



Submission to:

Joint Standing Committee on Electoral Matters

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

January 2018

Introduction

This submission outlines key areas of concern for the Community Council for Australia (CCA) in relation to changes to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

CCA is particularly concerned by the way this Bill enables any charity engaging in advocating for a charitable purpose to be deemed a political actor. Combined with onerous new administrative requirements and restrictions on who can donate and for what purpose, the proposed Bill will have a major negative impact on charities, their advocacy, and their capacity to achieve their charitable purpose.

CCA has consulted with members (see listing in appendix 1) in framing this submission, however, it is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

The content of this submission includes: a brief background to CCA; an overview of the current context for the NFP sector; a broad discussion about charities and advocacy; a listing of key issues relating to political donations and political influence, a listing of specific issues associated with the proposed Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, a call for a proper Regulatory Impact Statement, and a conclusion.

CCA welcomes this opportunity to provide input into this Inquiry and is keen to engage in detailed discussion about any proposals arising from the Inquiry.

The Community Council for Australia

The Community Council for Australia is an independent non-political member based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Background context: the not-for-profit sector

The NFP sector encompasses over 600,000 organisations - from large to very small - and employs well over one million staff (around 10% of all employees in Australia). Australia's 54,000 charities collectively turn over more than \$130 billion each year and hold over \$260 billion in assets. In the last decade, sector growth has continued at more than 7% a year, a figure that is higher than any other industry group.

These facts tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society.

The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP investment and productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and productivity within the NFP sector.

The establishment of the Australian Charities and Not-for-profit Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. The national charities register has also provided invaluable information.

While the recent history of the NFP sector is framed by growth and reform, new issues are emerging. The level of volunteering and individual philanthropic giving as a percentage of income has still not recovered to the highs of 2009. At the same time, revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and services has increased.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs. There have been numerous reports and recommendations relating to the NFP sector over the last decade, but relatively few have been acted upon.

Surveys conducted by ProBono Australia of leaders across the charities sector find their number one concern is their capacity to speak out and advocate for public policies that will improve the lives of the people they serve.

Moves to restrict the advocacy activities of charities that receive foreign donations or international philanthropy; to review the tax deductibility of environmental charities that engage in advocacy; to change the purpose of the ACNC so it becomes more active in restricting the advocacy of charities, are collectively raising concern amongst charities that their voice is being silenced.

CCA believes it is critical that governments exclude charities from any new limitations around advocacy, particularly those relating to foreign donations and political parties.

The contribution of charities and NFPs to the formation of public policy should not be collapsed into the same category as industry groups or others seeking personal gain.

From a charity perspective, the most powerful players in forming national policy are not those seeking to improve our communities, but those with a vested economic interest.

Background context: advocacy, public policy and purpose

Any charity that campaigns in support of a political party or makes donations to a political party will lose their charitable status. The same restrictions do not apply to business and vested interests.

It is also important to explain that any charity pursuing its charitable purpose can legitimately become an advocate for that purpose, and many do. This means many charities may seek to influence public policy, even though charities cannot and do not operate in a politically partisan way.

Most charities do not set out to be public policy advocates or to engage in any political process. For instance, a charity may have a purpose of supporting the homeless. They may offer free food and comfort including collecting blankets every winter to keep the homeless who sleep rough warm at night. Year after year they may collect blankets, but at some point, they may decide their support for the homeless needs more than just free food and blankets. They may decide to try and find safe accommodation that meets the needs of the homeless community they serve. When they move into this area, the charity will find structural and policy barriers that make it difficult to put in place safe sustainable housing for the poorest people in our society. As a consequence, they may become advocates for particular housing policies. They do not do so for personal or organisational gain. They become advocates to better serve their charitable purpose of looking after the homeless.

Many charities pursue their purpose and serve their communities partly through offering various services and partly through advocating to improve their community. This applies in almost every area of charitable endeavour. In this way, most charities engage in advocacy for public policies, but without having the resources to mount major campaigns, develop modelling, conduct research, or pay consultants and lobbyists. Most will not be able to regularly attend Parliament and host meetings with government Ministers. Most will have very limited input into formation of government policy. Most just want what is better for the communities they serve.

The *Report of the Consultation Panel on the Political Activities of Charities*, released in Canada this year, makes some salutary points about the important role of charities advocating for their purpose and the difficulty of excluding what are termed 'political activities'. In framing their report, the authors clearly set out the benefits of charities playing an active role in public policy:

Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.

The four recommendations in the Canadian report include lines like: ***to enable charities to fully engage in public policy dialogue and development ...to allow charities to fully engage, without limitation, in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.***

If Australia is to develop flourishing communities and better respond to emerging social, economic and environmental issues, the voices of charities in public policy should be encouraged and facilitated. Governments need to be very careful not to limit or exclude, by regulations or by processes, the capacity of charities to have input into the formation of public policy.

1. General issues relating to the influence of political donations and the formation of public policy

1.1 When is a donation a donation?

There are many ways people can support a political party or politician. Making a political donation is one way, but disclosure laws and other limitations mean this is not always the best way. Donors may wish to support political parties, but want to remain anonymous for several reasons including:

- not wanting to establish a potential link between a political donation to a political party and the political party subsequently adopting policies that support the interests of the donor
- not wanting to be identified as a donor to a political party that loses an election - it may mean the donor is not seen as being supportive of the successful political party that wins government
- donating to all major political parties ensures a donor is seen as a supporter of whoever wins government, but if it is known the donor contributed to other political parties as well, the donor might not be seen as a strong supporter and their donation would not be as highly valued.

There are many ways to offer support and seek to influence public policy that are much less transparent than political donations. Alternatives to political donations are often more effective in building a close relationship between donors and political parties. Here are just a few ways industry groups and others currently contribute to political parties:

- conducting research on an issue of interest in a specific electorate and making all results exclusively available to a particular politician or political party
- funding functions and events that the politician might attend
- providing travel, accommodation, meals or other benefits
- providing staff expertise and knowledge at no cost or special rates
- funding a third party or other organisation to support the politician or political party
- engaging in fundraising and other activities at a level that ensures your donations are known but not recorded.

In any democracy, successful business people, industry groups and others should be able to make their views known and seek to influence national policies.

At the same time, any discussion about political influence or political donations needs to acknowledge that making direct political donations is just one of many ways to influence and provide resources to politicians and political parties.

What is most important is that any measures seeking to tighten accountability for advocacy, political donations and the formation of public policy does not ignore the more common and more effective strategies used by powerful vested interests to advocate for public policy that serves their own interests.

1.2 The price of access to national policy

Very few (if any) charities can afford to fly the Deputy Prime Minister and the Foreign Affairs Minister to India for a private family function with some of India's political leaders and their mining industry friends.

Charities are not able to offer seats at major sporting events, hospitality in VIP marquees, or expensive lunches and dinners in fine restaurants.

There are no staff funded by charities in any politician's office.

Charities cannot offer politicians paid positions providing more than half a million dollars a year when the politician moves on from politics.

Charities cannot host political party meetings and conferences.

Charities cannot offer extensive media opportunities for politicians through media outlets they control.

There is no doubt that the most powerful lobbyists in Australia are well resourced vested interests – industry groups like the Minerals Council of Australia – who can and do make political donations. These groups also have the resources to wine and dine their supporters and will threaten political campaigns against anyone not supporting policies that make them richer.

Politicians do not always declare all the personal and party benefits provided to them by industry groups and others, sometimes because the politician is not fully aware of who has paid for particular services.

In Australia, you can buy access to politicians and to government ministers in various ways. Many industry groups invest millions in ensuring national policy supports their interests. This investment in influencing public policy to the advantage of their members or shareholders is seen as a legitimate business expense.

Charities only gain access to politicians because they represent a constituency or an issue of concern.

Paying for better access to politicians and political parties is not an option for the vast majority of charities in Australia.

1.3 Public benefit versus personal gain

Charities can only be registered if they demonstrate they have been established to pursue a purpose that provides a public benefit. Charities cannot operate for personal profit or gain and any surplus must be directed towards the public benefit purpose. Charities cannot pursue individual wealth. Charities cannot be privately owned.

When charities advocate to politicians and political parties, they do so on behalf of the communities they serve. Often charities are arguing the case for individuals and communities who do not participate in public policy formulation. Charities advocate on behalf of the most marginalized, the environment, animal welfare, the unemployed, refugees, the sick, disabled, imprisoned, those with the least capacity to have their own input into public policy.

When groups like; alcohol producers, the Pharmacy Guild, the Minerals Council of Australia, the Food and Grocery Council of Australia, major companies or industry groups advocate to politicians, they invariably do so for personal gain. These groups will oppose good public policy if it is not in their vested interests.

Charities should not be treated in the same way as those pursuing vested economic interests. Advocating for public policy that serves self-interest is not the same as advocating for public benefit.

1.4 Distributed benefit versus specific benefit

There is often a distributed benefit to good public policy. This means the real beneficiaries of these policies are individuals that cannot be identified. We do not know who has benefitted from seat belt rules, or random breath testing, but we do know that tens of thousands of Australians are now alive who would otherwise be dead.

Distributed public good policies struggle to compete equally in advocacy or political lobbying against specific benefit policies.

If a particular group or organisation can benefit by not changing policies, they can mount very strong cases that are able to dismiss or diminish the benefits because the beneficiaries are unknown

For instance; bulk wine producers support very low taxes on wine casks despite the evidence that higher floor prices for alcohol reduce harms and save lives. Wine casks are taxed lower than almost any other alcohol product and are the product of choice for alcoholics and others seeking the best bang for their buck. Bulk wine producers can argue a specific case about the problems any increase in taxes might create for their business, their employees, their growers, their children and the community they live in. In defending the status quo and seeking to maintain their income, bulk wine producers may well donate to political parties that support keeping the current wine tax unchanged. They may also use other methods such as; wining and dining politicians and their advisors, commissioning research reports backing up their position, mustering support from those they currently do business with.

The research clearly and consistently shows that an increase in the floor price of alcohol would save lives and reduce hospital admissions. The problem is we do not know who will avoid these harms. The people who will avoid dying or being hospitalised because of the change in the floor price of alcohol will not be campaigning for the change or donating to political parties, even though they may die if the change is not implemented. They are not participating in the public policy debate about alcohol taxation because they do not know who they are.

The reality is that charities are often advocating for distributed benefit in a competitive policy context where vested financial interests not only outspend, but also present strong cases for specific economic benefit. The purpose of charities means they are often advocating for benefits to a whole community and, as a consequence, many charities struggle to compete in the policy space against specific benefit.

What this means in practice is that there are often no advocacy campaigns and no political donations from those who will end up benefiting the most from positive changes to public policy.

1.6 The role of the Australian Charities and Not-for-profit Commission

Unlike most players competing to influence national policies, charities face restrictions on their activities enforced by a regulator with significant powers. Charities can and do lose their charitable status if they engage in what are deemed to be political activities. Charities cannot support a particular candidate, support a particular party, make donations to political parties, or hand out how to vote cards. Charities can only advocate for their charitable purpose – nothing else.

The Australian Charities and Not-for-profit Commission has undertaken significant enforcement activities and obtained various undertakings from charities in relation to their advocacy, particularly during election periods. The current regulations prevent the ACNC making details of these actions public.

Given charities are already regulated in this area, further regulation would be an over-reach.

2. Specific issues relating to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

2.1 The definition of political expenditure in the Bill is unworkable

It is absurd to argue that a homeless group advocating for more shelter is equivalent to a political party.

The way the terms 'political expenditure' and 'political purpose' are used in this Bill mean almost every form of charity advocacy may be considered political – even though a charity pursuing its purpose is never seeking to gain political power.

Under new s 287(1), political expenditure would be defined to mean 'expenditure incurred for one or more political purposes.' A political purpose includes any of the following purposes:

The public expression by any means of views on a political party, candidate in an election or a member of the Federal Parliament;

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);

The implication is that no-one except politicians and political parties can have public views on the environment, or health, or education, or employment, etc. and if they do, they should be treated the same as politicians.

Many charities going about their normal activities will be caught up in these definitions and many may be deemed to be political actors.

2.2 Classifying charities as 'political campaigners' or 'third party campaigners'

Many charities spend more than \$100,000 over four years in advocating for their cause and their community. Many may be classified as political campaigners, despite the fact that they are behaving as charities pursuing their charitable purpose, not political power. This makes no sense.

2.3 Obligation to nominate 'financial controller'

Requiring charities that spend over \$100,000 in four years on advocacy to appoint a new senior staff position with serious responsibilities is, at best, an onerous new imposition. The requirements of this role will divert significant resources from the charitable purpose to administration.

2.4 New limits on donors

Creation of 'allowable donors' and 'allowable amounts' seems designed to ensure charities are strangled in more red tape, while creating new barriers to giving. If charities spend more than \$100,000 on advocacy over four years all donors will have to satisfy a new range of obligations. The Bill will reduce philanthropic giving and make charities spend more time making sure all donations are compliant. The losers will be Australian communities.

2.5 New restrictions on international philanthropy

CCA fail to see any risk that is created by the Bill Gates Foundation funding health research at Australian universities. There is no case to restrict international philanthropy. Australians will be the poorer if we deny the capacity of major philanthropists around the world to give to Australian charities.

2.6 New compliance costs

The community expect their charities to spend less not more on administration. Similarly, all governments agree the need to reduce red tape impositions on charities. This Bill creates onerous new reporting requirements for many charities, despite the lack of evidence that there is any issue with the way charities currently represent their communities in their advocacy.

2.7 The chilling effect

Charities are risk averse. No charity wants to be seen as acting politically. No charity seeks to be partisan in their advocacy. If a charity spends over \$100,000 in four years on: preparation of submissions, meetings with government and politicians, attending and presenting at conferences, representing their issues in various public forums, responding to media queries, they may be labelled as being political. Many charities will seek to avoid such a label, partly for their reputation, and partly to avoid the onerous reporting requirements such a classification brings.

Experience overseas in the UK and Canada has confirmed that legislative restrictions on charitable advocacy have a chilling impact on charities – it makes civil society less likely to raise their voices.

3. The need for a proper Regulatory Impact Statement

It is disappointing that there is no Regulatory Impact Statement outlining the likely impact of the proposed new Bill on charities. While the Minister responsible asserts minimal impact, many others have a different view, including CCA. The least that could be expected with such a significant Bill is that the government has undertaken some consultation and investigation with charities to ascertain exactly what is entailed in complying with the proposed new requirements within the Bill.

CCA is requesting a full Regulatory Impact Statement be undertaken prior to the Bill being further considered.

Conclusion

CCA believes the current system of influence and power in national politics often favours the most economic powerful who benefit economically from certain policies. These policies may or may not be in the broader public interest. This bias towards the most powerful having more input into public policy is partly facilitated through political donations, but mostly operates outside of disclosure regimes.

Charities advocating policies that will benefit their communities are often at a major disadvantage against very strong and powerful economic interests.

CCA supports increased transparency and moves to ensure public policy is primarily informed by public rather than private interest, but the charities sector is already well regulated and accountable.

The proposed measures in this Bill will strangle charities in more red tape, further diminishing the capacity of charities to serve their charitable purpose and be active participants in the formation of public policy.

Given the limitations already applying to charities through regulations and the work of the ACNC, CCA believes charities should be treated separately from vested interest groups that currently operate without any restrictions and are able to apply economic and political pressure on the public policy process.

Current Membership – Community Council for Australia *Attachment A*

Access Australia's National Infertility Network

Access Housing

Adult Learning Australia

Alcohol, Tobacco and Other Drugs Association ACT

Arab Council Australia

Australian Charities Fund

Australian Community Support Organisation (ACSO)

Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)

Australian Indigenous Leadership Centre

Australian Institute of Superannuation Trustees

Australian Major Performing Arts Group

Australian Research Alliance for Children and Youth

Australian Women Donors Network

Business Council of Cooperatives and Mutuals

Carers Australia

Centre for Social Impact

Church Communities Australia

Churches of Christ Vic and Tas

Community Based Support (Tas)

Community Broadcasting Association of Australia

Community Colleges Australia

Connecting Up

Drug Arm Australasia, Dennis Young, CEO (CCA Board Director)

Ethical Jobs

Everyman

Foresters Community Finance

Foundation for Alcohol Research and Education

Foundation for Young Australians

Fragile X Association of Australia

Fundraising Institute of Australia

Good Samaritan Foundation

Good to Give

Hammondcare

Hillsong Church, George Aghajanian, CEO (CCA Board Director)

Justice Connect

Legacy Australia
Life Without Barriers, Claire Robbs, CEO (CCA Board Director)
Mater Foundation
Menslink
Mission Australia, Catherine Yeomans, CEO (CCA Board Director)
Missions Interlink
Musica Viva Australia, Mary Jo Capps, CEO (CCA Board Director)
Non Profit Alliance
Our Community
OzHarvest
Palliative Care Australia
Philanthropy Australia
Playgroup Qld
Port Phillip Housing Association
Power Housing Australia
Pro Bono Australia
Queensland Water & Land Carers
RSPCA Australia, Heather Neil, CEO (CCA Board Director)
SANE
SARRAH
Save the Children, Paul Ronalds, CEO (CCA Board Director)
Settlement Services International
Smith Family, Lisa O'Brien, CEO (CCA Board Director)
Social Ventures Australia
St John Ambulance
Starlight Foundation
Ted Noffs Foundation
Touched by Olivia
Variety Australia
Veterans Off the Streets
Volunteering Australia
Wesley Mission, Keith Garner, CEO (CCA Board Director)
White Ribbon Australia, Libby Davies (CCA Board Director)
World Vision, Tim Costello, Chief Advocate (Chair CCA Board)
World Wide Fund for Nature Australia
YMCA Australia