



**Submission to the
JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
INQUIRY INTO
ELECTORAL LEGISLATION AMENDMENT (ELECTORAL FUNDING AND DISCLOSURE
REFORM) BILL 2017**

25 January 2018

Submitted by Amnesty International Australia

Title: Advocacy & Government Relations Adviser

About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

- 1.1 The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill), if enacted, is likely to have a negative impact on the work of various civil society organisations by virtue of the proposed definitions of “political expenditure” and “political purpose”. These definitions are too broad and can create uncertainty around their application.
- 1.2 Consequently, organisations whose work entails advocating for the vulnerable in our society, protection of our environment or the promotion of human rights may be unsure as to whether their advocacy activities are captured by the Bill.
- 1.3 If activities are captured, an extra layer of administrative compliance will be added to already stretched resources of the sector. Alternatively, organisations may choose to abandon their important work in bringing evidence and other insights to assist governments in making policy determinations.
- 1.4 These potential impacts appear disproportionate to the stated aims of the Bill and could stifle the important contribution the sector makes to Australian social policy.
- 1.5 This year is the twentieth anniversary of the adoption of the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote, and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders).¹ Article 13 of the Declaration stresses the right of associations to solicit, receive and utilize financial resources. This Bill seeks to operate in a manner that is contrary to this Article. AIA has further concerns that the rights to freedom of expression and of association as set out in the *International Covenant of Civil and Political Rights*², to which Australia is a party, are being impacted.
- 1.6 Of further concern is the precedent this Bill sets for the international community. It has the potential to help justify such measures being introduced - as has already happened in several states - in other countries in order to stifle the voices of human rights defenders. AIA is very concerned that this Bill is example of Government overreach impacting on the vibrancy of Australia’s civil society and the capacity for human rights organisation in Australia to effectively advocate for their cause.
- 1.7 Amnesty International makes the following recommendations:
Recommendation 1: that the Bill not proceed; and
Recommendation 2: that in any future iteration of the Bill:

¹ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* UNGA Res 53/144, 9 December 1998 art 13.

² UNGA Res 2200A (XXI) of 16 December 1966.

- a. Any limits placed on civil society adhere to Australia's International human rights obligations and the Human Rights Defenders Declaration
- b. There be careful consideration of the impact that the legislation will have on civil society, and the ability of charities to speak up for Australians and deliver essential support to the Australian community; and
- c. Consider the undesirability and regulatory impact of having a double regulatory system for charities under both the *Electoral Act 1918* and *Charities Act 2013*.

2. About Amnesty International Australia (AIA)

- 2.1 AIA is specifically listed in the Income Tax Assessment Act 1997 in section 30.45 (2) as such satisfying the requirements for Deductible Gift Recipient (DGR) status.
- 2.2 AIA is a company limited by guarantee and a registered charity with the Australian Charities and Not-for-profit Commission (ACNC). AIA's charitable purpose is that of 'the purpose of promoting or protecting human rights' as set out in section 12 (1)(g) of the Charities Act 2013 (Charities Act).

AIA's Purposes

- 2.3 AIA's objects - or purposes - are set out in in rule 3 the Memorandum of Association contained in its constitution, and are reproduced below.

Objects and Methods

- 2.4 AIA is part of the global movement of Amnesty International. The worldwide movement of Amnesty International - including AIA - is a non-denominational, non-partisan movement, independent of all governments, political parties and religious institutions.
- 2.5 AIA is a democratic organisation comprising members and supporters who work to achieve the objects set out below.

AIA's objects are:

- (a) To promote, defend and protect the human rights of all people as set out in the Universal Declaration of Human Rights (UDHR), and subsequent United Nations conventions and declarations based on the UDHR, as well as in regional codes of human rights which incorporate the rights contained in the UDHR, the provisions to which governments have voluntarily acceded.*
- (b) To encourage, and raise awareness, that every human being possesses rights based on their humanity and that respect for human rights improves people's lives.*
- (c) To end grave abuses of the human rights of individuals, for example prisoners of conscience, and groups of people experiencing: injustice; poverty; discrimination; torture; cruel, inhuman and degrading treatment or punishment; executions; and the indiscriminate killing of civilians.*
- (d) To help those fleeing persecution and conflict and to defend people from violence from state and non-state actors.*

2.6 To achieve the objects in clause 3.3 above, AIA may:

- (a) *Conduct investigations and publish well-founded, evidence-based research on human rights issues;*
- (b) *Prepare, publish (in a variety of media) and promote reports and material on human rights issues;*
- (c) *Monitor and publicise violations and abuses of human rights;*
- (d) *Provide education on human rights;*
- (e) *Support, directly or indirectly, individuals and their families whose human rights have been breached;*
- (f) *Protect, directly or indirectly, those who are at risk of human rights violations;*
- (g) *Work in partnership with other organisations and individuals;*
- (h) *Promote public support for, and advocacy of human rights;*
- (i) *Inform public opinion to encourage individuals, non-state actors, and governmental and other entities to protect, promote and defend human rights;*
- (j) *Hold to account individuals, governments and non-state actors for violations of human rights;*
- (k) *Provide expertise and technical advice to government and others on human rights issues;*
- (l) *Promote a culture of respect for all human rights;*
- (m) *Promote economic, social and cultural rights as a means of alleviating poverty, which is a grave violation of human rights;*
- (n) *Seek to eliminate infringements of human rights; and*
- (o) *Support the work of Amnesty International through financial contributions and other means consistent with being part of the global movement of Amnesty International.*

2.7 AIA has the legal capacity and powers of a body corporate and may exercise all powers of a body corporate granted under law in pursuit of the objects and methods set out in the above clauses.

If at any time the objects or methods of AIA as set out in these clauses become inconsistent with the objects or methods that are for the time being set out in the Statute of Amnesty International, the last-mentioned objects or methods shall, to the extent of the inconsistency, prevail.

Only to enable to AIA to carry out its objects in accordance with clause 3, AIA will:

- (a) *Raise funds and other resources from the public;*

- (b) Invest money not immediately required for its objects in any investments, securities or property;*
- (c) Take all necessary steps to remain an effective and sustainable organisation; and*
- (d) Adopt any other appropriate methods for securing the objects set out in clause 3.3.*

Methods to achieve AIA's purposes

2.8 AIA employs a range methods to achieve the charitable objects contained in rule 3.3. These are set out in rule 3.4 and include:

- advocacy (rule 3.4 (h)),
- encouraging governments to protect, promote and defend human rights (rule 3.4 (i)),
- holding governments to account for violations of human rights (rule 3.4 (j)),
- providing expertise on human rights issues to government and others (rule 3.4 (k)), and
- promoting a culture of respect for all human rights (rule 3.4 (l)).

2.9 Each of the activities listed above involves engaging in dialogue with governments, including the Australian Government. As the Federal Government is primarily responsible for human rights in Australia and giving effect to the provisions of the international human rights instruments, these conversations are central to the realisation of human rights in Australia and elsewhere.

Amnesty International is politically non-partisan

2.10 Amnesty is politically non-partisan; does not take sides in armed conflict or political disputes; adheres strictly to its mandate as a human rights organization and does not take positions on issues outside of that mandate; aims to apply its policies consistently and universally as a single, worldwide standard, and to do so irrespective of partisan political considerations; collects information from a wide range of sources; reports on human rights violations it knows about wherever they occur; and aims at accuracy and consistency in reporting -- all within its overall goal of effectiveness in protecting human rights, while avoiding negative consequences for victims.

3. The impact of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017. Bill

- 3.1 AIA welcomes the opportunity to provide comments on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill). AIA is concerned about many aspects of the Bill:

Definitions of “political expenditure” and “political purpose”

- 3.2 The Bill broadens activities constituting “political expenditure”. Notably of concern is a new “political purpose” definition:

A political purpose means any of the following purposes:

- 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 (whether or not a writ has been issued for the election);*
- c) *The communicating of any electoral matter for which particulars are required to be notified under s 321D (which requires certain electoral communications to be authorised);*
- d) *The broadcast of a political content regulated under s 4(2) of Sch 2 of the Broadcasting Services Act 1992 (which, put simply, applies to a “political matter”);*
- e) *Opinion polling, and other research, relating to an election or the voting intentions of electors.* ³ *(emphasis added)*

- 3.3 The breadth of the phrase “public expression by any means of views” is very wide and might include making submissions on human rights to parliamentary inquiries and producing research on human rights issues. All of these activities are frequently undertaken by NGOs and civil society organisations.

Definition of “associated entity”

- 3.4 In addition to creating these new categories, the Bill amends the definition of the existing category of “associated entity”. The new definition introduces a subsection that outlines situations in which an organisation will be deemed to be operating “wholly, or to a significant extent, for the benefit of one or more registered political parties”, and therefore an associated entity.⁴

³ New 287(1)

⁴ New s 287H(1) and (5)

- 3.5 This new subsection heightens the risk for organisations whose policy positions may align with positions of political parties at a particular point in time of falling within the definition.

New “political campaigner” category

- 3.6 The Bill creates a new class of “political campaigner” in the Electoral Act. An organisation is a “political campaigner” if it:
- (a) Incurs more than \$100,000 of “political expenditure” in any of the previous four years, or
 - (b) Incurs \$50,000 or more in political expenditure, where that represents 50% or more of their annual budget.⁵

New “third party campaigner”

- 3.7 A “third party campaigner” is an organisation which does not meet either (a) or (b) above, but incurs more political expenditure than the “disclosure threshold”. The disclosure threshold is defined in s 287(1) as \$13,500 and is indexed.

Donations from international sources regulated

- 3.8 The Bill seeks make unlawful political campaigners who are not charities or unions from accepting donations above \$250 even if the donation is not for political purposes. The proposed penalty for doing so is a serious criminal offence.
- 3.9 Charities who are also “political campaigners” under the Bill can accept donations but cannot use donations for political purposes and must keep the donations in a separate account.
- 3.10 Other provisions of the Bill limit the amounts and who may donate money for political expenditure for Australian residents prescribed by the Minister and non citizens.
- 3.11 Finally any donor who makes a gift to the political campaigner exceeding the disclosure threshold in a financial year must provide a return.

Consequences

- 3.12 The Bill may bring many civil society organisations within the new regulatory framework of the *Commonwealth Electoral Act 1918* with obligations such as:
- Registering as the appropriate organisation type
 - Increased disclosure (including financial information and the political party membership of senior staff)

⁵ New s 287L

- In the case of “political campaigners”, a prohibition on receiving international funding and for “political campaigners” that are also charities or unions, a partial prohibition on receiving international funding, and a requirement to separate funds relating to political expenditure from other funds, and
 - Requiring donors that exceed the “disclosure threshold” of \$13,500 to a political campaigner to file a return under s305B.
- 3.13 AIA believes that the legislation is likely to have a significant and detrimental effect on civil society organisations in Australia and on their work, potentially including the work of AIA.
- 3.14 The considerable uncertainty around the type of activities captured by the Bill and their breadth will be impractical to manage when working in a fast paced media cycle where there is always some chance for political commentary especially when working in joint campaigns. However the penalties imposed for not complying create considerable and disproportionate risk for advocacy groups. If the Bill is adopted it may force organisations to make a choice between registration as a political campaigner (with all the associated costs and disclosure obligations) or abandoning or curtailing their advocacy on critical areas of public policy that are in the public interest such as indigenous rights, children’s rights, and on the environment.
- 3.15 AIA shares the concerns of many in the sector that charities will be restricted in their ability to fund much of their advocacy work by international philanthropy, choosing instead to refrain from advocacy work so that their political expenditure is not high enough to be reclassified. This will potentially stifle important contributions to social policy debates of many civil society institutions.
- 3.16 AIA has concerns about requiring donors that exceed the “disclosure threshold” in a donation (\$13,500) to a political campaigner to file a return under s305B. This would be likely to deter some donors from making donations. In particular the Minister is allowed to determine by a legislative instrument that an Australian permanent resident or residents in not eligible to make a political donations. (see clause 287AA (2)). The power appears to be completely uncircumscribed or limited and does not seem to be reviewable by the Administrative Appeals Tribunal.
- 3.17 Furthermore, the Australian Charities and Not-For-Profits Commission provides an excellent regulatory framework for registered charities and not-for-profit organisations which provides accountability for the sector and transparency to the public. Reporting obligations are graduated according to the size (and resources) of organisations and do not create unnecessary 'red tape'. The Bill seeks to add a further layer of 'red tape' in circumstances where its application is unclear.

4. Are the limitations imposed by the Bill justified?

- 4.1 While at first sight the amendments seem to have a legitimate aim (restricting undue external interference in elections) and arguably are not directly targeting NGOs, the broad of the legislation and its vagueness suggests the NGOs are indeed intended to be covered.
- 4.2 There is little evidence that registered charities and not-for-profit organisations have been unduly or inappropriately trying to affect election outcomes.
- 4.3 The way the legislation pursues its aims however is heavy handed. AIA is concerned that it may impose an unjustifiable impact upon NGOs and civil society which is inconsistent with the relevant international guidance and standards on human rights.
- 4.4 It is not made clear from Minister's Second Reading speech⁶ why those not seeking to be elected but seeking to exercise their freedom of expression to argue on issues of public policy should be treated in the same way as registered political parties or candidates. This advocacy role by civil society is a separate and distinct issue from the issue of foreign countries interfering or seeking to influence the electoral process.
- 4.5 The success and survival of many of these organisations relies on their ability to secure funding to carry out their work. In the case of charities the work must be in furtherance of their registered purposes or incidental to those purposes.

Australia's international human rights obligations

- 4.6 The Bill raises issues which need to be considered having regard to Australia's international human rights obligations.
- 4.7 This year is the twentieth anniversary of the adoption of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote, and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).⁷ Article 13 of the Declaration stresses the right of associations to solicit, receive and utilize financial resources.
- 4.8 Article 17 of the *Declaration on Human Rights Defenders*⁸ states:
In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the

⁶http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/5d592247-329b-4d73-aa23-cc7010d35d45/0096/hansard_frag.pdf;fileType=application%2Fpdf, Thursday, 7 December 2017

⁷ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* UNGA Res 53/144, 9 December 1998 art 13.

⁸ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, UNGA A/RES/53/144 dated 8 March 1999.

purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- 4.9 The rights to freedom of expression and of association as set out in the International Covenant of Civil and Political Rights (ICCPR)⁹, to which Australia is a party, are relevant.¹⁰ The right to freedom of expression, under Article 19 of the ICCPR, protects the right of all people to seek, receive, and impart information of any form, including political discourse, commentary on one's own and on public affairs, journalism, cultural and artistic expression, teaching, and religious discourse.¹¹
- 4.10 In interpreting and applying Article 22 of the ICCPR, both the UN Human Rights Committee and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have stressed the importance of safeguarding the capacity of NGOs to engage in fundraising activities, and have argued that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22 of the ICCPR.
- 4.11 The right to freedom of association includes the freedom of individuals to come together and form a collective entity and pursue a common goal, an important element of a healthy civil society, as has been recognized internationally. Freedom of association protects, among other things, the right of individuals to form organisations for the defence and promotion of human rights. The right to freedom of association includes as well the right of groups to access funding and hold resources.¹²
- 4.12 Furthermore, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly provides an obligation on States to engage in "international assistance and co-operation, especially economic and technical" in achieving the full realization of the rights

⁹ UNGA Res 2200A (XXI) of 16 December 1966

¹⁰ Article 19 states:

..

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

[emphasis added]

Article 22 states:

1. Everyone shall have the right to freedom of association with others,...

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

...

¹¹ Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), 12 September 2011, UN Doc. CCPR/C/GC/34, para. 11.

¹² Human Rights Committee, *Viktor Korneenko et al v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, 10 November 2006, para 7.2; Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para.16.

protected under the ICESCR. Such assistance and cooperation includes the financial support of NGOs engaged in activities to achieve the full realization of those rights.¹³

- 4.13 Article 6 of the Declaration on Human Rights Defenders particularly affirms the right of everyone to know, seek, obtain, receive and hold information about all human rights. The UN Human Rights Committee, in relation to article 19 of the ICCPR, has observed that the right to freedom of expression encompasses "the expression and receipt of communications of every form of idea and opinion capable of transmission to others [including] discussion of human rights".¹⁴ Critically, the Declaration on Human Rights Defenders highlights the right of human rights defenders to develop and discuss new human rights ideas and principles, and to advocate their acceptance.¹⁵ The UN Special Rapporteur on the situation of human rights defenders has also highlighted the crucial importance of the rights to freedom of expression and association to the work of human rights defenders, as without these they would not be able to perform their monitoring and advocacy work to promote and protect human rights, including by discussing and developing new human rights ideas.¹⁶
- 4.14 The provisions of the Bill, as currently drafted, raise serious concerns about the impact on civil society organisation. In particular, the legislation may threaten the capacity of some NGOs to engage in fundraising activities, and may pose an impediment to the "ability of associations to pursue their statutory activities" and potentially constitute an interference with the rights set out in Articles 19 and 22 of the ICCPR.

Administrative burdens

- 4.15 In Europe the imposition of administrative burdens has been found to interfere with rights under Article 11 of the European Convention on Human Rights a number of occasions.¹⁷ These cases support the analysis made by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who has raised concern over practices of several jurisdictions in which States have exerted extensive scrutiny over associations over the argument of transparency and accountability as a way of harassment and intimidation. In particular, the Special Rapporteur has warned about "frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations".¹⁸

¹³ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 69.

¹⁴ Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), 12 September 2011, UN Doc. CCPR/C/GC/34, para 30.

¹⁵ Declaration on Human Rights Defenders, op cit., Article 7.

¹⁶ Report of the Special Rapporteur on the situation of human rights defenders, 28 July 2011, UN Doc. A/66/203, paras. 29, 43 and 56.

¹⁷ ECtHR, *Martin Balluch v. Austria*, Application No. 4471/06, 25 September 2012, para. 24. ECtHR, *Kasparov and Others v. Russia*, Application No. 21613/07, 3 October 2013, para. 84.

¹⁸ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 38.

- 4.16 The additional administrative burdens potentially imposed on NGOs including charities by the Bill are significant enough to raise concerns about unjustified interference in the rights to freedom of association in Australia.

Restrictions on the right to seek, receive and utilize resources

- 4.17 Legislation which mischaracterizes legitimate funding for NGOs including foreign source funding as inappropriate and in need of regulation, as is done by the current Bill, has drawn the concern of the designated human rights bodies of the United Nations. In 2013, the importance of safeguarding the capacity of NGOs to engage in fundraising activities was emphasised by the United Nations Human Rights Council, in its Resolution 22/6, where it called upon states not to criminalize or delegitimize activities in defence of human rights on account of the origin of funding.¹⁹ Paragraph 9 calls upon countries:

*to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and **that no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto** (emphasis added)*

- 4.18 The Special Rapporteur on the right to freedom of peaceful assembly and of association has also emphasized, with reference to the jurisprudence of the Human Rights Committee²⁰, that “fundraising activities are protected under Article 22 of the Covenant, and funding restrictions that impeded the ability of associations to pursue their statutory activities constitute an interference with Article 22”.²¹
- 4.19 Likewise, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed concern over increased restrictions on organisations to access foreign funding based on arguments of the protection of state sovereignty or State’s traditional values, including by stigmatizing such organisations. The Special Rapporteur has noted that “foreign funding to civil society has been deliberately depicted as a new form of imperialism or neo-colonialism and recipients have been subject to defamation, stigmatization and acts of harassment. This tendency has a serious impact on the work of civil society actors [and] is

¹⁹ Human Rights Council Resolution, 22/6, Protecting human rights defenders, UN Doc. A/HRC/Res/22/6, para. 9.b.

²⁰ Human Rights Committee, Viktor Korneenko et al v. Belarus, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, 10 November 2006, para 7.2.

²¹ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, para.16.

particularly alarming for associations promoting human rights and democratic reforms who have been accused of 'treason' or of 'promoting regime change'.²²

4.20 The European Court has also specifically recognized that restrictions on funding of NGOs may adversely and impermissibly interfere with the exercise of freedom of association by the NGO and its members. Thus, in *Ramazanova and Others v. Azerbaijan* the Court acknowledged that "...even assuming that theoretically the association had a right to exist, the domestic law effectively restricted the association's ability to function properly. It could not, inter alia, receive any 'grants' or financial donations which constituted one of the main sources of financing of non-governmental organizations in Azerbaijan. Without proper financing, the association was not able to engage in charitable activities which constituted the main purpose of its existence".²³ Similarly, in *Parti Nationaliste Basque-Organization Regionale D'Iparalde v. France*, a prohibition on a political party receiving foreign funding was characterized as an interference with freedom of association, "having regard to the impact of the circumstances in issue on the applicant party's financial capacity to carry on its political activities".²⁴

4.21 The current legislation needs to be considered in the contest of a range of measures which have recently been taken by the Government which impact on the freedoms enjoyed by civil society. In the "End of mission statement" by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders stated:

*While Australia is renowned for its vibrant and diverse civil society, the broad support of the government to CSOs seems to be far from what is expected in terms of empowerment and consultation, funding and recognition of its important role. General observation from extensive discussions with human rights defenders across the country point to a "chilling effect" of the combined measures including the lack of meaningful consultations on government decisions; funding cuts; general government's antipathy of advocacy; "gagging clauses" in funding agreements; secrecy laws and the stifling Border Force Act; undermining the AHRC and vilifying human rights defenders. Many activists spoke of an atmosphere of fear, censorship and retaliation.*²⁵

4.22 The Bill and its prohibition on certain donor funding from foreign sources (as set out in paragraphs 3.2 - 3.4) raises serious concerns about impermissible interference with the exercise of freedom of association for NGO's utilising or seeking to access funding for their human rights work in Australia overseas. It would be a mistake to think that Australia is somehow an exception to the wider international problem of attempts to limit foreign funding to human rights defenders. Amnesty is concerned that the current Bill will potentially encourage other countries to follow suit with serious implications for human rights defenders seeking funding from overseas.

²² Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 27

²³ ECtHR, *Ramazanova and Others v. Azerbaijan*, Application No. 44363/02, 1 February 2007, para. 59

²⁴ ECtHR, *Parti Nationaliste Basque-Organization Regionale D'Iparalde v. France*, Application No. 71251/01, 7 June 2007, para. 38.

²⁵ Visit to Australia, 18 October 2016

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21275&LangID=E>

4.23 AIA has serious concerns that this Bill is out of step with expectations of Australians and the international community impacting on the vibrancy of Australia's civil society and the capacity for human rights organisation in Australia to effectively advocate for their cause.

4. Recommendations

4.1 Amnesty International's makes the following recommendations:

Recommendation 1: that the Bill not proceed; and

Recommendation 2: that in any future iteration of the Bill:

- (a) Any limits placed on civil society adhere to Australia's International human rights obligations and the Human Rights Defenders Declaration
- (b) There be careful consideration of the impact that the legislation will have on civil society, and the ability of charities to speak up for Australians and deliver essential support to the Australian community; and
- (c) Consider the undesirability and regulatory impact of having a double regulatory system for charities under both the *Electoral Act 1918* and *Charities Act 2013*.