



Submission to:

Department of the Prime Minister and Cabinet

**Draft Open Government National Action Plan
2018-2020**

July 2018

Introduction

This submission outlines key areas of concern for the Community Council for Australia (CCA) in relation to the Draft Open Government National Action Plan.

CCA welcomes the Government's intention to engage with the Australian community on this very important initiative. It is regrettable that the opportunity to contribute to the consultation has not been widely publicised, and the two-week period to review the Draft Plan is insufficient to ensure all who would like to contribute, are able to.

CCA supports the commitment to improve transparency and accountability in business, open data and digital transformation, access to government information, integrity in the public sector, and public participation and engagement. We believe there are real gains to be made through better engagement, transparency and accountability – in fact, by fundamentally changing the culture of the way government relates to the community and the organisations it works with to improve Australian well-being.

CCA is pleased to see this work being driven at the highest level, and sitting within the remit of the Department of Prime Minister and Cabinet. We believe this work is as much about driving a cultural change, as it is about structures, initiatives and frameworks.

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; an outline of CCA's concerns in relation to the eight areas of the Draft National Action Plan, and a conclusion.

CCA welcomes this opportunity to provide input into this consultation and is keen to engage in detailed discussion about the finalisation and implementation of the new National Action Plan.

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, 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.

The inability of governments to streamline their own regulatory processes, their tendering processes, contract management and programs monitoring has consistently been identified as a major barrier to improving productivity in the not-for-profit sector in Australia. The lack of certainty in the government regulatory environment, funding and contracting processes also undermines performance and ongoing investment in improving outcomes. For the sector to be more effective, these issues must be addressed.

Positive change often requires increased collaboration, recognition of shared goals and shared ways of achieving outcomes. Given the size of the sector and its critical role in improving Australian well-being, there is scope to boost productivity by working constructively with the sector in developing more responsive and effective programs and services seeking to achieve shared goals and outcomes. Working better with the sector will require a significant culture shift across government.

The Commitments of the Draft Open Government National Action Plan

1. Strengthen the national anti-corruption framework

CCA notes that the Draft Plan seeks to act on Recommendation 1 of the 2017 Senate Select Committee on a National Integrity Commission and welcomes the commitment to consider and assess all options for strengthening the national anti-corruption framework.

Transparency and genuine civic engagement in the review of the national integrity framework is essential. The commitment currently includes an action point to 'communicate the framework'. Communication is only one step in ensuring the framework is understood and accessible. The commitment should include ensuring there is consultation and deep engagement in the review of the national anti-corruption framework; in any recommendations that result; and in the finalisation and implementation of any new anti-corruption framework. The framework and its elements should drive a culture that supports engagement with the community, business and across governments. National Action Plan reporting should include measures that reflect access and engagement with the framework.

2. Enhance the transparency of political donations and funding

CCA supports increased transparency and moves to ensure public policy is primarily informed by public rather than private interest. This discussion must take into the account the reality of the power imbalance and ways our decision-makers and decision-making is currently influenced in Australia.

CCA believes the current system of influence and power in national politics often favours the most economically 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 the disclosure regimes.

Any discussion about the influence of 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.

Charities that try and advocate for the benefit of community are often at a major disadvantage against very strong and powerful economic interests. CCA would be very concerned if any new measures had the unintended consequence of strangling charities in more red tape, further diminishing the capacity of charities to be active participants in the formation of public policy.

Given the limitations already applying to charities through regulations and the work of the Australian Charities and Not for profits Commission (ACNC), CCA believes charities should be treated separately from vested interest groups that currently operate without any restrictions and apply considerable economic and political pressure on the public policy process.

CCA has provided substantial and considered input in submissions and evidence to the Senate Select Committee on Political Donations (Attachment A and B), and the Joint Standing Committee on Electoral Matters (Attachment C).

CCA is particularly concerned that recent changes to the Electoral Act and the proposed Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 confuse political campaigning with policy advocacy. These changes threaten to sweep many charities in onerous new reporting and

audit regimes. The net effect will be to bind charities in red tape, waste resources and silence the voice of community.

Experience overseas has found that auditing the advocacy activities of charities has had a chilling effect on the voice of civil society. This is unnecessary and harmful to our democracy and the well-being of Australians served by our national policy making.

The Charities Act 2013 makes it clear that charities cannot engage in partisan support for a political party or a candidate, cannot make political donations and cannot hand out how to vote cards. Charities can only pursue their charitable purpose – the public benefit that they were established to serve. The Charities Act also makes it clear that charities can pursue their charitable purpose through advocacy. Australians expect charities to speak up for their cause and their community, and Australia is a better place when they do.

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.

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.

In any effort to enhance transparency around political influence, charities would like to see:

- a fairer playing field for political advocacy where money, direct donations, in kind and other benefits to politicians were not only more transparent, but also more accountable
- acknowledgement that charities are already regulated in terms of political advocacy
- no new accountabilities or reporting requirements that may have negative consequences
- the creation of less expensive and more accessible options for community and charity input into national policy making
- greater recognition that governments and political parties are elected to serve collective benefit rather than vested interests
- greater recognition of the importance of engaging charities in policy development to deliver better community outcomes.

3. Improve the sharing, use and reuse of public sector data

CCA welcomes the commitment to engage with the community in implementing a simpler, more efficient data sharing and release framework and the guiding recommendations of the Productivity Commission Data Availability and Use 2017.

4. Enhance state and territory participation in the Open Government partnership

CCA commends the commitment to better leverage and enhance participation in the Open Government Partnership process by state and territory governments.

- 5. Improve public service practices using place-centred approaches**
- 6. Enhance public engagement skills in the public service**
- 7. Engage Australians in the Independent Review of the Public Service**
- 8. Expand open contracting and due diligence in procurement**

These four areas are inter-related and highlight the changes necessary to realise Open Government and transform the way government works to better serve Australian society.

Broader adoption of place-based approaches, and the development and implementation of an Open Dialogue Roadmap and the establishment of an APS Engagement Hub may be worthy endeavours to improve some of how government works and engages with the community, but they fall short of addressing the real issues in improving public trust, engagement and outcomes for the Australian community. These have to be about linking government goals to government actions.

In essence, Open Government is about realising a true partnership between government and those that it serves and works with. The real issues to be addressed are relationships, culture and fundamentally the way government goes about implementing policy, to achieve policy outcomes.

Open Government goes beyond transparency and engagement – as vital and foundational as these are. It requires clarity on policy goals; investment and commitment to improving outcomes measurement and reporting; building and sharing evidence; and moving to a partnership and relationship basis in contracting, funding and tendering processes.

A) Clarifying and being accountable for the policy goal is the critical starting point in open government

The most fundamental question in any meaningful discussion of public services and government intervention is to ask; what is the policy goal of these services or initiatives? The next question should be; what informs these goals and how are they measured?

The usual response to questions about policy goals in public services are descriptions of inputs and outputs – how many people were serviced or activities undertaken and at what cost? Only rarely is there any real discussion - or reporting - about what was achieved in terms of outcomes. There is even less discussion about longer term impact.

A lack of clarity about policy goals and measures results in a failure to understand how best to deliver the desired outcomes. As a consequence, many areas across government seem to be awash with ad hoc measures being developed by both government departments and the providers of services themselves.

When there is no clear policy goal or the policy goal is removed from the actual program or service allowing no consistent indication of desired outcomes, a vacuum is created in measurement. This vacuum is often filled by input and output measures that rarely inform policy goals or describe the outcomes achieved.

Unfortunately, the lack of specified goals and meaningful measures is common. If we look objectively at what is rewarded in our health services, it appears illness is rewarded while wellness is ignored. This is because health services tend to operate within an activity based system. Doctors are paid more if they see more sick people or see the same people more often. Surgeons make more if they operate more. Drug companies make more for their shareholders if they sell more of their drugs. Reducing levels of mortality and morbidity across population groups is not really a winner for the current stakeholders of our health services.

In most public services, the policy goal is about achieving a change in the status of those using the services – for instance; improving education, increasing employment, providing housing, reducing illness, reducing imprisonment. Unfortunately, these broader beneficial policy goals are often not seen as critical in program development, or are lost in translation when it comes to implementing programs and services.

For instance, a government may, for very good reasons, have a policy goal of increasing Indigenous junior school attendance and retention. Senior government officials might develop and implement a program to pay for additional social workers to visit the homes of students absent from school and encourage them to attend or to talk to parents.

What gets measured and reported in these programs tend to be activities measures - how many social workers are deployed and how many hours of home visits are conducted. If the government is able to achieve a major increase in the number of hours of home visits, the officials involved might call the program a success even if attendance rates only increase slightly.

In practice, improving Indigenous attendance at school is a complex issue driven by many local factors. There have been successful initiatives such as providing a four-wheel drive diesel bus capable of carrying 25 people between remote communities enabling junior football teams to become part of a regular fixture of inter-community football matches. Only kids who attended school could be selected in the football team. Without the bus it would take many vehicles and adults for the competition to work. Experience tells us that in some communities, this kind of active engagement initiative has increased school attendance by over 30%. Successful investments to increase Indigenous school attendance include; building a swimming pool, setting up a music recording and video production studio, and supporting a mentoring program. What might work in any particular community clearly needs to be informed by those who live and work in the community.

As this example highlights, achieving real change for people and communities is not always about directly intervening in one area, independent of others. For instance, the best way to improve the health status of someone who is unemployed, homeless, depressed and using illicit drugs may be to provide stable housing, supportive employment and a network of peer support. In the absence of these social determinants of health, the provision of specific health services may or may not be effective.

How do we know what works? It all starts by setting clear policy goals, talking with clients, local organisations and communities to establish meaningful goals, and then measuring success or failure against the agreed outcomes.

Clarity about what the policy goals are – and reporting performance against those policy goals - is the first step in Open Government. It is the building block on which all transparency and engagement turns and is fundamental in working openly and more effectively with other areas of government, community, service providers and business.

The Draft National Action Plan turn towards place-based approaches is welcome – this should sit within a broader commitment to achieving a holistic approach to achieving outcomes, driven by a genuine commitment to partnership, evidence and learning.

B) Public services will not be more effective until there are real changes in funding / contracting / tendering mechanisms. This is where we must see Open Government enacted.

'Governments are realising the limitations of the 'contract state' and are searching for more creative ways of applying the experience, knowledge and capability of a wider array of actors to pressing problems in public policy.

This 'third wave' of policy delivery in which government, not-for-profits and business work together for public purposes, will need to accommodate a more elastic concept of 'risk', embrace new forms of shared governance, and encourage experimentation and innovation.

Crucially, policy actors from all sectors will be obliged to engage in a meaningful conversation with constituencies of need. Where, in the past, public policy interventions were 'done to' or 'done for', in the emerging policy environment policy delivery will be 'done with' end users and communities.'

Australian and New Zealand School of Government monograph, *'The Three Sector Solution'*
Cited from: <https://www.anzsog.edu.au/blog/2016/07/440/the-three-sector-solution> posted 18/7/16

Assuming there is clarity about the policy goal, the question then becomes what is the best way of developing, funding and implementing appropriate services or initiatives. The short answer is that any new approach has to be about the customer / consumer / client, their families and communities. What will work best for them? What will deliver the best outcomes in their lives?

At this point in time, many Australian government departments have been reluctant to adopt more consultative and informed approaches in the development of services. Consequently government departments, like the providers themselves, end up developing their own approaches to contracting and measurement.

It is interesting to note in this context the work the Commonwealth Department of Finance has been engaged in as part of the Commonwealth Financial Accountability Review process that commenced five years ago. The *'Is Less More – towards better Commonwealth performance'* discussion paper provided some good insights into the types of reforms that need to be canvassed.

One option worth considering is to bring greater expertise and effectiveness to the contracting process by outsourcing government contracting of public services to non-government specialists who have the capacity to engage with potential clients and their communities, can manage risk without resorting to micro management of inputs and outputs, understand measurement of service outcomes that are related to policy goals, can assess organisational capacity, and demonstrate a preparedness to take a longer term view of human, environmental and other services.

Other possible ways to achieve greater efficiency, effectiveness and improved outcomes through reform of public services include:

- *promoting co-design* (with service users, their communities and providers of services)
- *collaboration and collective impact* (drawing on the combined strengths of different organisations in flexible funding arrangements to support community driven goals)
- *broader goals* (less focused on a particular aspect – more holistic. Eg, in human services, including consideration of social supports, housing, employment, etc.)
- *less micro-management and compliance* (giving organisations a greater opportunity to both succeed and fail)

- *greater emphasis on achieving outcomes* (better focus on exactly what the service is meant to be delivering in terms of outcomes and impact)
- *more time to develop and sustain programs* (short-term funding is often consumed establishing capacity which is then undermined by future uncertainty)
- *building on what works* (knowing what has been tried and what works is critical to improving service delivery)
- *recognizing the value of relationships* (often the real capacity of an organisation lies in the relationships with clients, families, communities and other service providers)
- *drawing on real expertise and grounded knowledge from service providers and users* (similar to co-design but beyond the development phase – actively engaging people and local organisations in implementing, monitoring and sustaining services delivery)
- *place based solutions* (working with communities to develop local solutions that may be adapted from the experiences of other communities)
- *pay for results* (not paying for activity but paying for delivering agreed measurable outcomes).

The fundamental principle in all these considerations is that we need to improve the way public services are contracted and paid for. This includes overcoming the command and control approach of so many government departments and replacing it with genuine engagement and partnership. We must develop more effective ways to measure and report on outcomes, and we must get better at building and sharing data and evidence of what worked, and what did not.

Conclusion

CCA commends the government on pursuing an Open Government agenda. Greater transparency, participation and accountability in government will drive real improvements in performance and better outcomes for the Australian community. However, this requires governments to commit to collecting and making public a much higher level of outcome and impact reporting, not just of the services they contract, but of their own performance in achieving government policy goals.

CCA encourages the National Action Plan to be bolder and more visionary – to move from transparency to transformation. To realise Open Government, the Plan needs to embrace and support genuine partnership with the Australian community. This begins with clarity on policy goals; improving outcomes and impact measurement and reporting; building and sharing evidence; and moving to a partnership and relationship basis in contracting, funding and tendering processes. The disconnect between government policy goals and actions reflects the tendency for government to develop its own activities without consultation or real engagement about what will deliver the desired outcomes.

The charities and not-for-profit sector has deep experience of working with government, and a grounding in community where the outcomes of government policy and implementation are experienced. Unfortunately, government tends to dismiss the expertise of the sector and purchase its own version of solutions. This is not the partnership the sector or the community seeks. It reflects a closed approach to government. CCA welcomes the opportunity to provide input into this consultation and is keen to engage in detailed discussion about the finalisation and implementation of the new National Action Plan.

Current Membership – Community Council for Australia *Appendix 1*

Access Australia's National Infertility Network

Adult Learning Australia

Alcohol, Tobacco and Other Drugs Association ACT

Arab Council Australia

Australian Community Support Organisation (ACSO)

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

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

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

Life Without Barriers, Claire Robbs, CEO (CCA Board Director)

Lock the Gate

Mater Foundation

Menslink

Mission Australia

Missions Interlink

Musica Viva Australia, Mary Jo Capps, CEO (CCA Board Director)

Non Profit Alliance

Our Community

OzHarvest

Painaustralia

Palliative Care Australia

Philanthropy Australia

Port Phillip Housing Association

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 Australia

Volunteering Australia

Wesley Mission, Keith Garner, CEO (CCA Board Director)

White Ribbon Australia

Work Place Giving Australia

World Vision, Tim Costello, Chief Advocate (Chair CCA Board)

World Wide Fund for Nature Australia

YMCA Australia



Submission to:

**The Senate Select Committee
into the Political Influence of Donations**

Political Influence of Donations

October 2017

Introduction

This submission outlines five key areas of concern for the Community Council for Australia (CCA) in relation to political donations and their influence over national policy.

CCA is particularly interested in the terms of reference relating to the formation of national policy and how political donations and other mechanisms directly supporting politicians and political parties work to disenfranchise the advocacy of charities on behalf of the communities they serve.

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 five key issues associated with influencing public policy, a brief listing of what charities would like to see in this area 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
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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

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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.

Current 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 impositions 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

It is important to note at the outset that any charity that campaigns in support of a political party or makes donations to a political party will lose their charitable status.

It is also important to explain that any charity pursuing its purpose can legitimately become an advocate for that purpose, and many do. This means many charities seek to influence public policy, even though charities cannot make political donations.

Most charities do not set out to be public policy advocates engaging in the political process. For instance, a charity may have a purpose of working with the homeless to offer food and comfort. They may collect 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 they need to do more for the homeless than just feed them and try to keep them warm. 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 purpose.

Many charities pursue their purpose and serve their communities partly through offering various services and partly through advocating to improve the 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 attend Parliament and host meetings with government Ministers. Most will have very limited input into formation of government policy. Most are part time advocates who 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.

Key issues relating to the influence of political donations and the formation of public policy

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 the influence of 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 political donations and the formation of public policy does not ignore the more common and more effective strategies used by vested interests to advocate for public policy that serves their own interests.

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 Pharmacy Guild 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.

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.

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.

5. 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.

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.

What charities would like to see

Charities would like to see:

- a fairer playing field for political advocacy where money, direct donations, in kind and other benefits to politicians were not only more transparent, but also more accountable
- acknowledgement that charities are already regulated in terms of political advocacy
- no new accountabilities or reporting requirements that may have negative consequences
- the creation of less expensive and more accessible options for community and charity input into national policy making
- greater recognition that governments and political parties are elected to serve collective benefit rather than vested interests
- greater recognition of the importance of engaging charities in policy development to deliver better community outcomes.

Whether public funding of election campaigns will deliver these outcomes is not an area CCA feels able to argue on behalf of our members. Public election funding certainly appears to offer some benefits over the current system where political parties spend considerable effort building their election war chests.

Perhaps the major concern across the charities sector about the focus on the influence of political donations is the possibility of imposing new accountability measures. Experience overseas has found that auditing the advocacy activities of charities has had a chilling effect on the voice of civil society. Given the current context in which there appears to be moves to restrict the advocacy activities of charities, the imposition of any new requirements, including the auditing or documentation of activities and funding, would be seen as furthering an agenda that seeks to diminish the public voice of all charities.

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 the disclosure regimes.

Charities that try and advocate for the benefit of community 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.

CCA would be very concerned if any new measures had the unintended consequence of strangling charities in more red tape, further diminishing the capacity of charities to 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 apply considerable economic and political pressure on the public policy process

. SENATE SELECT COMMITTEE INTO THE POLITICAL INFLUENCE OF DONATIONS

Supplementary Submission from the Community Council for Australia

In response to the 28th of March 2018 request from the Committee for additional information in relation to this Select Committee Inquiry, CCA provide the following information.

CCA appreciate the opportunity to provide this supplementary information which addresses each of the questions raised in the request from the Committee.

These responses should be read in association with the original CCA submission to this inquiry.

- the adequacy of current laws governing third parties and their political expenditure;

It appears to CCA that the current laws encourage all political parties to spend as much as they possibly can to win elections – the more spent the more likely parties can properly segment the market and target accordingly. E.g. a politician who can survey every voter in their electorate and directly or indirectly segment the market might then be able to produce fifteen different fliers, each targeting issues that they know are important to a particular part of their electorate, and have those fliers selectively distributed to the appropriate target group of voters. They may even have the resources to test each of their separate messages and employ people to call voters individually. This targeted approach is more likely to resonate with voters than a politician who can only afford to produce one flier and relies on mass distribution of this single flier.

What this means in practice is that prior to elections, politicians need to build their resource base to enable effective targeting and marketing to the voters. Any third party that can assist with this task is going to be welcomed by the politician.

Without caps on expenditure, it is difficult to see how the politician with the most money to spend in an election does not have a significant advantage over other less well resourced candidates.

- the most appropriate means, if any, of further regulating third party actors to improve the integrity of political decision-making, including the possibility of caps on political expenditure, caps on political donations, and restrictions regarding foreign donations;

Although CCA has not canvassed each of these options with all members, a cursory review of best practice around the world suggest capping political expenditure creates a more even playing field and goes some way towards reducing the capacity of third parties to influence politicians.

- whether third party actors would accept further regulation if it were part of a comprehensive reform of the political funding and disclosure regime;

Charities are already well regulated in relation to what they can and cannot do in regard to exerting political influence. Charities cannot donate to political parties, tell people to vote for a particular candidate or party, or produce how to vote cards. Perhaps more importantly, charities cannot advocate for anything that is not their charitable purpose.

Charities are free to pursue issues-based advocacy and to rank the policies of political parties in relation to their issue. CCA see no problem with charities seeking to influence voters provided the influence is towards building greater support for their charitable purpose.

If charities are compliant with their legal requirements, CCA is not sure why the source of their income matters. Does it matter if advocacy for more affordable housing comes in the form of donations from someone overseas or locally, from an individual or an organisation? If the source of the income does not change what a charity can or cannot do, what is the issue?

- whether all types of third parties should be treated equally in relation to regulation of their political expenditure;

CCA believe charities are in a separate category in relation to political influence primarily because all charities have to demonstrate a public benefit as well as satisfying a range of legal and regulatory requirements to establish and maintain their charitable status.

As noted in the CCA submission, charities are not vested interests seeking to maximise their profit. They almost invariably act in public interest rather than sectional interest, and seek to improve our communities rather than support the agenda of already powerful individuals committed to furthering their own economic interests.

Charities also enjoy significant levels of trust and public support. A charity that betrays that trust will soon find itself unable to function. Charities trade in public trust and their role is already highly regulated.

It is not unreasonable to suggest that the rich are getting richer in Australia partly because of their capacity to influence political decision making in ways that favour their own economic interests.

- how additional third party regulation might impact charities in their ability to fulfil their purpose under the ACNC Act.

Charities are already very heavily regulated. Core activities - like fundraising on the web - require weeks of dedicated administration and compliance activities to satisfy the regulations in each State and Territory across Australia. Charities that receive government funding are often micro managed with individual line item budget controls and tight controls over activities.

All charities with income above \$250,000 must not only provide a detailed annual information statement to the Australian Charities and Not-for-profits Commission (ACNC), including: a breakdown of the sources of their income, an outline of their expenditure, details about any changes to the Board or governance structures, etc.

Anyone at any time can lodge a complaint against a charity and the ACNC is required to investigate the complaint. This includes complaints that the charity has been acting in a partisan political way.

Imposing further regulations and compliance activities on charities will not only diminish their capacity to fulfil their charitable purpose, it will also add another layer to arguments against charities exercising their public voice.

Introducing another regulator into this space – the Australian Electoral Commission – can only further complicate and create barriers for charities seeking to provide a public benefit. Having separate reporting entities with separate requirements is clearly undesirable for a sector that already has to deal with the complexity of requirements from different funding sources.

If more reporting is to be required – such as the level to which a charity receives overseas funding or the level to which the charity seeks to pursue its purpose through advocacy – it is critical that these requirements rest with the ACNC rather than introducing a new regulator with all the associated complexity and duplication.



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.

6. 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.

7. 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.

8. 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.