

Arnold Bloch Leibler - Bills Alert

Impact of Electoral Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Bill) on business

The Bill proposes to create a new register of political campaigners and impose disclosure and reporting obligations on entities that incur 'political expenditure'.

According to the responsible Minister, the Bill is designed in part to regulate 'political actors that have emerged into the Australian political landscape, who neither endorse candidates nor seek to form government, yet actively seek to influence the outcome of elections through their campaigning activities.'¹

In our view, there is a real risk that the proposed amendments will also capture many Australian businesses that do not engage in any campaigning and have no intention of influencing election outcomes.

Requirement to register as a campaigner for non-partisan activities

Businesses that incur \$13,500 (indexed) of 'political expenditure' in a financial year will be required to register publicly with the Australian Electoral Commission as a 'third party campaigner'. Business that incur \$100,000 (indexed) of 'political expenditure' will be required to register publicly as a 'political campaigner'.

'Political expenditure' includes non-partisan activities, such as expressing a view in public, by *any means*, on an issue that may be before voters in future.

Beyond social justice, environmental and community issues, this may include issues relating the regulatory environment for businesses, such as company tax rates, industrial relations law, competition policy or commissions of inquiry into corporate activities.

Consequences of public registration as a campaigner

Different regulatory consequences flow from the two levels of 'campaigner' status. Both registration types require preparation of Annual Returns for publication on the AEC website, including personal political affiliations of company Directors.

Businesses that are 'political campaigners' will be treated in many respects as if they are registered political parties, despite incurring 'political expenditure' of less than 1% of the outgoings of major Australian political parties !

The Annual Return

The Annual Return form will be uploaded to the AEC website for public searching and will require publication of:

¹ Commonwealth, *Parliamentary Debates*, Senate, 7 December 2017, 10101 (Mathias Cormann, Western Australia).

- the total receipts for the financial year and names and addresses for all amounts received by the business during the financial year above an indexed \$13,500 threshold (including loans, returns on investment and proceeds from the sale of assets);
- the total amount paid by the company during the financial year (including salaries, administrative expenses, purchase of assets, loan repayments and bank charges);
- the total outstanding debts of the company as at 30 June and particulars of all outstanding debts incurred during the financial year above the indexed \$13,500 threshold;
- any discretionary benefits received by the company from the Commonwealth, a State or Territory during the financial year (including contracts); and
- an auditor's report confirming compliance the *Commonwealth Electoral Act 1918* (Cth).²

Examples of penalties for non-compliance

- Failure by a 'political campaigner' to submit annual return: 360 penalty units per day (\$75,600), imposed on the company secretary;
- Failure by third party campaigner to submit annual return: 180 penalty units (\$37,800) per day imposed on the company secretary;
- Failure to update 'financial controller' (company secretary) details with the AEC: 60 penalty units (\$12,600);
- Acceptance by a 'political campaigner' of a gift over \$250 from a foreign donor, where gifts include services or goods for which inadequate consideration is paid: 10 years imprisonment or 600 penalty units (\$126,000) or both, imposed on the company secretary.

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² See *Commonwealth Electoral Act 1918* (Cth), ss 314AB, 314AC, 314AE for calculation method.