

# **Charities and International Philanthropy: A position paper**

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This position paper has been prepared by a consortia of charities, led by the Australian Council for International Development, Philanthropy Australia and the Community for Council for Australia.

## Executive summary

As part of a move to ban foreign donations to political parties, the Government has flagged that it also intends to ban overseas funding to other organisations. The impact of this wider push may mean that **registered charities are prevented from accepting international philanthropy.**

### Why charities should be allowed to receive international philanthropy

International philanthropy complements Australian philanthropy's support for charities, and makes an important contribution to Australian communities. **Registered charities should continue to be allowed to receive international philanthropy** for the following reasons:

1. International philanthropy makes an important contribution to Australian charities in diverse fields such as health and medical research, Indigenous advancement, marine conservation, poverty alleviation, and education. The work this philanthropy supports has very high public value.
2. Charities exist for the public benefit and must work to further their charitable purposes. They must fulfill this fundamental obligation to retain their charitable status under Australian law.
3. The political activities of charities are strictly regulated and constrained by the *Charities Act 2013 (Cth)* and the *Commonwealth Electoral Act 1918*.
4. Charities are already regulated by a Statutory Regulator, the Australian Charities and Not-for-profits Commission (ACNC), which has powers to investigate and impose serious sanctions for any alleged breaches under relevant Acts.
5. There is a category difference between political parties and charities. Charities have completely different access to and influence over the political process compared to political parties. Given the very different legal circumstances within which charities operate, a new set of regulations for political parties should not be applied to charities.

### What outcome are we proposing?

Despite public concern about the influence of foreign money in politics, there is high public confidence and trust in charities, and their ability to stand up for the interests of everyday people and the issues they care about.<sup>1</sup> International philanthropic funding is an important part of many charities' annual budgets and enable them to deliver their public good. Imposing further restrictions on charities would restrict the voice of communities, and hinder the healthy operation of our democracy.

**We therefore propose that Australian charities registered with the Australian Charities and Not-for-profits Commission be exempt from any legislation that bans receiving international philanthropy.**

# Charities and International Philanthropy

## Background

As part of a move to ban foreign donations to political parties, the Government has flagged that it also intends to ban overseas funding to other organisations. The impact of this wider push may mean that **registered charities are prevented from accepting international philanthropy.**

Following the 2016 election, the Joint Standing Committee on Electoral Matters (JSCEM) conducted an “Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto”.<sup>2</sup> The Government members of the committee recommended a series of measures to ban foreign donations for third party activity that is not normally deemed to be “political” under the current disclosure regime. The recommendations included activity undertaken by groups that are registered charities and have Deductible Gift Recipient status.<sup>3</sup>

In media statements following the Inquiry, the Federal Government said it will deliver a reform proposal to address the issue of foreign donations by the end of the year.<sup>4</sup> New legislation will likely be based on the JSCEM recommendations and seek to restrict overseas funding to organisations including Australian charities.

The question of foreign influence in Australian politics is an important public policy issue with a range of complexities. However, this position paper highlights the potential **unintended consequences for Australian charities** of legislation that seeks to ban the receipt of international philanthropy. It makes the case that Australian charities registered with the Australian Charities and Not-for-profits Commission are **adequately regulated and should be exempt from any additional legislation or restrictions on funding.**

## Why charities should be allowed to receive international philanthropy

In our increasingly globalised and interconnected world, international philanthropy and Australian charities are addressing common challenges. These challenges are often global in nature, and require transnational responses. Global capital markets are liberalised, promoting and encouraging the flow of capital. Australian charities, companies, and the Australian Government, all send money to support charities in neighbouring countries in addressing local or common regional challenges.

International philanthropy complements Australian philanthropy’s support for charities, and makes an important contribution to Australian communities. Any barriers that will inhibit resources flowing to Australian charities will reduce their ability to undertake their important work in Australia and surrounding regions. **Registered charities should continue to be allowed to receive international philanthropy** for the following reasons:

## **1. International philanthropy makes an important contribution to Australian charities, supporting work that has a very high public value**

Overseas philanthropy makes an important contribution to Australian charities in diverse fields such as health and medical research, Indigenous advancement, marine conservation, poverty alleviation, and education. More than half of the Australian recipients of US grant money are universities, with hospitals and health research institutions also among the top recipients.<sup>5</sup>

Many of these issues cross international borders and it is appropriate for global philanthropy to play a role. In fact, many Australian organisations that deliver public good outcomes rely extensively on international philanthropy for their budgets. Around 1 in 4 charities depend on donations and philanthropy for 50% or more of their total income. Smaller charities tend to depend on donations and philanthropy for a higher proportion of their income compared with larger charities.<sup>6</sup>

Despite public concern about the influence of foreign money in politics, there is high public confidence and trust in charities, and their ability to support interests of everyday people and the issues they care about.<sup>7</sup> Communities *expect* charities to have a public voice on the issues they have been established to address.<sup>8</sup> Imposing further restrictions on charities would restrict the voice of communities, and hinder the operation of our democracy.

## **2. Charities in Australia operate for the public benefit and must work to further their charitable purpose**

Unlike a company which may engage in political activities, charities are not set up to provide private benefits. Charities exist purely for public benefit and must work to further their charitable purpose. Indeed, they must fulfill this fundamental obligation to retain their charitable status under Australian law.

Under the *Charities Act 2013 (Cth)* charities must operate for the public benefit and conduct activities consistent with their purpose. A charitable purpose is what a charity has been set up to achieve. It is the overarching object or goal of the charity – some people may refer to it as a ‘mission’. There are 12 charitable purposes listed in the *Charities Act 2013 (Cth)* and charities may have more than one charitable purpose.<sup>9</sup> Charities cannot have a non-charitable purpose unless the purpose is incidental or ancillary to (in aid of) a charitable purpose. Charity activities are the activities that a charity undertakes in support of its overarching purpose.

Charities work to deliver public good. Charities exist because the community wants them to exist. Communities want their charities to be advocates, to raise their voices, to represent those who do not have the capacity to influence policies. This mandate and support for charities is important to a well-functioning democracy and health public discourse.

### **3. The political activities of charities are strictly regulated and constrained by law**

Under Australia's *Commonwealth Electoral Act 1918* non-political entities are regulated differently to political parties. This is consistent with common sense – charities and other non-profit NGOs are not seeking state power, and should therefore not be subject to the same regulations as political parties. Nonetheless, there are still regulations and constraints on their activities. For example, charities are required to submit a return on political expenditure in certain circumstances, including for “expression of a view on an issue in an election”.

Under the *Charities Act 2013 (Cth)*, charities cannot be active participants in campaigns to support political parties or candidates. However, charities are allowed to promote or oppose a change to any matter established by law, policy, or practice in the Commonwealth, a State, a Territory, or another country, consistent with their charitable purpose.

Unlike other actors in elections, charities are specifically advised against handing out how-to-vote cards (although they are permitted to prepare scorecards that evaluate different candidates' policies). In this way, foreign donations to charities cannot directly influence the policy of political parties, or the outcome of elections.

### **4. Charities are already well regulated by their Statutory Regulator, the Australian Charities and Not-for-profits Commission**

Registered charities are regulated by the Australian Charities and Not-for-profits Commission (ACNC) - the independent national regulator of charities. The ACNC has been set up to achieve the following objects:

- a) maintain, protect, and enhance public trust and confidence in the sector through increased accountability and transparency;
- b) support and sustain a robust, vibrant, independent, and innovative not-for-profit sector;
- c) promote the reduction of unnecessary regulatory obligations on the sector.<sup>10</sup>

The ACNC, as the Statutory Regulator, has extensive powers to investigate and impose serious sanctions for any alleged breaches under relevant Acts, including withdrawal of registration of charities.

Charities are permitted to engage in campaigning and advocacy in service of their charitable purposes, but they are prohibited from engaging in party politics. The ACNC clarifies the nature of advocacy and campaigning in detail on its website, noting “Advocacy and campaigning can be a legitimate and effective way of furthering the charitable purposes of a charity.”<sup>11</sup>

## 5. There is a category difference between political parties and charities

The stated motivation behind the prospective ban on overseas donations to political parties is to reduce the potential risk of corruption and foreign government interference posed by such donations. But charities in receipt of overseas philanthropy do not pose this risk.

There is a category difference between political parties and charities. Charities have completely different access to and influence over the political process than political parties. Charities cannot be active participants in campaigns to support political parties or candidates. Unlike political parties, charities do not exercise executive power. They do not have access to the levers of government nor do they have the capacity to directly enact policy. From a risk mitigation perspective, there is no argument for applying the same restrictions to charities as are applied to political parties.

### What outcome are we proposing?

Charities by definition are not “political actors”. Charities are bound by charities law to ensure that their activities serve their charitable purpose, that they do not have a disqualifying political purpose, and that they abstain from party politics. Given the very different legal circumstances within which charities operate, and their more limited capacity to contribute to electoral outcomes, charities should not be included in any ban on foreign donations.

International philanthropic funding is an important part of many charities’ annual budgets and enable them to deliver their public good. Imposing further restrictions on charities would restrict the voice of communities, and hinder the healthy operation of our democracy.

**We therefore propose that Australian charities registered with the Australian Charities and Not-for-profits Commission be exempt from any legislation that bans receiving international philanthropy.**

## Questions and Answers

### ***Q: Why should charities be allowed to accept foreign donations, while political parties and other political actors are banned?***

A: Charities work to deliver public good. Unlike political parties that seek seats in government, or third party political actors that seek explicitly to change electoral outcomes, charities are bound to act in accordance with charities law and their own charitable purpose – be it environment or human rights protection, medical research or Indigenous advancement. Charities are permitted by charities law to engage in campaigning and advocacy in service of their charitable purposes, but they are prohibited from engaging in party politics. Unlike third party political actors, charities are specifically advised against handing out how-to-vote cards (although they are permitted to prepare scorecards that evaluate different candidates’ policies). In this way, foreign donations to charities cannot directly influence the policy of political parties, or the outcome of elections.

### ***Q: Shouldn’t there be one rule for everyone to ensure a ‘level playing field’?***

A: There is no level playing field, and it is entirely appropriate that different kinds of groups are regulated differently. Political parties get seats in parliament, public funding for election campaigns, and access to the electoral roll. Non-charity political actors are able to campaign for particular electoral outcomes, and to hand out how-to-vote cards that direct people how to vote. Corporations are already seen by most Australians to have too much influence over the political process, and on top of their day-to-day influence can also campaign for explicit electoral outcomes and hand out how-to-vote cards. Charities that work for the public good are the only ones bound to act in accordance with their charitable purpose, and that are prevented from engaging in party politics. They should, therefore, be treated differently.

### ***Q: Which charities are likely to be affected by these changes?***

A: If all the charities which comment on policy, offer critique, advocate for funding, or express a view on issues during an election campaign are considered to be ‘political actors’, the proposed changes could potentially affect thousands of charities. A wide range of groups engage in advocacy, including human rights, environment and social justice groups, universities, medical research institutes, aged care providers, religious and arts bodies.

***Q: How do other countries treat foreign donations?***

A: Australia is among a third of countries internationally that do not ban foreign donations to political parties. The US, UK and Canada all ban such donations, although New Zealand, Germany, Italy, Spain and some other European countries do not. Nonetheless, very few democracies ban foreign donations to charitable NGOs (although in a worrying trend this has been happening in China, India, Russia, Hungary, Israel and elsewhere). The US, UK and many other countries allow foreign donations for charities.

***Q: What example would banning funding to charities set internationally?***

A: In many countries, human rights organisations, social justice advocates, and environmental organisations receive significant funding from international philanthropy. For example, much of the funding for environmentalists working to protect the Amazon from deforestation has come from international foundations. A significant amount of Australia's Official Development Assistance goes to local in-country partner NGOs to undertake development and capacity building projects and build governance and democracy. Stopping international philanthropy to charities in Australia would set a poor international example and may encourage similar crackdowns against civil society in other countries. We are already seeing civil society organisations such as unions and NGOs face oppression from authorities who prevent these organisations from fundraising in order to limit their influence. Australia should not be sending a signal that stopping international philanthropy to civil society is appropriate for a healthy democracy.



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<sup>1</sup> In 2015 research commissioned by the ACNC, charities were third most trusted institutions and organisations after doctors and police, and ahead of the High Court and Parliaments: <http://acnc.gov.au/trustandconfidence>  
Similarly, 2014 research undertaken by Swinburne University found that those who lead charities and not-for-profit groups were viewed as more trustworthy than political, business, trade union or religious leaders:  
<http://www.vista.org.au/documents/item/2766>

<sup>2</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third Interim Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)

<sup>3</sup> The two relevant recommendations are:

*Recommendation 3:*

The Joint Standing Committee on Electoral Matters recommends a prohibition on donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties. This ban would not apply to dual Australian citizens either in Australia or overseas, or to non-Australian permanent residents in Australia.

*Recommendation 4:*

The committee recommends that the Joint Standing Committee on Electoral Matters, in its wider inquiry into donations and disclosure, further examines the requirement to extend a foreign donations ban to all other political actors. The key issue to be considered is how to prevent foreign funds being channelled through organisations engaging in political activities and who are not subject to regulation under the Commonwealth Electoral Act 1918. This new inquiry would also examine related issues that have arisen in this inquiry which are outside the current terms of reference, including tax deductibility for gifts.

<sup>4</sup> <http://www.abc.net.au/radionational/programs/breakfast/foreign-donations/8599572>

<sup>5</sup> [https://www.philanthropy.org.au/images/site/misc/About\\_Us/Initiatives/2016/US\\_Foundation\\_Funding\\_for\\_Australia.pdf](https://www.philanthropy.org.au/images/site/misc/About_Us/Initiatives/2016/US_Foundation_Funding_for_Australia.pdf)

<sup>6</sup> *Australian Charities Report 2015*, ACNC, <http://australiancharities.acnc.gov.au/download/>

<sup>7</sup> Based on 2015 research commissioned by the ACNC, charities are third most trusted institutions and organisations after doctors and police, and ahead of the High Court and Parliaments: <http://acnc.gov.au/trustandconfidence>

<sup>8</sup> In a 2016 Essential Poll, more than 2/3rds of respondents agreed that charities should be able to criticise the government: [http://www.essentialvision.com.au/wp-content/uploads/2016/11/Essential-Report\\_161115.pdf](http://www.essentialvision.com.au/wp-content/uploads/2016/11/Essential-Report_161115.pdf)

<sup>9</sup> Section 12 of the Charities Act 2013 (No. 100, 2013) gives the definition and range of “charitable purpose”:

(1) In any Act: “*charitable purpose*” means any of the following:

- (a) the [purpose of advancing health](#);
- (b) the purpose of [advancing](#) education;
- (c) the [purpose of advancing social or public welfare](#);
- (d) the purpose of [advancing](#) religion;
- (e) the [purpose of advancing culture](#);
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting [human rights](#);
- (h) the purpose of [advancing](#) the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of [advancing](#) the natural environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);

Note: In the case of a purpose that was a [charitable purpose](#) before the commencement of this Act and to which the other paragraphs of this definition do not apply, see item 7 of Schedule 2 to the *Charities (Consequential Amendments and Transitional Provisions) Act 2013*.

(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

- (i) in the case of promoting a change--the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
- (ii) in the case of opposing a change--the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

(2) Paragraph (l) of the definition of [charitable purpose](#) in subsection (1) is the only paragraph of that definition that can apply to the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country.

(3) For the purposes of this section, it does not matter whether a purpose is directed to something in Australia or overseas.

<sup>10</sup> [https://www.acnc.gov.au/ACNC/About\\_ACNC/ACNC\\_role/ACNC/Edu/ACNC\\_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe](https://www.acnc.gov.au/ACNC/About_ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe)

<sup>11</sup> [http://www.acnc.gov.au/ACNC/Reg/Charities\\_elections\\_and\\_advocacy.aspx](http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx)