwise by qualifying the exception, for instance '*predominantly* academic purposes' as opposed to a '*sole* academic purpose'.

For further information or to discuss this submission further, please contact Ms Kylie Gould, General Counsel & Executive Director, Legal and Risk at k.gould@unimelb.edu.au or on (03) 8344 3796.